BOROUGH COUNCIL OF WELLINGBOROUGH **AGENDA ITEM 7**

Council **17 April 2018**

Report of the Managing Director

REVIEW OF CONSTITUTION

1 Purpose of report

This report provides members with an updated constitution for review.

2 Executive summary

Members requested a review of the constitution some time ago, and the constitution working group has been working on this since July 2017, in conjunction with officers and a local government lawyer who specialises in constitutional matters. Attached as an appendix is the outcome of those deliberations; a recent iteration has been shared with the wider membership before the draft was finalised.

3 Appendices

The appendix to this report is the revised constitution.

4 Proposed action:

The council is invited to RESOLVE to:

4.1 **approve the constitution as appended to the report (version 1, April 2018).**

5 Background

5.1 The previous chief executive sought permission from resources committee to create a constitution working party on 16 September 2014. As part of its terms of reference it was due to meet at any point up to the end of the 2014/15 civic year (ie. until 31 March 2015).

5.2 Some revisions have been made to the constitution in the past few years, but no overall review has been carried out.

5.3 At annual council in 2017 the constitution working party was reinstated to carry out a full review of the constitution.

5.4 Officers advised that it would be beneficial to employ a local government lawyer who had worked with a number of authorities and could identify any omissions or weaknesses in the current constitution. He carried out a thorough review and “health check” before the working party met in July 2017.

5.5 Since then there have been several meetings to discuss various aspects of the constitution, but with particular emphasis on making the delegations to committees and officers easier to navigate, as well as the addition of codes of conduct/protocols which were absent.

6 Discussion

6.1 Proposed changes to the current version were agreed by the working party following discussions with the council's officers and the lawyer commissioned to advise. All members had the opportunity to discuss any points in relation to the new proposed constitution at an informal meeting on 15 February 2018. This was followed by a further working party meeting to agree the final draft version for council consideration.

6.2 The changes made to the draft constitution for April 2018 are as follows. Minor changes to wording, formatting, duplication etc. are not included for practical purposes; in general an attempt was made to simplify the language and layout to promote ease of use:

(a) Revised approach to Part 3 – delegations to committees and officers. The working party requested that the delegations be amended to reflect function rather than statute. This meant that there would be no requirement to update the constitution each time legislation was changed or new legislation enacted.

(b) The layout of part 3 was also amended to show the functions of the committees, as delegated by council, immediately followed by the delegations made to officers by that committee. This approach showed a clear thread through from council delegation to committees, and then to officers. No material changes were made to the delegations to officers; whilst the wording was amended the spirit remained unchanged.

(c) Specific requirements in relation to the management of the council's staff were removed because of the requirement to negotiate or consult on policies in relation to staffing issues with the recognised trade union. This was dealt with in 3.3.01 (B)(iv)(a) of the current constitution where resources committee was empowered to establish a "framework for human resources policies and procedures". This has now been reflected in revised points (l) to (n) on page 18 of the revised part 3, and within the delegations to the relevant director on page 20.

(d) Changes were made to officer titles to reflect the current structure.

(e) The ability for council to consider planning applications, if requested in accordance with paragraph 3.1.22, was removed because this conflicted directly with the council's requirement that all members of planning committee be appropriately trained.

(f) The operation of the market and the strategic approach to the market were divided: the operation remained with services committee and strategy was transferred to development committee.

(g) The two different requirements in relation to a licensing committee were

included (regulatory and Licensing Act), which divided the current single committee into two.

(h) In part 4 clarity was provided on procedure rules (standing orders) to comply with statutory requirements.

(i) The Members' Code of Conduct was amended to reflect the amended definitions of the "Nolan Principles" made by the committee for standards in public life in 2013.

(j) A planning code of conduct for members was added.

(k) A licensing code of good practice was added.

(l) The monitoring officer protocol was revised, because the existing protocol described the standards regime rather than the monitoring officer's role.

(m) A governance of council interests in companies code of practice was added.

6.3 The following were not changed in any significant way: part 1 (all); part 2 (all); part 4 (Access to Information, financial procedure and contract procedure rules); part 5 (Local Authority Publicity Code, Officer/Member Protocol, Employee Code of Conduct, protocol on working parties/advisory groups, Local Code of Governance).

6.4 It was also identified that an investigating and disciplinary committee was needed in order to comply with changes to required procedures for discipline, capability, redundancy and other dismissals of chief executives (head of paid service). In addition, the council has agreed to create an arts and culture sub-committee. The creation of both will be included in a report to annual council and updated pages of the constitution will be provided if the changes are agreed.

7 Legal powers

There is a legal requirement under Section 37 of the Local Government Act 2000 for local authorities to adopt a constitution and keep it up to date. The council's current constitution also provides for regular review and revision as necessary.

8 Risk analysis

The current constitution does not reflect best practice, and there are some omissions which need to be corrected. Various aspects of the current constitution are out of date and the those are addressed by the revised version.

9 Implications for resources, equalities and stronger and safer communities

The constitution by its own nature provides a framework for the council's management of its resources, the delivery of services in a non-discriminatory manner and of its priorities and objectives.

10 Author and contact officer

Liz Elliott, Managing Director

11 Consultees

Julie Thomas, Monitoring Officer and Director
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Members of the Constitution Working Party
Members of the Council

12 Background papers

Background papers include reports and minutes of the constitution working party, reports from the council's consultant, and various iterations of the constitution.

Borough Council of
Wellingborough
Making Wellingborough a place to be proud of

CONSTITUTION

April 2018

Version 1

www.wellingborough.gov.uk

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PART 1
SUMMARY AND EXPLANATION

1.1 The Council's Constitution

The Borough Council of Wellingborough has agreed a constitution which sets out how the council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the council to choose.

The Constitution is divided into 15 articles which set out the basic rules governing the council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

1.2 What's in the Constitution?

Article 1 of the Constitution commits the council to statements of purpose in the delivery of the mission statement, approved by Council on 10 February 2008, which is as follows:

"**Making Wellingborough a place to be proud of**"

Articles 2-15 set out in Part 2 of this Constitution explain the rights of citizens and how the key parts of the council operate. These are:

- Members of the Council (Article 2)
- Citizens and the council (Article 3)
- The Council meeting (Article 4)
- Chairing the Council (Article 5)
- Policy, licensing and planning committees (Article 6)
- Partnerships and Performance Committee
- The Standards Committee (Article 8)
- Provision for area committees (Article 9)
- Joint arrangements (Article 10)
- Officers of the council (Article 11)
- Decision making (Article 12)
- Finance, contracts and legal matters (Article 13)
- Review and revision of the Constitution (Article 14)
- Suspension, interpretation and publication of the Constitution (Article 15)

1.3 How the council operates

The council is composed of 36 Councillors elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of councillors is to the whole borough, but they have a special duty to their own constituents, including those who did not vote for them.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Standards Committee monitors compliance with the Code of Conduct and considers and determines complaints.

All councillors meet together as the Council. Meetings of the council are normally open to the public. It is here councillors decide the council's overall policies and set the budget each year. The Council retains certain powers and duties to itself and delegates some to committees and officers.

1.4 How decisions are made

Most day-to-day decisions are made by policy committees. The council has three policy committees: **Resources, Development and Services.**

A **Planning** Committee exists to deal with planning applications and other planning matters. A **Licensing** Committee is responsible for the council's licensing functions and the hearing of appeals.

In addition, there is an **Audit Committee** responsible for overseeing the Council's financial reporting and auditing processes, a **Partnerships and Performance Committee** responsible for reviewing partnerships and council performance, and an **Appointments Committee** responsible for making senior officer appointments.

Advisory groups may be formed, on a time-limited basis, to look into particular issues.

Meetings of the council's committees are open to the public except where exempt or confidential matters are being discussed. The council publishes a Scheme on Public Participation in its meetings.

1.5 The council's employees

The council employs staff to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the council acts within the law and uses its resources wisely. A code of practice, set out in this Constitution, governs the relationships between officers and members of the council.

1.6 Councillors

A local Code of Conduct sets standards of behaviour for councillors and their working relationships, and the council has established a Standards Committee which is responsible for:

- advising on the adoption of a Code of Conduct which sets out the conduct expected from councillors;
- promoting and maintaining high standards of conduct in the council;
- monitoring the operation of the Code of Conduct and local protocols, including the Member/Officer Protocol;
- considering and determining complaints.

1.7 Ethical governance and conduct

In delivering council services in respect of the above priorities and objectives, both members and officers abide by the 6 principles of good governance (see Part 5 – Local Code of Governance (Framework)) and the principles of public life (See Part 5 - Code of Conduct for Members). These principles are enshrined in the policies and procedures of the council and in individual conduct.

1.8 Citizens' rights

Citizens have a number of rights in their dealings with the council. These are detailed in Article 3. Some of these are legal rights, whilst others depend on the council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the council where they may speak and ask questions in accordance with the council's scheme except where, for example, exempt or confidential matters are being discussed;
- participate in the council's public participation arrangements and contribute to reviews by the Partnership and Performances Committee;
- see reports and background papers, and any record of decisions made by the council, except where they are exempt from publication;

- complain to the council using the council's complaints procedure;
- complain to the Local Government Ombudsman if they think the council has not followed its procedures properly. However, they should only do this after using the council's own complaints process;
- complain to the council's Standards Committee if they have evidence which they think shows that a councillor has not followed the Council's Code of Conduct;
- inspect the council's accounts and make their views known to the external auditor;
- petition the council under the council's Scheme for Petitions or request a referendum on an elected mayoral form of executive; and
- request information under the Data Protection Act, Freedom of Information Act and the Access to Environmental Information Regulations

The council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Monitoring Officer at the council offices by letter, e-mail or telephone.

The process for inspecting agendas and reports, and for attending meetings, is set out in full in the Rules of Procedure of the Council, Part 4 of this Constitution.

PART 2
ARTICLES OF THE CONSTITUTION

2.1 Article 1 – The Constitution

2.1.01 Powers of the council

The council will exercise all its powers and duties in accordance with the law and this Constitution, having regard at all times to the corporate mission set out in Article 2.1.04.

2.1.02 The Constitution

This Constitution, and all its appendices, is the Constitution of the Borough Council of Wellingborough. It is dated April 2018 and replaces all previous versions. Updates are issued from time to time to reflect amendments.

2.1.03 Purpose of the Constitution

The purpose of the Constitution is to:

(a) enable the council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;

(b) support the active involvement of citizens in the process of local authority decision-making;

(c) help councillors represent their constituents more effectively;

(d) enable decisions to be taken efficiently, effectively and transparently;

(e) create a powerful and effective means of holding decision-makers to public account;

(f) ensure that no one will review or scrutinise a decision in which they were directly involved;

(g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and

(h) provide a means of improving the delivery of services to the community.

2.1.04 Motto and mission statement

The council's motto from its coat of arms is "Forward Together".

The Council's mission statement was adopted in January 2008 as follows

"Making Wellingborough a place to be proud of"

2.1.05 Interpretation and review of the Constitution

Where the Constitution permits the council to choose between different courses of action, the council will always seek to choose that option that it thinks is closest to the purposes stated above.

The council will monitor and evaluate the operation of the Constitution as set out in 2.14.01 below (Article 14)

2.2 Article 2 – Members of the Council

2.2.01 Composition and eligibility

(a) **Composition**. The council will comprise 36 members, otherwise called councillors. Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Boundary Commission for England.

(b) **Eligibility**. Section 79 of the Local Government Act 1972 sets out the qualifications for standing as a candidate and the grounds for disqualification of a candidate.

To qualify as a candidate for election to a local authority, a person must satisfy the following criteria on the day they are nominated and on polling day. They must:

- be at least 18 years old, and
- be a British citizen, a qualifying Commonwealth citizen or a citizen of any other member state of the European Union.

The candidate must also meet at least one of the following four qualifications on the day they are nominated and on polling day:

- they are registered as a local government elector for the local authority area in which they wish to stand, or
- they have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day they are nominated, or
- their main or only place of work during the last 12 months has been in the local authority area, or
- they have lived in the local authority area during the whole of the last 12 months.

A person cannot be a candidate if at the time of their nomination or their election:

- they are employed by the local authority or hold a paid office under the authority (including joint boards or committees);
- they hold a politically restricted post;
- they are the subject of a bankruptcy restrictions order or interim order;
- they have been sentenced to a term of imprisonment of three

months or more (including a suspended sentence), without the option of a fine, during the five years before election day;

- they have been disqualified under Part III of the RPA 1983 (which relates to donations and other offences) or under the Audit Commission Act 1998.

A person may also be disqualified from election if they have been convicted or reported guilty of a corrupt or illegal practice by an election court, or if they have been disqualified from standing for election to a local authority following a decision of the Adjudication Panel for England.

2.2.02 Election and terms of councillors

The regular election of councillors is held on the first Thursday in May (or whatever date is fixed by law) every four years beginning in 2003. The terms of office of councillors start on the fourth day after being elected and finish on the fourth day after the date of the next regular election. A by-election is held if a vacancy arises (except where a vacancy arises within six months of a regular election).

2.2.03 Roles and functions of all councillors

(a) **Key roles – all councillors will:**

i. collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;

ii. represent their communities and bring their views into the council's decision-making process, i.e. become the advocate of and for their communities;

iii contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;

iv. deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances fairly and impartially;

v. balance different interests identified within the ward and represent the ward as a whole;

vi. be involved in decision-making;

vii. be available to represent the council on other bodies;

viii. maintain the highest standards of conduct and ethics; and

ix. participate in the governance and management of the council.

(b) **Rights and duties**

i. Councillors have rights of access to such documents, information, land and buildings of the council as are necessary for the proper discharge of their functions and in accordance with the law.

ii. Councillors will not make public information that is confidential or exempt without the consent of the council or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.

For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.2.04 Political groups

The members of an authority are to be treated as divided into different political groups when there is at least one properly constituted political group in existence.

A political group shall be treated as constituted when there is delivered to the Monitoring Officer a notice in writing which is signed by two or more members of the authority who wish to be treated as a political group; and states

(a) that the members of the authority who have signed it wish to be treated as a political group;
(b) the name of the group; and
(c) the name of the member of the group who is to act as its leader.

Under Section 15 of the Local Government and Housing Act 1989, the council has a duty to review the allocation of seats on committees to the political groups in the council at the annual meeting or as soon as possible thereafter.

The allocation of seats on the Council and committees is made in proportion to the seats on the Council held by each political group. The duty to allocate seats on a proportional basis does not apply to all committees of the council.

Councillors who are not members of a political group are allocated seats by the full Council. Councillors elected as Independents may, if they wish, form an independent group that, for the purposes of the 1989 Act, shall be treated as a political group.

2.2.05 Conduct

At all times, councillors will observe the Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

2.2.06 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme.

2.2.07 Office holders

(a) Administration and Opposition

In this Constitution, the expression "The Administration" means the group or groups of councillors holding office, normally with a majority of council seats.

"The Opposition" means the largest group or groups of councillors not forming part of the Administration.

(b) Roles of the Mayor and Deputy Mayor

i. The Mayor and Deputy Mayor are elected each year at the Annual Council meeting. The Mayor chairs the full Council meeting.

ii. The Mayor is First Citizen of the Borough and is the council's civic and ceremonial head.

iii. The Mayor may nominate a Mayoress or Consort and a Chaplain or some other faith representative.

iv. The Deputy Mayor may nominate a Deputy Mayoress or Consort.

v. The Deputy Mayor may, if for any reason the Mayor is unable to act or the office of Mayor is vacant, discharge all functions that the Mayor as such might discharge.

vi. On a casual vacancy occurring in the office of Mayor or Deputy Mayor, an election to fill the vacancy shall be held not later than the next ordinary meeting of the Council held after the date on which the vacancy occurs, or if that meeting is held within 14 days after that date, then not later than the next following ordinary meeting of the Council, and shall be conducted in the same manner as an ordinary election. A special meeting of the Council for the election may be convened by the Head of Paid Service.

(c) Leader and Deputy Leader of the Council

The leader and deputy leader of the majority group, if there is one, shall be appointed as Leader and Deputy Leader of the Council.

If there is no majority group, the Council itself may elect a Leader and Deputy Leader at the annual meeting of the Council to exercise any

functions falling to the Leader under these Standing Orders, the Terms of Reference, Scheme of Delegation, statute, or any other lawful authority.

The Leader of the Council may act as spokesman for the council and may delegate this function to any elected councillor for a specific purpose or function.

(d) Leader and Deputy Leader of the Opposition

The appointment of Leader and Deputy Leader of the Opposition are noted at the annual meeting of the Council.

(e) Cessation of membership

A councillor will cease to be a member if he/she

i. resigns by giving notice in writing to the Head of Paid Service;
ii. fails to observe the requirements to attend Council meetings as prescribed by Section 85 of the LGA 1972; or
iii. is disqualified from holding office by virtue of Section 80 of LGA 1972 or any other statutory provision.

2.3 Article 3 – Citizens and the Council

2.3.01 Citizens' rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

(a) **Information.** Citizens have the right to:

i. attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
ii. see reports and background papers, and any records of decisions made by the council; and
iii. inspect the council's accounts and make their views known to the external auditor.

(b) **Participation.** Borough electors have the right to contribute by way of the council's public participation arrangements and contribute to investigations by the scrutiny function, in accordance with the council's scheme.

(c) **Complaints.** Citizens have the right to complain to:

i. the council itself, under its complaints scheme;
ii. the Local Government Ombudsman (usually after using the council's own complaints scheme);

iii. the Standards Committee, about a breach of the Councillors' Code of Conduct.

(d) **Voting and petitions**. Borough electors have the right to vote and sign a petition to request a referendum for a change in governance arrangements.

2.4 Article 4 – The Full Council

2.4.01 The Council will exercise the following functions:

(a) adopting and changing the Constitution and Code of Conduct;

(b) approving or adopting the policy framework, the annual pay policy statement and the budget (the meanings of these terms are set out in Part 3 to this Constitution);

(c) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;

(d) appointing representatives to outside bodies, unless the appointment has been delegated by the Council;

(e) adopting an allowances scheme;

(f) changing the name of the Council,

(g) conferring the Freedom of the Borough;

(h) confirming the appointment of the Head of Paid Service;

(i) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation; and

(j) all other matters which by law must be reserved to Council;

(k) receiving and adopting reports of committees.

2.4.02 Council meetings

There are three types of Council meeting:

(a) the Annual meeting;

(b) Ordinary meetings;

(c) Extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

2.5 Article 5 – Chairing the Council

2.5.01 The Mayor and Deputy Mayor will be elected by the Council annually. The Mayor, and in his/her absence the Deputy Mayor, will have the following responsibilities:

(a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;

(b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;

(c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which councillors are able to hold the policy committees to account;

(d) to promote public involvement in the council's activities; and

(e) to attend such civic and ceremonial functions as the council and he/she determines appropriate.

2.6 Article 6 – Policy, licensing, planning and other committees

2.6.01 Policy committees

The council will appoint three policy committees, as follows:

(a) Resources Committee
(b) Development Committee
(c) Services Committee

2.6.02 Specific functions

The specific functions of the committees are detailed in Part 3 of this Constitution.

2.6.03 Proceedings of the committees

Proceedings of the committees shall take place in accordance with the Committee Procedure Rules set out in Part 4 of this Constitution.

2.6.04 Appointments Committee

The Council will appoint an **Appointments Committee** to advise the Council on the appointment of the Head of Paid Service and appoint Chief Officers and Deputy Chief Officers.

2.6.05 Audit Committee

The Council will appoint an **Audit Committee** to provide independent assurance of the adequacy of the council's internal control environment, examination of the council's financial and non-financial performance to the

extent that it affects the council's control environment, and to oversee the financial reporting and auditing processes.

2.6.06 Planning Committee

The Council will appoint a **Planning** Committee to discharge the following role:

(a) **General role**

Functions relating to Town and Country Planning and Development Control, as specified in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

(b) **Specific functions**

The specific functions of the Planning Committee are set out in Part 3 of this Constitution.

(c) **Proceedings of the committee**

Proceedings of the Planning Committee shall take place in accordance with the Procedure Rules set out in Part 4 of this Constitution.

2.6.07 Licensing Committee

The Council will appoint a **Licensing Committee** to exercise the functions relating to Licensing and Registration as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and under the Licensing Act 2003 and Gambling Act 2005; it will also hear appeals against the decisions of the council.

2.6.08 Partnerships and Performance Committee

The council will appoint a **Partnerships and Performance Committee** to review and monitor the performance of council services and services provided on behalf of the council by external bodies as set out in Part 3 of this Constitution.

2.7 ARTICLE 7 – Standards Committee

2.7.01 The Council will appoint a Standards Committee. The vice-chairman will be a member of the Opposition group.

2.7.02 General role

The Standards Committee will have the following roles:

(a) promoting and maintaining high standards of conduct by councillors and co-opted members;

(b) determining complaints made against councillors and co-opted members;

(c) assisting the councillors and co-opted members to observe the Members' Code of Conduct;

(d) the exercise of these functions in relation to parish councils in the Borough of Wellingborough and the members of those parish councils.

2.7.03 Specific Functions

The specific functions of the Standards Committee are set out in Part 3 of this Constitution.

2.8 Article 8 – Provision for area committees

2.8.01 Although it has not chosen to hitherto, the Council may appoint area committees as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

2.8.02 The form, composition and function of any such area committee will be determined in accordance with the provisions of the relevant legislation and accompanying guidance.

2.8.03 The council will consult with relevant parish and town councils and the chairmen of relevant parish meetings when considering whether and how to establish area committees.

2.9 Article 9 – Joint arrangements

2.9.01 The council may establish joint arrangements with one or more local authorities to exercise functions in any of the participating authorities.

2.10 Article 10 – Officers

2.10.01 Management structure

(a) **General.** The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.

(b) **Chief officers.** The full Council will engage persons for the following posts, who will be designated chief officers:

Post	Functions and areas of responsibility
Managing Director	• Overall corporate management and operational responsibility (including overall management responsibility for all officers) • Business transformation • Reputation management • Provision of professional advice to all parties in the decision-making process • Together with the Monitoring Officer, responsibility for a system of record keeping for all the council's decisions

- Representing the council on partnership and external bodies (as required by statute or the council)
- Corporate policy
- Strategic management
- Management of services
- Decision making at strategic level
- Partnership development

(c) **Head of Paid Service, Monitoring Officer and Chief Finance Officer**. These are statutory appointments and the council will designate the following to these posts:

Designation	**Post**
Head of Paid Service	Managing Director
Monitoring Officer	Director
Chief Finance Officer (Section 151 Officer)	Head of Finance

These posts will respectively have the functions described in paragraphs 2.11.02, 2.11.03 and 2.11.04.

(d) **Structure**. The Head of Paid Service will publicise a description of the overall officer structure of the council showing the management structure and deployment of officers.

2.10.02 Functions of the Head of Paid Service

(a) **Discharge of functions by the council**. The Head of Paid Service will report to full Council on the manner in which the discharge of the council's functions is co-ordinated, the number and grade of officers required for the discharge of functions, and the organisation of officers.

(b) **Restrictions on functions**. The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

(c) **Proper Officer.** Until the council decides otherwise, the Head of Paid Service shall be the Proper Officer for the purpose of all statutory provisions, whether existing or future, in respect of which no express Proper Officer appointment has, for the time being, been made elsewhere in this Constitution. In the event the appointed Proper Officer is unavailable to act the Head of Paid Service shall determine who is to fulfil the Proper Officer role in the interim.

2.10.03 Functions of the Monitoring Officer

(a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by councillors, staff and the public.

(b) **Ensuring lawfulness and fairness of decision making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

(c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

(d) **Receiving reports.** The Monitoring Officer will receive and act on reports made by members of the public.

(e) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters referred for investigation by an assessment sub-committee of the Standards Committee and make reports or recommendations in respect of them to the Standards Committee hearings sub-committee. As an alternative to investigation the assessment sub-committee may instruct the Monitoring Officer to pursue alternative resolution.

(f) **Proper officer for access to information.** The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

(g) **Complaints.** To investigate all complaints against the council received through the Local Government Ombudsman.

(h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

2.10.04 Functions of the Chief Finance Officer

(a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council and the council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the council is about to enter an item of account unlawfully.

(b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the council.

(c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the council, in particular through the provision of professional financial advice.

(d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity to all councillors and the Mayor and will support and advise councillors and officers in their respective roles.

(e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

2.10.05 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

The council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources sufficient to allow the officers' duties to be properly performed.

2.10.06 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

2.10.07 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 5 of this Constitution.

2.11 Article 11 – Decision making

2.11.01 All decisions of the council will be made in accordance with the following principles:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);
(b) value for money and affordability;
(c) due consultation and the taking of professional advice from officers;
(d) respect for human rights;
(e) a presumption in favour of openness; and
(f) clarity of aims and desired outcomes.

2.11.03 Decision making by other committees established by the council

Council committees will follow the Committee Procedure Rules set out in Part 4 of this Constitution.

2.11.04 Decision making by council bodies acting as tribunals

The council, a councillor or an officer acting as a tribunal or in a quasi-judicial

manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair hearing contained in Article 6 of the European Convention on Human Rights.

2.12 Article 12 – Finance, contracts and legal matters

2.12.01 Financial management

The management of the council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution.

2.12.02 Contracts

Every contract made by the council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

2.12.03 Legal proceedings

The Managing Director is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the council or in any case where the Managing Director considers that such action is necessary to protect the council's interests.

2.12.04 Authentication of documents

Where any document is necessary to give effect to any legal procedure or proceedings conducted by or on behalf of the council it shall be signed by the Managing Director or such other person duly authorised by the Managing Director for that purpose unless any enactment or provision of this Constitution requires otherwise or the council has granted the necessary authority to another person or body for some specific reason or purpose.

2.12.05 Common Seal of the Council

The Common Seal of the Council shall be kept in a secure place under the custody of the Managing Director. A resolution of the council or any part of the council duly authorised by it shall be sufficient authority for the sealing of any document necessary to give effect to that resolution.

The Common Seal of the Council shall be attested by the Mayor (or Deputy Mayor) and the Managing Director (or other duly authorised officer) and a record of the sealing shall be entered into a written register (the deed register) that will be kept in a safe place and maintained for that purpose and the persons attesting the document shall sign their names against the relevant entry in the deed register. Except in the case of documents in paragraph (b) below the relevant council or committee minute authorising the transaction together with the entry number in the deed register shall be written on the document adjacent to the Common Seal before attestation.

2.12.0.6 Documents that require to be sealed

The following deeds documents or other instruments ("documents") shall be executed under the Common Seal of the Council. Any document or documents:

(a) That is required by law to be so executed;
(b) Relating to civic procedure or protocol that is by custom and practice usually so executed;
(c) Giving effect to any transaction being entered into by the council, other than the sale, purchase or transfer of land, where the consideration in money or monies worth is greater than £250,000 or where two or more documents form part of a series of linked transactions and the aggregate consideration is greater than that sum;
(d) Giving effect to any transaction where the annual sum is greater than £25,000 per annum (except for contracts of employment for permanent members of council staff);
(e) Relating to the sale purchase or transfer of land;
(f) Where it is reasonably foreseeable that the transaction will or could incur future liabilities for the council in excess of £25,000.

2.13 Article 13 – Review and revision of the Constitution

2.13.01 Duty to monitor and review the Constitution

The Resources Committee, Standards Committee and the Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are properly upheld.

2.13.02 Protocol for monitoring and review of Constitution by the Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

(a) observe meetings of different parts of the member and officer structure;
(b) undertake an audit trail of a sample of decisions;
(c) record and analyse issues raised with him/her by councillors/officers, the public and other relevant stakeholders; and
(d) compare practices in this council with those in other comparable authorities, or national examples of best practice.

2.13.03 Changes to the Constitution

(a) **Approval**. Decisions involving a substantive change to the Constitution, except delegations (Part 3) and titles/structures will be

approved by the full Council only after consideration of the proposal by the Resources Committee. However the need to amend the Constitution is not an obstacle to the Council agreeing changes to structures and delegations providing such changes are incorporated into the Constitution as soon as possible thereafter.

(b) Changes to meeting procedures (Part 4) will not come into force until the start of the next Ordinary Council meeting after the one giving approval thereto. Provisions for changes to delegations are contained in paragraphs 3.2.01(a) and (b).

2.13.04 Change in governance arrangements

The council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up any such proposals.

2.14 Article 14 - Suspension, interpretation and publication of the Constitution

2.14.01 Suspension of the Constitution

(a) **Limit to suspension**. The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full council or a committee as the case may be to the extent permitted within those Rules and the law.

(b) **Procedure to suspend.** A motion to suspend any or all rules will not be moved without notice unless at least two thirds of the whole number of councillors is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

(c) **Rules capable of suspension**. The council's or a committee's Rules of Procedure may be suspended in accordance with this Article.

2.14.02 Interpretation

The ruling of the Mayor or chairman of a committee as applicable as to the construction or application of this Constitution, or as to any proceedings of the Council or committee shall not be challenged at any meeting of the Council or committee. Such interpretation will have regard to the purposes of the Constitution contained in Article 1.

2.14.03 Publication

(a) The Monitoring Officer will give a printed copy of this Constitution to each member of the Council upon delivery to him/her of that individual's declaration of acceptance of office on the member first being elected to the Council.

(b) The Monitoring Officer will ensure that copies are available for inspection at council offices, libraries and other appropriate locations,

and are available for purchase by members of the local press and the public on payment of a reasonable fee.

(c) The Monitoring Officer will ensure that the summary of the public's rights to make representations to the council is made widely available within the area and is updated as necessary.

PART 3

RESPONSIBILITY FOR FUNCTIONS AND THE GENERAL SCHEME OF DELEGATION

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3.1 General scheme of delegation to committees and officers

3.1.01 This scheme of delegation sets out the functions of the council to be discharged by the Council, its committees and sub-committees. It also includes terms of reference of statutory and non-statutory advisory bodies set up by the Council or its committees.

3.1.02 Advisory groups and panels do not have any executive powers and must submit recommendations to the appropriate committee or Council for implementation. Licensing Committees and their sub-committees have the power to determine cases coming before them.

3.1.03 The powers, duties and functions of the committees of the council shall either be exercised subject to the approval of the Council (called advisory powers) or in the name of and on behalf of the Council (called executive powers). The advisory and executive powers of each committee shall be as determined by the Council.

Reservations on delegations (committees and officers)

3.1.04 No committee or officer to whom powers are delegated shall exercise those powers where revenue expenditure will be incurred, or new sources of revenue secured, which are not included in appropriate approved revenue or capital estimates, or approved financial projections for capital or other funds, without reference to the appropriate committee if the amount exceeds that stipulated in the Financial Procedure Rules.

3.1.05 Each committee or officer to whom powers are delegated shall not exercise those powers where any capital expenditure will be incurred except in accordance with Financial Procedure Rules, except that authority may be given for the incurring of expenditure on preliminary action or appraisals, or design work where expenditure will:
(a) be treated as capital expenditure; and
(b) the scheme appears in the approved capital programme.

3.1.06 Each committee or officer shall exercise all delegated powers subject to the rules detailed in this constitution.

3.1.07 Every committee or officer shall refer all proposals involving council developments, within the meaning of the Town and Country Planning Act, to the Planning Committee.

3.1.08 Every council committee (or officer) shall refer to the Resources Committee for directions on any significant matter within its terms of reference where this is in conflict with the policies of another committee.

3.1.09 Every committee or officer may decline to exercise delegated powers in relation to any item of business and will instead report to the council or committee as appropriate.

Other considerations on delegations

3.1.10 The chairman of Resources Committee may, in consultation with or on the advice of the Head of Paid Service:

(a) add any item to the agenda of a relevant policy committee; or
(b) require any item on the agenda of any policy committee to be referred to Council; or
(c) remove any item from the agenda of any policy committee, provided that such item is submitted to the next convenient meeting of the Resources Committee for advice prior to final consideration by the committee, or in the normal way.

3.1.11 When any committee, under its terms of reference, is reviewing the use of resources on any council activity, it shall make available to the committee which normally covers the activities under discussion, a copy of their report thereon.

3.1.12 In relation to the day to day conduct of the administration and the business at committees, the ruling of the Head of Paid Services on questions relating to this General Scheme of Delegation will be final.

3.2 Delegations to committees

Conditions and reservations

3.2.01 The exercise of all functions that are not reserved to the Council are delegated to the committee (or sub-committee) relevant to their respective terms of reference set out below. Where permitted to do so in law, the committee may then delegate further to a sub-committee or to an officer and the sub-committee likewise.

(a) The Council and the parent committee retain responsibility for the functions so delegated and may choose to exercise those functions itself regardless of the delegation. The right of the Council and the relevant committee to exercise any power otherwise delegated to a committee, sub-committee or an officer, or to issue directions on the exercise of any power or duty, may not be exercised where

i. the decision has been implemented in that an officer concerned has already acted in the exercise of the delegated power;
ii. to do so would involve or potentially involve the Council being in breach of any statute, rule of law, or of the rules of natural justice, or would be likely to involve maladministration;
iii. any third-party rights would be adversely affected; or
iv. the power is one which has been delegated to an officer because of that officer's professional qualification or expertise and requires for its exercise professional judgement based on that qualification or expertise.

(b) **There shall be reserved to the Council the following powers**:

i. approve the strategic financing of the council, upon recommendations from the Resources Committee including:
   a. determination of the financial strategy
   b. approval of the revenue budget
   c. approval of the capital programme
   d. setting the council tax
   e. approval or adoption of a plan or strategy for the control of the council's borrowing or capital expenditure

ii. determine or amend the council's priorities and objectives, and approve the corporate plan;

iii. adopt and change the Constitution except where otherwise provided in the Constitution or by resolution of the Council;

iv. adopt or create relevant codes of conduct;

v. approve and adopt the policy framework (including such plans that the council must formulate by statute (defined in the Schedule to the Local Authorities [Alternative Arrangements] [England] Regulations 2001) and any subsequent regulations;

vi. approve matters which require a decision that represents a significant departure from any existing strategy policy or budget previously agreed by the Council;

vii. approve the creation of any wholly-owned companies or joint ventures of any kind;

viii. consider proposals relating to significant partnerships with external agencies; or delegation of services to a local authority company so far as these have not already been delegated;

ix. delegate significant functions to other local authorities or their executives and decide whether or not to accept such a delegation from another local authority;

x. elect the Mayor, appoint the Deputy Mayor, Leader of the Council and Deputy Leader;

xi. appoint chairmen and vice-chairmen of committees without prejudice to the Council allowing the committees to make such appointments;

xii. agree and/or amend the terms of reference of committees (with the exception of the Licensing Committees), deciding on their composition and make appointments to them;

xiii. appoint advisory groups which report direct to Council and receive their recommendations;

xiv. adopt the council's schedule of meetings;

xv. appoint representatives to outside bodies unless the appointment has been delegated by the Council;

xvi. consider the recommendations of the Independent Remuneration Panel and adopt the level of allowances that can be claimed by members of the council in respect of authorised or approved duties;

xvii. change the name of the council;

xviii. consider and formulate views upon all matters relating to local government boundaries, including any future proposals for local government reorganisation;

xix. consider any proposed changes to: boundaries of the borough or the county; wards; electoral divisions; the borough's electoral arrangements; or the boundaries or electoral arrangements (including any change of name) of a parish;

xx. determine polling places and polling districts within the borough (although in cases of emergency the Returning Officer may amend polling places);

xxi. receive the Certificate and Return of the Returning Officer in relation borough council elections;

xxii. confer the Freedom of the Borough and the title of Honorary Alderman;

xxiii. make, amend, revoke, re-enact or adopt byelaws, and promote or oppose the making of local legislation or personal bills;

xxiv. make and confirm compulsory purchase orders and any other instruments pursuant to the council's statutory powers and duties, except where specifically delegated to a committee;

xxv. adopt the Local Plan and make Neighbourhood Plans;

xxvi. receive statutory report from the Head of Paid Service, Chief Finance Officer (S151 Officer), Monitoring Officer, or their deputies;

xxvii. adopt the Statement of Licensing Policy and the Gambling Policy;

xxviii. confirm the appointment or dismissal of the Head of Paid Service, Chief Finance Officer (S151) Officer, Monitoring Officer and their deputies;

xxix. consider appropriate motions in accordance with Council procedure rules;

xxx. receive questions or petitions from members of the public or members of the council in compliance with procedural rules;

xxxi. approve minutes of committees or other appropriate bodies en bloc;

xxxii. all other matters which by statute or Council procedure rules must be reserved to Council.

(c) The delegation of powers and duties of the Council to committees shall be subject to

i. the observance of the council's procedure rules and financial regulations in force for the time being;

ii. matters delegated by the Council to officers;

iii. the power of the Head of Paid Service to determine the forum for the initial consideration of matters not falling immediately within the scope of any committee's duties;

iv. in cases of disagreement between committees the matter being referred to the Council;

v. being deemed to include in a reference to any Act of Parliament, a reference to any regulation, order or direction made under such Acts;

vi. the ability to respond directly in relation to consultation on draft legislative proposals, but not to formally promote or petition against legislation;

vii. include power to do all such things as may be necessary or calculated to facilitate or are incidental to them.

(d) A committee may consider that it is not appropriate that a delegated authority should be exercised by it, because it concerns a matter of great public interest, it would create a new area of policy or may have a significant impact on a major policy, and may determine that the business be referred to the next ordinary meeting of the Council for decision.

(e) Referral back

i. Within 5 working days of the passing of a resolution of a committee, any five members (one of which must be a ward member if the business relates to a particular ward or affects one ward more than it does any other ward) may sign and deliver to the Mayor a requisition requiring the Mayor to call an extraordinary meeting of Council (unless the requisitioning members agree the matter may be considered at a forthcoming ordinary meeting of Council).

ii. At the Council meeting the reference back is to be considered, a motion that part of the committee's resolution that has not been fully implemented by the date of the Council Meeting, or a reference back of the matter or any part of the matter that would not affect the part that had been implemented, may be moved (as provided for in paragraph 4.1.24(c) of this Constitution).

iii. The requisition must set out the intended reference back motion and state the reasons, which should include evidence as to the decision not having been taken in accordance with decision making principles (at law or more generally as set out at Article 2.11 of this Constitution).

3.2.02 The Council is responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the various committees to implement it.

3.2.03 No changes to any policy and strategy which make up the policy framework may be made by a committee (or officer) with delegated authority except changes:

(a) that will result in the temporary suspension of a service or part of a service to meet a budgetary constraint;
(b) necessary to ensure compliance with the law, ministerial direction or government guidance;
(c) in relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

3.2.04 All committees shall be empowered to appoint advisory groups to consider any matter falling within their terms of reference. Advisory Groups should normally be time limited in operation.

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3.2.05 All committees shall be empowered to co-opt additional councillors to serve on advisory groups, if considered necessary.

3.3 Delegations to officers

Introduction

3.3.01 The officers of the council have delegated to them the functions, powers and duties referred to below, but subject to the general reservations, conditions and qualifications set out below.

3.3.02 Subject to the definitions in this scheme, and to any other provision in this scheme, all expressions in this scheme shall have the same meaning as they do in the Articles or in Rules of Procedure; if there is any conflict between the meaning of any expression in the Articles and the same expression in Rules of Procedure, the meaning of the expression in the Articles shall prevail.

3.3.03 Any reference in this scheme to any statute, bye-law, regulation or scheme or to any part of the Constitution shall include any amendment, modification, re-enactment or re-issue of the statute, bye-law, regulation, scheme or part of the Constitution.

3.3.04 Any reference in this scheme to any statute shall, where the context requires, include any regulation or Order made under that statute or any other for the purposes of regulating the discharge of the powers or duties conferred by the statute.

3.3.05 Where officers are taking decisions under delegated powers they shall comply with the Scheme of Delegation to Officers in this Constitution.

3.3.06 Minor operational decisions on matters which fall within a committee's terms of reference and which are not otherwise covered by the scheme of Delegation may be taken by the relevant chief officer, provided that this is done in accordance with the Scheme of Delegation to Officers.

General reservations, conditions and qualifications to delegations

3.3.07 Each officer of the council or category of officer of the council specified in the scheme of delegations shall have delegated to them the powers specified subject to any conditions or qualifications specified.

3.3.08 When action is urgently needed and cannot be reasonably delayed for a decision of the Council, or any committee, the relevant chief officer shall be authorised to take appropriate action. This action may only be taken after consulting the chairman of the relevant policy committee or, in their absence, their vice-chairman, and the chairman of the Resources Committee (or in their absence, their vice-chairman) in the case of a matter which has financial implications. The matter must be reported to the next meeting of the relevant policy committee concerned.

3.3.09 The following reservations**, conditions and qualifications apply to the exercise of all powers delegated to officers**:

(a) All powers and duties shall be exercised on behalf of and in the name of the council;

(b) The officer exercising such powers shall take account of any previous decision of the council on any relevant policies, procedures or related matters;

(c) The officer must ensure that relevant committee chairmen are consulted on all matters of a controversial and sensitive nature (e.g. issues that impact on the standard of customer service, or issues that may create public dissatisfaction or disapproval);

(d) When optional duties under any enactment or regulation are being considered for adoption, discussion must be held with the relevant committee chairman and, if considered necessary, taken to the relevant committee for a decision;

(e) All decisions shall be taken in the name of, but not necessarily personally by, the officer(s) to whom the power is delegated. Sub-delegation is permitted (and may be required in some cases to enable compliance with the law) and any such sub-delegation shall be in writing, and the officer sub-delegating the power shall remain accountable for the exercise of that power;

(f) Officers must comply with the Constitution;

(g) Expenditure must be in accordance with approved budgets and where further approval is required (e.g. through virement) shall not precede that approval;

(h) Officers must comply with the financial procedure rules and contract procedure rules;

(i) The exercise shall not involve a new policy or extend an existing policy of the council except where action is urgently needed and cannot be reasonably delayed;

(j) The right of the Council and the relevant committees to impose further conditions or restrictions on the exercise by officers, or any specified officer, of any delegated power;

(k) An officer may decline to exercise her/his delegated power in any case and make a recommendation to the relevant committee but shall not do so if any third party rights would be adversely affected solely as a result of the officer declining to exercise her/his delegated power.

(l) In any case where the officer exercising the power considers that a new departure in policy or a significant change in financial practice is likely to be involved, he/she shall consult the Head of Paid Service who shall refer the matter to the appropriate committee for consideration.

(m) Subject to the foregoing conditions and to any special conditions which may have been, or may in future be, applied in respect of particular matters, chief officers exercising delegated powers will be expected to:

i. make such decisions and initiate such action as they deem necessary in the interests of the efficient running of the services for which they are responsible;
ii. maintain a close liaison with the appropriate committee chairman;
iii. ensure that the appropriate members are consulted on the exercise of delegated powers;
iv. ensure that the Monitoring Officer and the Section 151 Officer are consulted and advised of any decisions as necessary; and
v. ensure that other chief officers are consulted and advised where appropriate in relation to cross-service issues.

Amendment to Scheme

3.3.10 This scheme may be amended at any time by the Council.

3.3.11 The Monitoring Officer is authorised to make, from time to time, such amendments to this scheme as in their view is minor, eg to reflect changes to the titles of officers or to the responsibilities of particular post holders.

3.3.12 The relevant committee may at any time amend its delegations to officers in relation to powers within the terms of reference of that committee.

3.3.13 Nothing in this scheme shall preclude the relevant committee from revoking an officer's delegated authority in relation to a power delegated by the committee if the relevant committee considers that it is necessary to do so urgently in the interests of the council.

3.3.14 Where there is a clear and pressing need for a key decision to be taken and it is not reasonably practicable, for any reason, for that decision to be taken by the Council or a committee or sub-committee of Council then the Managing Director (Head of Paid Service) and Directors shall have authority to take key decisions. Before exercising such exceptional authority, the responsible officer must, as far as practicable, consult with the Monitoring Officer, the Chief Finance Officer and the Chairman of the Resources Committee (and the Leader if not the same person). Any decision taken under this exemption will be reported to all members immediately and be subject of a formal report to the next meeting of Resources Committee.

3.3.15 In the instance of a civil emergency the Head of Paid Service:
(a) shall have authority to exercise the power given to the relevant committee;
(b) shall have power to revoke a specific officer's delegated authority in relation to a power delegated by the committee if they consider that it is necessary to do so urgently in the interests of the council.

3.3.16 The Managing Director (Head of Paid Service), a Director or an Assistant Director may delegate any of their responsibilities or powers in exercise of delegated functions to any other officer to whom they consider it appropriate to discharge those functions. In doing so, it is recognised that delegated officers cannot personally undertake the discharge of every function conferred upon them. Delegated officers are accordingly entitled to arrange for the discharge by their subordinate officers of functions allocated to them provided that the delegated officer remains responsible for and accountable to the Council for the exercise of his/her delegated powers and puts in place such measures as the delegated officer considers appropriate to ensure that those officers assisting him/her in the discharge of functions do so in accordance with the provisions of this Scheme of Delegation and do not exceed the limits of any authorisation made to them by the delegated officer to assist him / her in this task.

3.3.17 For the avoidance of doubt, any reference in this part to the discharge of any functions includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions.

3.3.18 Even where the Managing Director (Head of Paid Service), a Director or Assistant Director hold delegated authority, they must consult the relevant committee chairman where the circumstances are particularly sensitive or if the decision in question involves changes to policy or strategy and, following consultation, they will normally report the matter to the committee where the committee chairman indicates a preference for this.

3.3.19 Any post specifically referred to in this Scheme of Delegation shall be deemed to include any successor post, or a post which includes, within the job description, elements relevant to any particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded or discharging the functions of the post on an interim basis.

3.3.20 If a matter is delegated to an officer, but that delegation cannot be implemented, that should be reported to the relevant decision-maker.

3.4 Definitions

3.4.01 In this scheme the following expressions shall have the meanings assigned to them below:

(a) “the Articles” means the Articles of the Constitution as set out in Part 2 of the Constitution;
(b) “the council” means the Borough Council of Wellingborough;
(c) “Financial Regulations” means the Financial Regulations as set out in Part 5 of the Constitution;
(d) "the general reservations" means the reservations, conditions and qualifications set out in this scheme;
(e) “chief officer or deputy chief officer” means an officer is defined as chief officer or deputy chief officer within the meaning of the Local Government and Housing Act 1989;
(f) “the relevant budget” means the total approved revenue budget for the relevant financial year for which the Head of Paid Service, chief officer or deputy chief officer is responsible, with, in any case, no commitment to additional expenditure in any future year above the level of the budget for the relevant financial year”;
(g) “the relevant financial year” means the financial year in which the decision or action in question is taken;
(h) "the ”relevant chief officer" means the chief officer responsible for the function in question or the chief officer to whom the officer taking, proposing to take, or responsible for, the function in question reports;
(i) “delegation”: the delegation of powers and duties of the Council to committees shall be interpreted widely, rather than narrowly in reserving functions to the full Council;
(j) "regulatory committee" means one of the Licensing Committees;
(k) “the relevant regulatory committee” means the regulatory committee, or a sub-committee of a regulatory committee, having responsibility for the power in question;
(l) “the relevant policy committee” means the policy committee, or a sub-committee of a policy committee, having responsibility for the power in question;
(m) “Rules of Procedure” means the Rules of Procedure as set out in Part 4 of the Constitution;
(n) “the 2000 Act” means the Local Government Act 2000.
(o) References to any Act of Parliament shall be deemed to extend to any Act extending, amending, modifying or replacing the same and to any regulations, orders and directions made thereunder.
(p) “policy framework” consists of key statutory documents that have to be adopted or approved by the council as well as certain locally determined policies and strategies that form part of the decision-making process. Listed below are the policies, strategies and plans that form the policy framework:
    i. The local development plan (a schedule plan);
    ii. The council tax reduction scheme;
    iii. The plans and strategies which together comprise the Housing and Homelessness Strategy;

iv. The plans and strategies for the control of the council's borrowing, investments and capital expenditure (all schedule plans);

v. The corporate business plan.

3.4.02 Delegations within this Scheme shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of that delegation.

3.4.03 For the avoidance of doubt, any reference in this Scheme to the discharge of any functions includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions.

3.5 Delegations common to all policy committees

3.5.01 Delegation common to all committees (unless otherwise delegated), on any issue within the remit of a committee:

(a) Agree policies for delegated responsibilities and draft policies for approval by Council where appropriate.

(b) Comply with the Financial Procedure Rules and Contract Procedure Rules when issuing orders for maintenance or repair work to council premises.

(c) Prepare byelaws and adoptive legislation for approval by Council.

(d) Make representations to, and liaise with, outside bodies/individuals.

(e) Respond to consultations.

(f) Initiate consultation on policy proposals.

(g) Seek and accept tenders above officers' financial limits within the budget framework; appoint contractors in accordance with the Contract Procedure Rules.

(h) Request and commission work from officers within available resources.

(i) Set up, review and abolish advisory groups, consultation forums and commissions, and time-limited sub-committees.

(j) Draw up and propose to the committee specifications, select lists, timetables and evaluation procedures for contracts delegated to committee by Council or contracts within the remit of the committee subject to the budget framework.

(k) Receive the reports of advisory groups created by the committee.

Resolved/recommended items

3.5.02 The Constitution lists the areas of responsibility for each committee.

3.5.03 It is intended that each committee will have full delegation (i.e. the power to **resolve**) items, subject to the following principles:

(a) committee decision within remit of the committee, within budget and within the council's policy will be a **resolved** item;

(b) committee decision outside budget and/or outside the council's policy framework will be a recommended item.

Common delegations to officers

3.5.04 Manage the effective operation of all services which fall within the remit of this committee.

3.5.05 Develop action plans for council strategies, policies and objectives, and implement such plans.

3.5.06 Implement projects approved by the committee and for which budget provision has been made.

3.6 SPECIFIC DELEGATIONS

RESOURCES COMMITTEE

Membership: The committee shall consist of **15** councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

Quorum: The quorum is six.

OVERVIEW

To exercise all functions of the council not specifically delegated to another committee or reserved to full Council under the law, this scheme of delegation, standing orders or procedure rules.

To exercise the council's functions in respect of matters referred to it by other committees which have corporate budgetary or policy implications.

FUNCTIONS

(a) Formulate, co-ordinate and implement corporate policies and strategies. Make decisions relating to such matters to the extent that they are not reserved to full Council.

(b) Establish and maintain the overall framework for the allocation, control and management of the council's resources including finance, assets, land and other property.

(c) Formulate annual budget proposals for adoption by the Council; authorise virements under financial procedure rules.

(d) Make decisions or authorise expenditure in accordance with the requirements of, and delegations given by, financial regulations and contract procedure rules.

(e) Be responsible for all financial services, including risk management, treasury management, and insurance.

(f) Authorise suitably qualified officers to represent the council in any proceedings before the Social Security Appeals Tribunal in respect of appeals against decisions relating to housing and council tax support.

(g) Authorise write-offs.

(h) Award discretionary housing payments.

(i) Be responsible for emergency planning, in compliance with the emergency plan, and the designation of a chief officer or deputy chief officer as gold commander if required.

(j) Establish a framework for the achievement of value for money and effective use of resources by the council.

(k) Approve self-assessment documents for external inspection.

(l) Establish the framework for human resources policies and procedures, and terms and conditions, and determine new or revised policy which has financial implications.

(m) Be responsible for the discharge of the council's functions as an employer.

(n) Determine the council's staffing establishment and approve any changes which have an impact on the overall staffing budget.

(o) Manage corporately owned land and property in accordance with the principles of good estate management.

(p) Authorise the acquisition or disposal of any land by the council.

(q) Exercise the council's functions in relation to the following services:

i. provision of resources to support the Electoral Registration Officer and the Returning Officer in accordance with statute;
ii. ceremonial matters relevant to the council;
iii. legal and complaints services;
iv. revenue and benefits, including housing benefit and council tax support, the administration, collection and enforcement of council tax, non-domestic rates;
v. local land charges;
vi. corporate communications and services for councillors;
vii. town twinning;
viii. any other services or functions not within the remit of another committee.

Delegation to officers by the Resources Committee

(a) Head of Paid Service, in compliance with financial regulations, contract rules of procedure, agreed budgets and policies of the council:

i. Appoint an interim Chief Officer or Deputy Chief Officer.
ii. Restructure the establishment.
iii. Authorise variations to the approved establishment within the agreed budget.
iv. Act as the responsible officer for emergency planning.
v. Approve service plans, in accordance with the agreed policy framework.

(b) Section 151 Officer (or deputy), in compliance with financial regulations, contract rules of procedure, agreed budgets and policies of the council:

i. Be responsible for internal audit arrangements pursuant to the Accounts and Audit (England) Regulations 2011 and supervision of the internal audit function.
ii. Sign contracts that are not required to be entered into under seal.
iii. Dispose of, or donate, surplus equipment, vehicles and stores, and write off any such items which are unfit for use and of no value.
iv. Make ex-gratia payments in settlement of claims, subject to the legislation in force and payment(s) in relation to a single incident not exceeding £250, with a limit of £3,000 per financial year for each service.
v. Determine the account to be charged with expenditure incurred.
vi. Administer the council's bank accounts and balances (including any necessary borrowing within policy limits) in accordance with the relevant CIPFA code of practice and the treasury strategy.
vii. Manage the council's borrowing and investments in accordance with the treasury strategy.
viii. Negotiate and determine the terms of all loans raised or made by the council in accordance with the treasury strategy.
ix. Negotiate and determine the terms of all investments made by the council in accordance with the treasury strategy.
x. Sell, switch or renew all investments of the council.
xi. Support, object to, or propose alterations to, the Valuation List under current legislation.
xii. Be responsible for recovery and collection of council income and debt, including legal action for recovery, in consultation with the council's legal advisers.
xiii. Present petitions for the liquidation of companies and bankruptcy petitions where necessary to recover debts due to the council.
xiv. Authorise write-offs: up to £2,000; or where the debtor is made insolvent (regardless of the amount of debt); or sums which are irrecoverable because the charge was excessive or unlawful.
xv. Make payment to creditors, including final accounts for contracts.
xvi. Propose fees and charges for adoption by Council
xvii. Implement changes to employee pay negotiated nationally.
xviii. Manage the council's insurance, including the management of risk and claims, and the appointment of the council's insurers.

xix. Determine the process of receipt, validation and acceptance or rejection of expressions of interest under sections 81 – 86 of the Localism Act 2011 (the Community Right to Challenge).

xx. Administer and settle compensation claims under sections 87 – 102 of the Localism Act 2011 (Community Right to Bid for assets of community value).

(c) In consultation with the Director responsible for human resources or a professional officer designated by them:

i. Make appointments other than Head of Paid Service, S151 Officer (or Deputy S151 Officer), Monitoring Officer (or Deputy Monitoring Officer), Electoral Registration Officer or Returning Officer, Chief Officers or Deputy Chief Officers.

ii. Comply with nationally or locally agreed terms and conditions of employment or policy relating to the management of council employees, save any aspect which is reserved to the Council or the Resources Committee or which cannot be achieved within existing budgets

iii. Implement changes to terms and conditions of employment negotiated nationally.

iv. Implement changes to local terms and conditions of employment or employment policies agreed by the council's Joint Consultation and Negotiating Committee, save any which have financial implications and must be considered by Resources Committee.

v. Appoint staff on a temporary basis in accordance with council policy, subject to adequate budgetary provision; approved recruitment agencies must be used (if the appointment is via an agency) and must not exceed six months unless approved by the Section 151 Officer.

vi. Terminate temporary appointments when there is no longer sufficient budget or requirement for their employment.

vii. Determine appropriate salary grades for new posts via the job evaluation system and review those where there have been significant changes in duties and responsibilities using the same system.

(d) Corporate Landlord, in compliance with financial regulations, contract rules of procedure, agreed budgets and policies of the council

i. Give consent to structural alterations of council properties.

ii. Make applications for consents to carry out works to council owned land or buildings.

iii. Inspect, repair, redecorate and otherwise maintain all council premises occupied by the council within proportionate timescales.

iv. Inspect all premises let or leased by the council where there is a liability to repair imposed upon the tenant or lessee and take appropriate action if any tenant or lessee has not complied with the conditions of the tenancy or lease as to the maintenance and repair of the premises.

v. Manage the council's interests in property including:

a. Doing all things necessary to preserve or enhance the value to the council of property in which the council has an interest;

b. Disposing of freehold interests or granting of leases or other interests in land;
c. Acquiring any interest in a property;
d. Permitting, refusing or opposing applications to the council as landlord for consent to assign leases, to grant sub-leases or for licences, alterations or change of use;
e. Entering into contracts and deeds effecting transactions;
f. Making physical alterations and additions to premises occupied by the council for operational purposes, after consultation with appropriate officers;
g. Administering the terms of leases, licences and other interests in property granted or held by the council;
h. In connection with any property which the council holds on lease tenancy or licence, oppose any Notice terminating the lease or serve Notices requesting renewals of such leases or tenancies;
i. Agreeing rents, fees or other considerations for lettings, licences, easements or other interests in land or premises;
j. Granting leases of land to utilities for their plant or equipment, together with any rights necessary or desirable for the efficient functioning of such installations;
k. Agreeing to the lifting of covenants on properties where there is no detriment to the council's objectives, imposing a reasonable charge where appropriate;
l. Authorising the temporary or seasonal use of land and/or premises subject to all necessary statutory permissions being obtained or in place.

(e) Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council

i. Delegation to officers common to all Committees.
ii. Deal with emergency plan preparation and operational matters.
iii. Administer statutory schemes for the collection and enforcement of council tax and NNDR, including the imposition of penalties for breaches of statutory duties; the instruction of enforcement officers and other collection agents; the institution of proceedings in a court of summary jurisdiction for the recovery of unpaid council tax and NNDR, and authorise suitably qualified officers to represent the council and to appear in such proceedings
iv. To assess and, where necessary, review entitlement to housing and council tax support according to the relevant regulations and to undertake all associated administration, including the making of all determinations considered appropriate and to determine appeals against the refusal to award discretionary housing payments and council tax support scheme.
v. Award mandatory relief from non-domestic rates in line with council policy.
vi. Award discretionary relief from non-domestic rates in line with council policy.

vii. Award a contract to the person or firm that submitted the highest scoring tender based on a pre-agreed scoring scheme, in accordance with financial regulations, contract rules of procedure and agreed budget.
viii. In the case of quotations for goods or services, select the most economically advantageous.
ix. Make purchases below the approved financial limit.
x. Approve final accounts for contracts.
xi. Maintain the Local Land Charges register and process local searches after receiving the relevant fee.
xii. Commission, manage and organise attendance at twinning events and determine applications for twinning travel grant, in consultation with the Twinning Association.

SERVICES COMMITTEE

Membership: The committee shall consist of **7** councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

Quorum: The quorum is three.

OVERVIEW

To develop the strategy and policy of the council on all matters relating to:

(a) the supply and demand for housing, including housing strategy, private sector housing and homelessness;

(b) maintenance and improvement of the environment and the health of the community;

(c) community leadership, community safety, equalities and community cohesion, neighbourhood and community development, health and wellbeing, including recreational, cultural and sports provision;

(d) promoting and widening access to services;

(e) exercising the council's enforcement powers and duties in respect of all statutory provisions which fall within the remit of this committee.

FUNCTIONS

To exercise the council's powers, and respond to external consultations in respect of any matters which are outlined above as a function of this committee, including:

(a) responsibility for environmental health functions;

(b) the operation and management of recreational, cultural, sporting and leisure facilities, and local amenities including bereavement services, parks and open spaces, allotments, the market and car parking;

(c) Recommendation of service delivery priorities for strategic voluntary sector funding schemes;

(d) private sector housing legislation including empty dwellings, control of houses in multiple occupation, housing, renovation and disabled facilities grants, housing conditions, and housing enforcement activity;

(e) fuel poverty and affordable warmth, home energy conservation measures and policies;

(f) housing legislation and duties relating to homelessness (services and policies) and allocations (housing register and allocations policy);

(g) personally based services provided by the council, including play schemes and sports development;

(h) agreements, delivery and outcomes relating to help support people;

(i) all environmental health matters including powers to deal with statutory nuisance; pollution control; air quality; contaminated land; stray dogs; pests; environmental permitting; food safety; health & safety; and public health functions.

(j) waste management strategy and policy development;

(k) designate the Proper Officer for communicable diseases.

Delegation to officers by the Services Committee

Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council

1. Delegation to officers common to all committees.
2. Approve grants for renovation and disabled facilities.
3. Provide assistance for protection of private tenants.
4. Select nominees for housing in accordance with the allocation scheme.
5. Determine applications to join the housing register in accordance with the allocation policy
6. Determine homeless persons' applications and reviews.
7. Select and manage properties for use in connections with homelessness (in consultation with the council's Corporate Landlord), including rent collection, repairs and support services (in consultation with the S151 Officer).
8. Authorise Notices of Seeking Possession and evictions.
9. Take all necessary steps to complete a compulsory purchase of land or property once approved by Council.
10. Administer all council environmental initiatives and statutory duties.
11. Provide environmental education and raise environmental awareness within budget allocations.
12. Maintain the council's parks and open spaces.
13. Provide and maintain litter and dog bins.
14. Administer waste collection and recycling schemes in accordance with council policy.
15. Determine applications for donations of trees, benches and other plants/installations in cemeteries, parks and open space
16. Issue Deeds of Grant of burial rights in accordance with cemetery rules and the fees and charges schedule.
17. Give approval for monuments, memorials and inscriptions, and arrange interments in accordance with cemetery rules and the fees and charges schedule.
18. Advise on changes to cemetery rules, and implement any changes.
19. Be responsible for burial of the dead pursuant to Public Health (Control of Diseases) Act 1984.
20. Undertake all formal and informal enforcement actions and other actions permitted under the relevant legislation and the relevant enforcement policies in relation to:
    i. Anti-social behaviour
    ii. Statutory nuisance

iii. Housing Acts and Orders
iv. Disinfestation of people/property
v. Defective premises
vi. Maintenance of land
vii. Sanitation and drainage
viii. Pest complaints and control
ix. Animal welfare
x. Dog fouling and dog control
xi. Dangerous dogs
xii. Stray dogs and micro-chipping
xiii. Nuisance animals
xiv. Environmental Permitting
xv. Air quality and pollution
xvi. Insecure buildings
xvii. Houses in multiple occupation
xviii. Improvements to houses
xix. Accumulations, fly tipping, graffiti, litter and waste
xx. Abandoned vehicles
xxi. Health and safety
xxii. Food safety
xxiii. Public health
xxiv. Smoke free provisions
xxv. Water quality and supply, including private water supplies
xxvi. Contaminated land
xxvii. Unauthorised traveller encampments
xxviii. Sunday trading
xxix. License houses in multiple occupation.

21. In respect of all legislation relevant or delegated to this committee:
    i. Authorise officers to enter premises to inspect, investigate, monitor, examine and collect evidence.
    ii. Authorise officers to require information.
    iii. Appoint officers as inspectors.
    iv. Seizure or detention of articles or substances, equipment and animals.
    v. Authorise enforcement action, to include the recovery of expenses where appropriate.
    vi. Authorise service of remedial notices including prohibition; improvement, abatement; community protection; fixed penalty and remedial action notices for non-compliance with any legislation relevant to this committee which permits it.
    vii. Authorise officers to undertake works in default following the service of an improvement notice.
    viii. Institute proceedings, issue cautions or instigate prosecution under statute and common law.
    ix. Undertake works in default.
    x. Issue environmental permits; variations; transfers, revocations and surrenders
    xi. Serve directions and recommend court action for removal of traveller encampments.
    xii. Collect and kennel stray dogs.

xiii. Procurement and analysis of samples.
xiv. Authorise officers to appear in court.

22. Authorise short-term or seasonal use of council land and/or premises for specific events.
23. Determine applications for small grants provided by this committee.
24. Obtain an injunction, if appropriate, where sufficient information is available prior to a noisy or pay party.
25. Approve the hire of premises available for public use, in accordance with the council's schedule of fees and charges and the current concessions policy.
26. Authority to discharge the council's functions, powers and duties under the Regulation of Investigatory Powers Act 2000.
27. Monitoring of contracts for provision of leisure and cultural facilities by the council.
28. Determine grant requests from voluntary organisations or other requests for external funding.
29. Exercise the council's powers in respect of dwellings which are not effectively secured against unauthorised access or are likely to become a danger to public health.
30. Install surveillance equipment and instruct professional witnesses to collect evidence in cases of anti-social behaviour/neighbour nuisance, subject to agreed protocol, data protection, human rights and surveillance legislation, after consultation with the council's legal adviser.
31. Inspect, report, make recommendations and take enforcement action (including seeking court orders for removal) in respect of illegal encampments of travellers, in consultation with the council's legal adviser.
32. Serve statutory notices, execute works in default, recover and apportion expenses and any other powers and duties of the council in respect of the Environmental Protection Act 1990, in consultation with the council's legal adviser.

DEVELOPMENT COMMITTEE

Membership: The committee shall consist of **15** Councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

Quorum: The quorum is six.

OVERVIEW

To develop the strategy and policy of the council on all matters relating to:

(a) planning policy, regeneration, development and sustainable infrastructure issues;

(b) proposals for local development documents under the Local Development Framework and associated matters, including neighbourhood plans;

(c) economic development activity;

(d) the coordination of initiatives, and implementation of projects, that contribute towards the delivery of the council's housing strategy.

(e) sustainable development activity, including climate change;

(f) car parking, transport and utility provision;

(g) provision of public open space, sport, recreation and heritage;

(h) conservation and enhancement of the built and natural environment, including the designation of conservation areas;

(i) street trading.

FUNCTION

To exercise the council's powers, and respond to external consultations, in respect of any of the functions of the committee, including but not exclusively:

(a) Local Development Framework documents;

(b) responsibility for the content of proposed development agreements;

(c) transportation, utility and public open space planning issues;

(d) highways functions;

(e) economic development and regeneration;

(f) town centre management and strategy;

(g) the regeneration of the market;

(h) tourism;

(i) street naming and numbering policy;

(j) operational land drainage functions exercisable by the council;

Delegation to officers by the Development Committee

Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council

1. Delegation to officers common to all Committees.
2. Administer all initiatives to promote economic development, tourism and town centre initiatives within the borough.
3. Name new streets or rename streets and comply with the requirements of the data entry conventions.
4. Administer arrangements for listing assets of community value
5. Determine Neighbourhood Areas applications unless there are objections and the Neighbourhood Area is not the same as the parish boundary in a parished area, when it should be determined at Development Committee.
6. Determine Neighbourhood Forum applications.
7. Carry out of the legal check on a submitted Neighbourhood Plan.
8. Make the decision to proceed to referendum where the decision accords with the examiner's, if the decision differs from that of the examiner it should be made at Development Committee.
9. Set the referendum date for Neighbourhood Plans.

PLANNING COMMITTEE

Membership: The committee shall consist of 11 councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

Members can sit on a Planning Committee only if they have received approved training in planning matters and procedures.

Quorum: The quorum is 4.

OVERVIEW

To exercise the powers and duties of the council as the local planning authority.

FUNCTION

(a) To exercise the powers and duties of the council as the local planning authority in respect of the determination of applications and enforcement measures under and in accordance with the provisions of The Town & Country Planning Act 1990, Planning (Listed Buildings and Conservation Areas) Act 1990, Control of Caravans under the Caravan Sites and Control of Development Act 1960, and Planning and Compensation Acts1991 and 2004.

(b) The powers and duties of the council as the local planning authority under the Building Act, 1984, which relate to the Building Regulations.

(c) To consider and determine applications and appeals made on Tree Preservation Orders and actions under the Hedgerow Regulations 1997.

Delegation to officers by the Planning Committee

Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council

1. Delegation to officers common to all committees.
2. Determine all applications for planning permission, approval and consent and to issue responses to prior notifications under the provisions of the Town and Country Planning Act 1990 (including the imposition of appropriate conditions), subject to the footnote at end of this list of officer delegations.
3. In respect of all legislation relevant or delegated to this committee:
   i. Authorise officers to enter land and premises.
   ii. Authorise officers to require information.
   iii. Authorise enforcement action.
   iv. Authorise service of notices for non-compliance with any legislation relevant to this committee which permits it.
   v. Institute proceedings, issue and serve notices and issue cautions or instigate prosecution under statute and common law.
   vi. Authorise officers to appear in court.
4. Determine whether a proposed minor amendment to an existing planning permission requires submission of a fresh planning application and to approve any such fresh application where no more than three planning objections have been made.
5. Determine non-material and minor amendments to approved applications;
6. Make observations on proposals submitted to adjoining planning authorities where determinations of the applications would be delegated if submitted to the borough council;
7. Application for prior notifications under the Town and Country Planning (General Permitted Development) Order;
8. Discharge conditions attached to a planning permission, listed building consent, conservation area consent or advertisement consent;
9. Determine that development is “permitted development”;
10. Negotiate and agree the contents of agreements under section 106 of the Town and Country Planning Act 1990;
11. Advertise applications which, if approved, would be contrary to the provisions of the development plan, as required by the Town and Country Planning (Development Plans and Consultation) Directions 1992.
12. Make requests for information under Section 330 of the Town and Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 (ownership etc. of property).
13. Deal with matters relating to the preservation of trees under sections 197 to 214D of the Town and Country Planning Act 1990 with the exception of a Tree Preservation Order to which an objection has been made and not withdrawn.

14. Determine applications to carry out work to protected trees .
15. In relation to any appeal made under the Town and Country Planning Act 1990 or any Regulations or Directions made under that Act, prepare, submit and present the council's statement including appropriate conditions and, if appropriate, in the case of enforcement appeals, a statement as to whether the council would be prepared to grant permission or consent for the development or works the subject of the appeal.
16. Take any necessary action to deal with dangerous buildings and structures in emergency situations.

FOOTNOTE

1.1 The following are not included as delegated powers in 2 above and should be presented to planning committee for determination:

(a) Major planning applications (full or outline) for 30 dwellings or more.

Agricultural, office, storage, warehouse or light industrial buildings of more than 10,000 square metres.

This category does not include reserved matters applications.

(b) Outline planning applications for residential development of land exceeding one hectare in area.

(c) Planning applications where written objections are made within the consultation period which raise material planning considerations

The notes in 2 below explain the interpretation.

(i) A member of the council can ask that a planning application goes to planning committee for determination, or for a site viewing.

The request needs to be made within the consultation period and must be made in writing stating sound planning reasons

The decision as to whether or not a site viewing takes place is at the discretion of the chairman and vice chairman.

(ii) A parish council can ask that a planning application goes to planning committee, or for a site viewing if they object and the officer recommends approval or vice versa.

The request needs to be made within the consultation period and in writing stating sound planning reasons.

The decision as to whether or not a site viewing takes place is at the discretion of the chairman and vice chairman.

(iii) Petition signed by more than 30 local residents.

The notes in 2 explain the interpretation.

(iv) Written objections received from four or more households local to the application site.

The notes in 2 explain the interpretation.

(d) Planning applications submitted by an adjacent local authority or the county council unless the chairman and vice chairman agree the proposed development does not have a material impact on the borough.

(e) Planning applications with a recommendation to approve which are a departure from the development plan.

Minor variations are not included.

The notes in 2 explain the interpretation.

(f) Planning applications subject to an Environmental Impact Assessment, as a required by the EIA Regulations 1999 (as amended).

(g) Where a delegated decision conflicts with an earlier decision or condition imposed by planning committee. The application must be for a similar scheme.

1.2 Planning applications with a recommendation to approve submitted by or on behalf of the council where

(a) a written objection from a consultee or member of the public is received.

(b) it is a departure or conflicts with Supplementary Planning Documents.

This does not include temporary uses or structures

The notes in 2 explain the interpretation.

1.3 Planning applications with a recommendation to approve submitted by or on behalf of a member or officer and which:

(a) has a written objection from a consultee or member of the public; or
(b) is a departure or conflicts with supplementary planning documents.

1.4 The Director responsible for planning can request that a planning application goes to planning committee or for a site viewing.

1.5 Applications for Prior Notifications will be dealt with under delegated powers.

2. Interpretation

2.1 Notes on (c) (iii)

The petition must have the names and address of all people who have signed the petition.

It must include 30 people local to the planning application site

Signatures which do not include a clear name and address, or if they are not local, will not count towards the 30 that triggers determination by planning committee

The objections must relate to planning matters.

Objections should relate to planning applications. This category will not apply to non-material amendments, minor amendments, reserved matter applications, discharge of conditions or minor variations of conditions.

2.2 Notes on (c) (iv)

The objections must include the names and address of the objector(s).

The objections must relate to planning matters.

They must be local to the planning application site.

Objections which do not include a clear name and address, or if they are not local, will not count towards the trigger to planning committee

Objections should relate to planning applications. This category will not apply to non-material amendments, minor amendments, reserved matter applications, discharge of conditions or minor variations of conditions

2.3 Minor variations relate to detailed planning policies of the adopted development plan or adopted supplementary planning documents.

2.4 For the purposes of Paragraph 1.1 (c) above the following shall not be regarded as material planning considerations:

(a) an objection to the principle of development if planning permission has been granted previously, or if there is no conflict with the development plan;

(b) objections to details, reserved matters, minor amendments, non-material amendments, if the objection relates to the principle of the development.

(c) issues associated with competition;

(d) objections relating to trespass;

(e) noise and disturbance during construction;

(f) property maintenance; loss of value to the objector's property, building control issues;

(g) issues covered by other legislation which are not planning matters;

(h) alleged unauthorised activities or works which could be dealt with under enforcement;

(i) personal, moral, abusive or discriminatory comments; or

(j) the wording or context of proposed advertisements.

LICENSING (REGULATORY) COMMITTEE

Membership: The committee will consist of 13 councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

The committee will be able to form individual sub-committees of three of its members.

Members can sit on a Licensing Sub-Committee only if they have received approved training in licensing matters and procedures.

Quorum: The quorum of the full committee is 5. At least two members must be present at a Licensing Sub-Committee for it to be quorate.

OVERVIEW

The purpose of the committee is to exercise and undertake those licensing, registration and regulatory functions of the Council that may be delegated under section 101 of the Local Government Act 1972 that are not already delegated elsewhere by the Council or are not functions of a statutory committee.

FUNCTION

(a) To exercise all powers and duties of the council on the licensing, consents, authorisations, permits and registrations of:

i. Hackney carriage and private hire vehicles, drivers and operators
ii. Registration of door operatives on Licensed Premises (appeal body)
iii. Residential and non-residential caravan/mobile home sites
iv. Street trading, markets and Sunday trading
v. Pleasure boats
vi. Street collections and house-to-house collections
vii. Radioactive materials
viii. Scrap metal dealers
ix. Riding establishments
x. Cinemas and theatres
xi. Animals
xii. Lotteries and amusements
xiii. Hypnotism
xiv. Sex establishments
xv. Cosmetic piercing
xvi. All other matters requiring a licence, consent, authorisation, permit or registration which are not either specified above or delegated to a committee or officer of the council.

(b) In respect of all legislation relevant or delegated to this committee:

i. Authorise officers to enter premises to inspect; investigate; monitor; examine; and collect evidence.
ii. Seizure or detention of articles; substances and equipment.

iii. Authorise enforcement action, to include the recovery of expenses where appropriate.
iv. Authorise service of remedial notices, for non-compliance with any legislation relevant to this committee which permits it.
v. Institute proceedings, issue cautions or instigate prosecution under statute and common law.
vi. Authorise officers to appear in court.

(c) In respect of hackney carriage and private hire vehicles to fix a table of fares to which objection has been made.

(d) To advise on policy and recommend the implementation or amendment to byelaws on all licensing matters to Council for adoption.

(e) To consider and determine appeals by officers and employees.

(f) To exercise the council's enforcement powers and duties in respect of all other licensing authorisations, licences, permits, consents or similar, under all statutory provisions.

(g) The Licensing Committee and its sub-committees may delegate functions to one or more officers, except that an officer may not determine an application for a licence where an objection or representation has been made.

LICENSING (LICENSING ACT) COMMITTEE

Membership: The committee shall consist of 13 councillors. The Committee is not required to meet the political balance in accordance with Section 15 of the Local Government & Housing Act 1989. The Committee shall be constituted of the same members as those appointed to the Licensing (Regulatory) Committee.

The committee will be able to form individual sub-committees of three of its members.

Members can sit on a Licensing Sub-Committee only if they have received approved training in licensing matters and procedures.

Quorum: The quorum of the full committee is 5. At least two members must be present at a Licensing Sub-Committee for it to be quorate.

OVERVIEW

To carry out the functions of the statutory committee formed as required under the Licensing Act 2003 to act on behalf of the Council as licensing authority, except the setting and adoption of the Statement of Licensing Policy and the Gambling Policy.

FUNCTION

(a) To carry out the functions of the council as licensing authority so far as required or permitted by the Licensing Act 2003 in accordance with sections 6, 7, 9 and 10 of the Act and Regulations thereunder. In carrying out those duties it will have due regard to:

i. Promoting the licensing objectives
ii. Prevention of crime and disorder
iii. Public safety
iv. Prevention of public nuisance
v. Protection of children from harm
vi. The council's statement of policy on licensing
vii. Guidance issued by the Secretary of State

(b) To carry out the functions of the council as licensing authority under the Gambling Act 2005.

(c) licensing policy;

Delegation to officers by the Licensing Committees

Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council.

1. Delegation to officers common to all committees.
2. Refer applications/cases to the Licensing Committee or its sub-committees where there are:
   2.1. recommendations to refuse, revoke or suspend
   2.2. situation which make refusal or rejection mandatory
   2.3. objections or representations
3. Determine applications for licences, impose appropriate conditions, collect fees, maintain registers and carry out enforcement activities in relation to licensing and related statute and guidance applicable to local government in relation to licensing responsibilities outlined in the committee's terms of reference and delegations.
4. Revoke or suspend a hackney carriage or private hire licence where the driver is suspended from driving, where their conduct warrants it, or where a vehicle is considered unfit for such use.
5. Fix a table of fares for hackney carriage vehicles where no objection has been made.

6. Make representations on behalf of the licensing authority as a responsible authority under the Licensing Act 2003.
7. Raise objections to applications under the Goods Vehicles (Licensing of Operators) Act 1995.
8. Raise objections to Public Passenger Vehicle Licences pursuant to Public Passenger Vehicles Act 1981.

AUDIT COMMITTEE

Membership: The committee shall consist of **7** councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

Quorum: The quorum is 3.

OVERVIEW

To provide independent assurance of the adequacy of the council's internal control environment, examination of the council's financial and non-financial performance to the extent that it affects the council's control environment, and to oversee the financial reporting and auditing processes.

FUNCTION

To exercise the function of the council in relation to:

(a) internal and external audit

i. To approve and review the annual Internal Audit Plan. (The findings of individual audits will be reported to the relevant policy committee as part of that committee's discharge of its function of scrutinising the performance of service areas).
ii. To receive external audit reports and opinions, including annual and interim external audit reports.
iii. To refer matters arising from audit work to the relevant policy committee for scrutiny.
iv. To receive and consider matters arising from internal audit work referred from the Partnerships and Performance Committee.

(b) internal control arrangements and the Annual Governance Statement

i. To approve the proposed Annual Governance Statement and review the procedures followed in its completion and supporting documentation.
ii. To review the effectiveness of internal control across the organisation and the adequacy of action taken to address any weaknesses or control failures.

(c) corporate governance

i. To review internal rules, regulations and policies of relevance to corporate governance, including the Local Code of Corporate Governance.
ii. To review the adequacy of financial and contract procedure rules and to make recommendations for changes to Council.

(d) accounts

i. To consider and approve the council's Statement of Accounts in accordance with Regulation 10(3) of the Accounts and Audit Regulations 2003, including subsequent amendments.

ii. To consider the external auditor's report on the audit of the annual financial statements.

iii. To be responsible for initiating actions required to deal with any matters arising from the audit of the council's accounts, including the auditor's opinion on the accounts, identification of any misstatements, comments on the accounting and internal control systems, and qualitative aspects of accounting practices and financial reporting.

Delegation to officers by the Audit Committee

Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council.

1. Delegation to officers common to all committees.

PARTNERSHIPS AND PERFORMANCE COMMITTEE

Membership: The committee shall consist of **7** councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

Quorum: The quorum is 3.

OVERVIEW

To review and monitor the performance of council services, and services provided on behalf of the council by external and/or shared service providers.

Make reports or recommendations to the council with regard to those functions.

FUNCTION

(a) Assist the council in the development of its budget and policy framework by in-depth analysis of policy issues.

(b) Conduct research, community and other consultation in the analysis of policy issues and possible options.

(c) Consider and implement mechanisms to encourage and enhance community participation in the development of policy options.

(d) Undertake reviews and make recommendations on services or activities carried out by external organisations which affect the borough of Wellingborough or its inhabitants.

(e) Review and monitor the performance of the council in relation to its policy objectives, corporate procurement activities, performance targets and/or particular service areas.

(f) Review and monitor the contractual and operational performance of shared service partnerships, joint ventures and outside organisations to which the council makes a resource contribution, including examination of the benefits of the council's contribution and the extent to which the body concerned makes a contribution to achievement of the council's priorities.

(g) Question members of committees and senior officers about performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects.

(h) Make recommendations to the appropriate committee and/or council arising from the outcome of the performance monitoring process.

(i) Question and gather evidence from any person (with their consent) for the purposes of performance management and/or monitoring.

(j) Undertake the council's crime and disorder obligations to:

iii. review decisions made (or other action taken) by responsible authorities, in connection with their crime and disorder functions conferred by or under section 6 of the Crime and Disorder Act 1998 (formulation and implementation of crime and disorder strategies;

iv. consider (crime and disorder related) councillor 'calls for action' that arise; and make reports or recommendations to the council with regard to those functions.

Delegation to officers by the Partnerships and Performance Committee

Directors, Assistant Directors (or officers designated by them) in compliance with statute, financial regulations, contract rules of procedure, agreed budgets and policies of the council.

1. Delegation to officers common to all committees.

APPOINTMENTS COMMITTEE

Membership: The committee shall consist of **13** councillors and will meet the requirements for political balance in accordance with Section 15 of the Local Government & Housing Act 1989.

The Chairman and Vice-Chairman of the Committee will be the Leader and Deputy Leader of the Council respectively, subject to the right of the council to appoint others of its choosing at the Annual Council meeting.

The Committee will be able to form sub-committees of **5** of its members, to be known as Appointment Panels, and delegate to Appointment Panels its functions in respect of particular appointments.

The membership and chairmanship of Appointment Panels will be determined by the Chairman of the committee in consultation with the Vice-Chairman (and the Leader of the Opposition as to the identity of the opposition member(s)).

Members can sit on an Appointment Panel only if they have received approved training in the council's recruitment and selection procedures current at the date of their appointment to an Appointment Panel.

Quorum: The quorum for the committee is 5. The quorum for an Appointment Panel is 3.

OVERVIEW AND FUNCTION

To exercise the functions of the council in relation to:

(a) Selecting the person the council is recommended to appoint as Head of Paid Service. Appointment is reserved to the Council.

(b) The appointment of Chief Officers and Deputy Chief Officers.

STANDARDS COMMITTEE

Membership: The committee shall consist of **11** councillors and will meet the requirements for political balance in accordance with section 15 of the Local Government & Housing Act 1989. This applies to the committee and its sub-committees.

The committee shall appoint sub-committees to deal with referral decisions on complaints (assessment sub-committees) and the determination of investigated complaints (hearings sub-committees).

Quorum: A meeting of the Standards Committee or a sub-committee shall not be quorate unless at least one quarter of the whole number of voting members of the committee or sub-committee, as the case may be, are present for its duration: provided that in no case shall any business be transacted unless at least two voting members are present.

OVERVIEW

The Standards Committee will have the following functions:

(a) Promoting and maintaining high standards of conduct by councillors and officers.

(b) Assisting councillors to observe the Members' Code of Conduct.

(c) Advising the council on the adoption or revision of the Code of Conduct.

(d) Monitoring the operation of the Members' Code of Conduct.

FUNCTION

(a) The decision to refer/not refer allegations of a failure by a member/co-opted member to comply with the Code of Conduct for investigation or alternative resolution.

(b) The decision as to any action to be taken in respect of a member who has been found to have failed to comply with the Code of Conduct as may be necessary to promote and maintain high standards.

(c) The exercise of the council's powers in relation to granting of exemptions from designation as politically restricted in relation to council employees

(d) The exercise of (a) to (b) above in relation to the parish councils in its area and the members of those parish councils; and

(e) Recommending any changes to procedures, or to the codes or protocols of this Constitution in respect of probity issues arising from their considerations.

STANDARDS ASSESSMENT SUB-COMMITTEE

Membership: An Assessment Sub-Committee shall comprise **3** members and be made up of members drawn from at least two different political parties. A councillor may not be appointed to a sub-committee unless he or she has received training on the role and duties of the sub-committee.

Subject to those requirements, each is appointed in proportion to the strengths of each party group on the council.

Quorum: A meeting of the Standards Committee or a sub-committee shall not be quorate unless at least one quarter of the whole number of voting members of the committee or sub-committee, as the case may be, are present for its duration: provided that in no case shall any business be transacted unless at least two voting members are present.

OVERVIEW AND FUNCTION

(a) The Assessment Sub-Committee is established to receive allegations that a member of the authority (or a parish council in the area of the authority) has failed, or may have failed, to comply with their authority's Code of Conduct.

(b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the sub-committee shall make an initial assessment of the allegation applying the adopted criteria and shall then do one of the following:

i. Refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation;
ii. Refer the allegation to the Monitoring Officer for alternative resolution; or
iii. Decide that no action should be taken in respect of the allegation and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

STANDARDS HEARING SUB-COMMITTEE

Membership: The Hearings Sub-Committee shall comprise **3** members and be made up of members drawn from at least two different political parties. A councillor may not be appointed to a sub-committee unless he or she has received training on the role and duties of the sub-committee.

Subject to those requirements, each is appointed in proportion to the strengths of each party group on the council.

Quorum: A meeting of the Standards Committee or a sub-committee shall not be quorate unless at least one quarter of the whole number of voting members of the committee or sub-committee, as the case may be, are present for its duration: provided that in no case shall any business be transacted unless at least two voting members are present.

OVERVIEW AND FUNCTION

(a) To conduct hearings and consider reports from (or commissioned by) the Monitoring Officer on complaints referred by an Assessment Sub-Committee.

(b) To conduct hearings in cases where a member of the authority or of a parish council is not prepared to participate in an alternative resolution process instructed by the assessment sub-committee or undertake any proposed remedial action identified as a result of an alternative resolution process.

(c) To determine:

i. That the member who was the subject of the hearing had not failed to comply with the code of conduct of any authority concerned;

ii. That the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned but that no action needs to be taken in respect of the matters which were considered at the hearing; or

iii. That the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned and that a sanction should be imposed.

(d) If a Hearings Sub-Committee makes a finding under paragraph (c) above it shall impose any one of, or any combination of, the following sanctions:

i. Censure or reprimand the member (or recommend to the parish council that it censures or reprimands the member);

ii. Publish its findings in respect of the member's conduct;

iii. Report its findings to council (or to the parish council) for information;

iv. Recommend to the member's group leader (or in the case of un-grouped members, recommend to Council or to committees) (or recommend to the parish council) that he/she be removed from any or all committees or sub-committees of the council, including joint committees or sub-committees for a stipulated period;

v. Removing (or recommending to the parish council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the council (or by the parish council) for a stipulated period;
vi. Instruct the Monitoring Officer to (or recommend that the parish council) arrange training for the member;
vii. Withdraw (or recommend to the parish council that it withdraws) for a stipulated period facilities provided to the member by the council, such as a computer, website and/or email and Internet access, to the extent that such a withdrawal is reasonable and proportionate to the nature of the breach and does not unduly restrict the person's ability to perform the functions of a member;
viii. Exclude (or recommend that the parish council exclude) the member from the council's offices or other premises for a stipulated period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings; or
ix. Limit (or recommend to the parish council that it limits) access to officers for a stipulated period or require (or recommend to the parish council that it requires) communication between the member and officers or other persons or bodies to be confined to certain forms or ceased for a stipulated period.

PART 4

RULES OF PROCEDURE

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4.1 Council Procedure Rules (Standing Orders)

4.1.01 Annual Meeting

In a year when there is an ordinary election of members, the annual meeting will take place within 21 days of the retirement[1] of the outgoing members. In any other year, the annual meeting will take place in May.

It is the council's practice to hold an informal meeting to plan the Annual meeting.

The annual meeting will:

at the Ceremonial [Mayor Making] meeting:

(a) elect a person to take the chair if the Mayor and Deputy Mayor are not present;

(b) receive apologies for absence;

(c) receive declarations of interest in accordance with the Members Code of Conduct;

(d) elect the Mayor for the ensuing municipal year and note any appointment by the Mayor or Mayoress of Consort and Chaplain;

(e) elect the Deputy Mayor; note the appointment of the Deputy Mayoress or Consort;

at the Business meeting:

(f) receive any announcements from the Mayor and/or Head of Paid Service;

(g) approve the minutes of the last meeting;

(h) upon retirement of the previous Leader, which shall be at least once every four years, elect the Leader of the Council;

(i) appoint to committees and outside bodies, in that the annual meeting will:

i. decide which committees to establish for the municipal year;

ii. decide the size and terms of reference for those committees;

iii. decide the allocation of seats to political groups in accordance with the rules on political balance;

iv. receive nominations of members to serve on each committee and outside body;

v. appoint to those committees and appoint or nominate to those outside bodies (except where appointment to those bodies has been delegated by the Council);

vi. appoint the chairman and vice-chairman of all the Council's committees, other than those which the Council has decided should be appointed by the committee itself[2];

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[1] Section 7 of the Local Government Act 1972 provides that a member who is not re-elected, or who does not stand for re-election, retires on the fourth day after the ordinary day of election. Newly elected members come into office on the day on which their predecessors retire.

[2] The Council may decide at subsequent meetings to dissolve committees, alter their terms of reference or to appoint new committees.

(j) agree the scheme of delegations or such part of it as the Constitution determines it is for the Council to agree (as set out in Part 3 of this Constitution);

(k) authorise the sealing of documents for the ensuing year (supplemental to Part 2(12));

(l) approve a programme of ordinary meetings of the Council for the year; and

(m) consider any business set out in the notice convening the meeting.

4.1.02 Ordinary meetings

Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. Ordinary meetings will:

(a) elect a person to take the chair if the Mayor and Deputy Mayor are absent;

(b) receive apologies for absence;

(c) approve the minutes of the last Council meeting;

(d) receive any declarations of interest from members in accordance with the Members Code of Conduct;

(e) receive any announcements from the Mayor and/or Head of Paid Service

(f) receive and respond to questions from electors of the borough under paragraph 4.1.10 below;

(g) receive representations from electors of the borough;

(h) receive or debate petitions;

(i) deal with any business deferred from the last Council meeting;

(j) receive and note a report on any notable activities of the council that the Leader wishes to draw to members' attention [(which will normally be limited to five minutes), followed by any question on the announcement from a leader of an opposition group (which will normally be limited to one minute)];

(k) receive and note reports on the performance of the council;

(l) receive reports from the council's committees and receive questions and answers on any of those reports;

(m) receive reports about and receive questions and answers on the business of joint arrangements and external organisations;

(n) consider 'on notice' motions;

(o) receive and respond to questions from members under paragraph

4.1.11 below;

(p) appoint to outside bodies where casual vacancies arise during the year; and

(q) consider any other business specified in the summons to the meeting.

4.1.03 Extraordinary meetings

(a) **Calling extraordinary meetings**

Those listed below may request the proper officer to call council meetings in addition to ordinary meetings:

- i the Council by resolution;
- ii the Mayor;
- iii the Monitoring Officer; and
- iv the Chief Finance Officer;
- v any five members if five members have signed a requisition for that purpose and presented it to the Mayor and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition as the case may be.

(b) **Business**

The business to be conducted at extraordinary meetings of the Council shall be restricted to a single item of business other than procedural items.

4.1.04 Time and place of meetings

The time and place of meetings of the Council will be determined by the proper officer and notified in the summons. The dates of ordinary meetings will be determined by the Council at its annual meeting.

4.1.05 Notice of and summons to meetings

The proper officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the proper officer will send a summons, signed by him or her, by post (which shall include delivery by courier or the like), to every member of the council, or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

Reports and other documents that relate to confidential or exempt items of business shall wherever possible be printed on pink colour paper.

4.1.06 Chairman of meeting

The person chairing the Council meeting may exercise any power or duty of the Mayor in his/her absence.

4.1.07 Quorum

The quorum of a meeting will be one quarter of the whole number of members. The meeting may not proceed to business unless quorate, and if at any time during the meeting there is not a quorum present, the clerk of the meeting shall bring this fact to the notice of the Mayor (or person presiding) whereupon the Mayor (or person presiding) shall immediately cause the number of Members present to be counted.

If there is not a quorum present, the meeting will adjourn immediately for a period of fifteen minutes or until a quorum be present, whichever is the shorter period. After fifteen minutes the Mayor (or person presiding) shall again cause the number of members present to be counted. If there is still no quorum present, the meeting shall end. Remaining business (including notices of questions or motions that would lapse by virtue of any provision of the constitution) will be considered at a meeting of the council on a time and date fixed by the Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

4.1.08 Duration of meetings

Unless the majority of members present vote for the meeting to continue, any meeting that has lasted for 3 hours will adjourn immediately. Remaining business will be considered at a meeting of the Council on a time and date fixed by the Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

4.1.09 Declarations of interest

The agenda will include a section for members to declare any unregistered registerable interests and other interests they may have, and the nature of those interests, in the business before the Council.

A member with a disclosable pecuniary interest or a prejudicial interest in a matter must leave the room during consideration of and voting on the matter and the Mayor will ensure he/she is invited to re-join the meeting when the matter has been dealt with.

A member with a prejudicial interest may use any scheme for public speaking available to the public which may be in force.

A member with an interest in a matter that is not a disclosable pecuniary interest or a prejudicial interest retains the right to speak and vote on the matter.

The minutes will record the nature of any interest declared and the point at which a member with a disclosable pecuniary interest or a prejudicial interest left and returned to the meeting.

4.1.10 Questions from borough electors

Subject to the following rules, borough electors may ask questions of the Leader of the Council and the chairman of any Committee at ordinary meetings of the Council.

(a) **Number and order of questions**

No more than five questions will be considered at any one meeting and they will be asked in the order notice of them was received, except that the Mayor may group together similar questions into a single composite question.

(b) **Notice of questions**

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the proper officer no later than midday three working days

before the day of the meeting. Each question must give the name and address of the questioner together with a contact telephone number, and must name the member to whom it is to be put.

(c) **Allocation of questions**

No person may submit more than one question for consideration at any one meeting and no more than one such question may be asked by or on behalf of a particular organisation. If the proper officer considers that a question is written in such a way as seeks to evade the restriction in this paragraph on the number of questions that may be asked he/she shall contact the questioner and invite them to identify which of their questions they wish put to the member concerned.

(d) **Scope of questions**

The proper officer may reject a question if it:

- i is not about a matter for which the local authority has a responsibility or which affects the borough;
- ii is defamatory, frivolous or offensive;
- iii is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- iv requires the disclosure of confidential or exempt information.

(e) **Asking the question at the meeting and response**

- i The Mayor will invite the questioner to put the question to the member named in the notice. The respondent member's reply must be no longer than five minutes.
- ii If a questioner who has submitted a written question is unable to be present, he/she may ask the Mayor to put the question on his/her behalf. The Mayor may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.
- iii A questioner who has put a question in person may also put one supplementary question without notice to the member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. A period of time of one minute will be allowed in which to ask any supplementary question. The Mayor may reject a supplementary question on any of the grounds in Paragraph 4.1.10 (d) above. The respondent Member's reply may be no longer than two minutes in duration.
- iv Any question which cannot be dealt with because of the non-attendance of the member to whom it was to be put will be dealt with by a written answer.
- v Unless the Mayor decides otherwise, no discussion will take place on any question, but any member may move that a matter raised by a question be referred to the appropriate committee. Once seconded, such a motion will be voted on without discussion.

(f) **Record of questions**

i The proper officer will maintain a record of each question in a form that is suitable for public inspection during normal working hours and will immediately send a copy of the question to the member to whom it is to be put. The proper officer will inform the questioner of the reason if any question is rejected and the record will include the reason(s) for the rejection.

ii Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting.

(g) **Statements to the Council by borough electors and petitions**

i The council operates a scheme allowing borough electors to address the Council on matters of local concern for up to three minutes. The Mayor may agree to receive a petition in regard to a matter of local concern.

ii If a petition is scheduled for debate in accordance with the council's Petitions Scheme the petition organiser will be given five minutes to present the petition and the petition will then be debated by members for no more than 15 minutes. The Council will decide what action to take in response to the petition at the meeting at which it is debated.

4.1.11 Questions by members

(a) **On reports of committees**

A member may ask the chairman of a committee any question without notice upon an item of the report of a committee when that item is being received or under consideration by the Council.

(b) **Questions on notice at Council**

Subject to (c) below, a member may ask:

i the Mayor;

ii the Leader of the Council; or

iii the chairman of any committee

a question on any matter in relation to which the council has powers or duties or which affects the borough of Wellingborough.

(c) **Notice of questions**

A member may only ask a question under (b) above if either:

i he/she has given at least seven clear working days' notice in writing of the question to the proper officer; or

ii the question relates to urgent matters, he/she has the consent of the member to whom the question is to be put and the Mayor and the content of the question is given to the proper officer by 10am on the day of the meeting.

(d) **Scope**

If the proper officer considers a question:

i is not about a matter for which the local authority has a responsibility or which affects the borough;

ii is defamatory, frivolous or offensive;
iii is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
iv requires the disclosure of confidential or exempt information

he/she will inform the Mayor who will then decide whether or not to reject the question.

(e) **Response**

An answer may take the form of:

i a direct oral answer (the respondent's reply must be no longer than 5 minutes in duration);
ii where the desired information is in a publication of the council or other published work, a reference to that publication; or
iii where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

(f) **Supplementary question**

A member asking a question under the above rule may ask one supplementary question without notice of the member to whom the first question was asked. A period of time of 1 minute will be allowed in which to ask any supplementary question. The supplementary question must arise directly out of the original question or the reply. The respondent's reply may be no longer than 2 minutes in duration.

4.1.12 Motions on Notice

(a) **Notice**

i Except for motions which can be moved without notice under paragraph 4.1.13 below, written notice of every motion, signed by at least two members, must be delivered to the proper officer not later than **7** clear working days before the date of the meeting to enable them to appear on the agenda.
ii A relevant motion will be accepted if it concerns urgent matters, the proposer has the consent of the Mayor and the content of the motion is given to the proper officer by 10am on the day of the meeting.

(b) **Motion set out in the agenda**

i Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that he/she proposes to move it to a later meeting or withdraw it.
ii Motions on notice within the terms of reference of any committee of the council will stand referred without discussion to the next meeting of that committee when proposed and seconded, unless the Mayor allows the motion to be dealt with at the Council meeting. The proposer will be allowed to address the meeting of the committee to which the motion is referred in the event that he/she is not a member of it. If any question arises at the meeting as to which committee the

motion is to be referred, it shall be determined by the Mayor, after consultation with the proper officer.

iii Where notice of motion has been given for any meeting and that motion is not moved and seconded, the notice shall lapse without discussion, and the motion shall not be moved without further notice.

(c) **Scope**

If the proper officer considers a question:

i is not about a matter for which the local authority has a responsibility or which affects the borough;

ii is defamatory, frivolous or offensive;

iii is substantially the same as a question which has been put at a meeting of the Council in the past six months; or

iv requires the disclosure of confidential or exempt information

he/she will inform the Mayor who will then decide whether or not to reject the motion.

4.1.13 Motions Without notice

The following motions may be moved without notice:

(a) to appoint a chairman of the meeting at which the motion is moved;

(b) in relation to the accuracy of the minutes;

(c) to change the order of business in the agenda;

(d) to refer something to an appropriate body or individual;

(e) to appoint a committee or a member arising from an item on the summons for the meeting;

(f) to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;

(g) to withdraw a motion;

(h) to amend a motion;

(i) to proceed to the next business;

(j) that the question be now put;

(k) to adjourn a debate;

(l) to adjourn a meeting;

(m) that the meeting continue beyond 3 hours in duration;

(n) to suspend a particular council procedure rule;

(o) to exclude the public and press in accordance with the Access to Information Rules;

(p) to not hear further a member named under Paragraph 4.1.20 (c) or to exclude them from the meeting under 4.1.20 (d);

(q) to give the consent of the Council where its consent is required by this Constitution;

(r) reference back to a committee of any recommendation or resolved matter which had not been implemented by the date of the Council meeting.

4.1.14 Rules of debate at Council meetings

(a) **No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

(b) **Right to require motion in writing**

Unless notice of the motion has already been given, the Mayor may require it to be written down and handed to him/her before it is discussed.

(c) **Seconder's speech**

When seconding a motion or amendment, a member may reserve their speech until later in the debate.

(d) **Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the Mayor.

(e) **When a member may speak again**

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- i to speak once on an amendment moved by another member;
- ii to move a further amendment if the motion has been amended since he/she last spoke;
- iii 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);
- iv in exercise of a right of reply;
- v on a point of order; and
- vi by way of personal explanation.

(f) **Amendments to motions**

An amendment to a resolution or policy must be moved and seconded, and be relevant to the motion. The amendment will be one of the following:

- i to refer the matter to an appropriate body or individual for consideration or reconsideration;
- ii leave out words;
- iii to leave out words and insert or add others; or
- iv to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion.
Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

If an amendment is not carried, other amendments to the original motion may be moved.

If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

After an amendment has been carried, the Mayor will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

A member may move more than one amendment to the same motion.

(g) **Alteration of motion**

A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

A member may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations, which could properly be made as an amendment, may be made.

(h) **Withdrawal of motion**

A member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it, unless permission is refused.

(i) **Right of reply**

The mover of a motion has a right to reply at the end 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 has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
The mover of the amendment has no right of reply to the debate on his or her amendment.

(j) **Motions that may be moved during debate**

When a motion is under debate, no other motion may be moved, except the following procedural motions subject to paragraph (k) below:

i to withdraw a motion
ii to amend a motion
iii to proceed to the next business
iv that the question be now put
v to adjourn a debate
vi to adjourn a meeting

vii that the meeting continue beyond 3 hours in duration
viii to exclude the public and press in accordance with the Access to Information Rules
ix to not hear further a member named or to exclude them from the meeting under paragraph 4.1.20 below.

(k) **Closure motions**

i A member may move, without comment, one of the following motions at the end of a speech of another member:
  a to proceed to the next business
  b that the question be now put
  c to adjourn a debate
  d to adjourn a meeting.

ii If a motion to proceed to next business is seconded and the Mayor thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply. If the procedural motion (proceed to next business) is approved, the motion on the table lapses.

iii If a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, he/she will put the procedural motion (that the question be now put) to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

iv If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion (to adjourn) to the vote without giving the mover of the original motion the right of reply.

(l) **Point of Order**

A member may raise a point of order at any time. The Mayor will hear it immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The member must indicate the rule of procedure or law and the way in which he/she considers it has been broken. The ruling of the Mayor on the matter will be final.

(m) **Personal explanation**

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member in the current debate which may appear to have been misunderstood. The ruling of the Mayor on the admissibility of a personal explanation will be final.

4.1.15 Previous Decisions and Motions

(a) **Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at

least 9 members or it is the subject of an officer report reflecting a material change in circumstances.

(b) **Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 9 members or there has been a material change of circumstances. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

4.1.16 Voting

(a) **Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.[3]

(b) **Mayor's casting vote**

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote. There will be no restriction on how the Mayor chooses to exercise the casting vote.

(c) **Show of hands**

Unless a recorded vote is demanded under paragraphs (d) or (e) below the Mayor will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

(d) **Recorded vote**

If 7 members present at the meeting demand it, ahead of the vote being taken, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. A recorded vote may not be demanded for votes on appointments.

(e) **Right to require individual vote to be recorded (mandatory standing order)**

Where any member requests it immediately after the vote is taken, his/her vote will be so recorded in the minutes to show whether he/she voted for or against the motion or abstained from voting.

(f) **Voting on appointments**

If there are more than two people 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

[3] The time the question is put is the time at which the Mayor or chairman puts the matter to the vote. Members are not necessarily required to be in the meeting for the entire time the item is under consideration unless the item is a planning or other regulatory matter being considered by the Council rather than a committee.

taken. The process will continue until there is a majority of votes given in favour of one person.

A vote on appointments will take place by ballot if 7 members present at the meeting demand it ahead of the vote being taken. The Mayor will announce the numerical result of the ballot immediately the result is known.

(g) **Voting at the budget decision meeting (mandatory standing order)**

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

ii In this standing order (g):
a "budget decision" means a meeting of the authority at which it makes a calculation (whether originally or by way of substitute) in accordance with any of sections 31A, 31B , 34 to 36A , 42A, 42B, 45 to 49 , 52ZF , 52ZJ of the Local Government Finance Act 1992 2 and includes a meeting where making the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting; and

b references to a vote are references to a vote on any decision related to the making of the calculation.

4.1.17 Minutes

(a) **Signing the minutes**

The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor will move that the minutes of the previous meeting be signed as a correct record. The only aspect of the minutes that can be discussed is their accuracy.

(b) **No requirement to sign minutes of previous Ordinary meeting at Extraordinary meeting (mandatory standing order)**

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

(c) **Form of minutes**

Minutes will contain all motions and amendments in the exact form and order the Mayor put them.

4.1.18 Record of attendance

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

4.1.19 Exclusion of public

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or 4.1.21 (Disturbance by Public).

4.1.20 Members' conduct

(a) **Standing to speak**

When a Member speaks at full Council he/she must stand and address the meeting through the Mayor. If more than one member stands, the Mayor will ask one to speak and the others must sit. Other members must remain seated whilst a member is speaking unless he/she wishes to make a point of order or a point of personal explanation.

(b) **Mayor standing**

When the Mayor stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

(c) **Member not to be heard further**

If a member persistently disregards the ruling of the Mayor by behaving improperly or offensively or deliberately obstructs business, any member, including the Mayor, may move that the member be not heard further until permitted to speak again by the Mayor. If seconded, the motion will be voted on without discussion.

(d) **Member to leave the meeting**

If the member continues to behave improperly after such a motion is carried, a member may move that either the member leaves the meeting or that the meeting is adjourned for a period specified by the Mayor. If seconded, the motion will be voted on without discussion.

(e) **General disturbance**

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as he/she thinks necessary.

4.1.21 Disturbance by public

(a) **Removal of member of the public**

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor will order their removal from the meeting room.

(b) **Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared.

4.1.22 Suspension and amendment of Council procedure rules

(a) **Suspension**

All or any of these Council rules of procedure (standing orders) except the mandatory standing orders may be suspended by motion on notice or without notice if two-thirds of the members are present. Suspension can only be for the duration of the meeting.

(b) **Amendment**

Any motion to add to, vary or revoke these Council rules of procedure (standing orders) will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council (as detailed in Article 14.03).

4.1.23 Application to committees

The proceedings of committees appointed by the Council will be governed by the committee procedure rules.

4.1.24 Adoption of committee reports/minutes at Council

(a) The member in charge of the report (normally the chairman or vice-chairman, or failing both some other member of the committee) on submitting the report shall move "that the report be received" and shall be held to have moved each item contained in the report as and when it is called, unless he/she has withdrawn it, announced his/her disagreement with it, or declared an interest in it. No seconder shall be required for moving the reception of a report or of an individual item. No amendment to the motion for the reception of the report or of an individual item shall be in order and the motion shall not be debated.

(a) The reception of any item excluded by the member in charge of the report under paragraph (a) above may be moved by some other member of the committee.

(b) Upon the motion "that the report be received" being put, the paragraphs of the report shall be put by the Mayor (by reference only, where practicable, to the numbers of the paragraphs).

Where a paragraph contains a recommendation, any member may move an amendment to the recommendation.

Where a paragraph contains a resolution that has not been fully implemented by the date of the Council meeting, a reference back of the matter or any part of the matter that would not affect the part that had been implemented may be moved.

Where a paragraph contains neither a recommendation, nor a resolution, a reference back to the committee of the matter that is the subject of the paragraph in question may be moved.

(c) After all motions and recommendations contained in a report of the committee and all amendments (if any) have been disposed of, the member or members in charge of such report shall formally move "that the report (as presented or amended) be approved and adopted." Upon a

motion being so put and seconded, it shall be voted upon without further discussion.

(d) In any case where a recommendation or a resolution by a committee to the Council is the subject of a dissenting or amending recommendation or resolution of the Resources Committee, the matters shall be dealt with together and, unless agreed otherwise by the Council, shall be dealt with as part of the report of the Resources Committee. Should this procedure be used, the relevant paragraph of the report of the subsidiary committee shall be deemed to have lapsed.

4.2 Committee Procedure Rules (Standing Orders)

4.2.01 Committee procedure rules (standing orders) – general

Ordinary meetings of the committee will normally take place in accordance with a programme decided at the Council's annual meeting. The chairman may call additional meetings if necessary and cancel scheduled meetings if there is no urgent business. The Monitoring Officer or the Chief Finance Officer may also call additional meetings where they deem it necessary. Committee meetings will:

(a) elect a person to preside if the chairman or vice-chairman is not present;

(b) receive apologies for absence;

(c) approve the minutes of the last meeting;

(d) receive any declarations of interest from members;

(e) deal with any business deferred from the last meeting of the committee; and

(f) consider any other business specified in the summons to the meeting.

4.2.02 Agenda

The proper officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least **five** clear days before a meeting the proper officer will send a printed agenda (or transmit a copy by electronic means by prior agreement with individual members) to every member of the committee or leave it at their usual place of residence. The agenda will give the date, time and place of each meeting and specify the business to be transacted.

Any member may request an agenda item about a matter of local concern with the approval of the chairman of the committee.

Reports and other documents that relate to confidential or exempt items of business shall wherever possible be printed on pink colour paper.

Presentations

Presentations by outside organisation may not be made to a committee meeting other than in connection with an item of business of the agenda for the meeting. The total time allowed for a presentation shall not exceed 30 minutes, including the time allowed for questions, unless the meeting approved some other limit.

4.2.03 Declarations of interest

All committee agendas will include a section for members to declare any unregistered registerable interests and other interests they may have, and the nature of those interests, in the business before the committee.

A member with a disclosable pecuniary interest or a prejudicial interest in a matter must leave the room during consideration of and voting on the matter and the chairman will ensure he/she is invited to re-join the meeting after the matter has been disposed of. A member with a prejudicial interest may use any scheme for public speaking available to the public which may be in force.

A member with an interest in a matter that is not a disclosable pecuniary interest or a prejudicial interest retains the right to speak and vote on the matter.

The minutes will record the nature of any interest declared and the point at which a member with a disclosable pecuniary interest or a prejudicial interest left and returned to the meeting.

4.2.04 Chairman of meeting

The person presiding at the meeting may exercise the powers or duties of the Mayor as detailed in the Council rules.

4.2.05 Quorum

Unless the terms of reference of the committee as set out in Part 3 of this Constitution state otherwise, the quorum of a meeting will be one quarter of the whole number of members.

The meeting may not proceed to business unless quorate, and if at any time during the meeting there is not a quorum present, the clerk of the meeting shall bring this fact to the notice of the chairman (or person presiding) whereupon the chairman (or person presiding) shall immediately cause the number of members present to be counted; if there is not a quorum present, the meeting will adjourn immediately for a period of fifteen minutes or until a quorum be present, whichever is the shorter period. After fifteen minutes the chairman (or person presiding) shall again cause the number of members present to be counted, if there is still no quorum present, the meeting shall end.

Remaining business (including notices of questions or motions that would lapse by virtue of any provision of the Constitution) will be considered at a meeting of the committee on a time and date fixed by the chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

4.2.06 Duration of meetings

Unless the majority of members present vote for the meeting to continue, any meeting that has lasted for 3 hours will adjourn immediately. Remaining business will be considered by the committee at a time and date fixed by the chairman. If he/she does not fix a date, the remaining business will be considered at the next scheduled meeting of the committee.

4.2.07 Public participation

The public are allowed to make a statement to the council's committees only in accordance with the scheme(s) published under this rule. Questions may only be addressed to the full Council meeting.

4.2.08 Attendance by members at committees

(a) A member may attend any meeting of a committee of which he/she is not a member as an observer.

(b) A member may address a committee for no more than three minutes at the meeting (but may not otherwise take part in the debate or vote), after giving notice at least one working day before the meeting to the chairman, if:

i the business of the committee on which he or she wishes to speak affects their ward more than it would any other ward in the borough or

ii they have particular knowledge of the matter under consideration,

but the Chairman has a residual discretion in the matter. Members of the committee may ask questions of the observing member to clarify issues raised by him or her in his or her speech.

(c) At the discretion of the chairman an observing member is not included in a resolution to exclude the public under the provisions of Section 100(a) of the Local Government Act 1972.

(d) An observing member who has a prejudicial interest in a matter may not speak on the matter unless members of the public also have a right to speak on the matter (in which case notwithstanding (a) above the request to speak must be given in accordance to the scheme that applies to members of the public wishing to speak and the observing member shall be subject to the requirements of that scheme) and that member must leave the meeting whilst that matter is being discussed and voted upon.

4.2.09 Questions on notice at committees

(a) Subject to (b) below, a member of a committee may ask the chairman of it a question on any matter in relation to which the council has powers or duties or which affect the borough and which falls within the terms of reference of that committee.

(b) A question may only be asked if either:

i he/she has given at least **7** clear working days' notice in writing of the question to the proper officer; or

ii the question relates to urgent matters, he/she has the consent of the chairman to whom the question is to be put *and* the content of the question is given to the proper officer by 10am on the day of the meeting.

In putting his/her question the questioner may not make a speech and should confine him/herself to invite a response or reading out the question, but if the chairman believes that some additional information relating to the background to the matter should be given by the questioner to assist public understanding then he/she may invite the questioner to do so.

(c) **Scope**: If the proper officer considers a question:

i is not about a matter for which the local authority has a responsibility or which affects the Borough and which falls within the terms of reference of that committee;

ii is defamatory, frivolous or offensive;

iii is substantially the same as a question which has been put at a meeting of the council in the past six months; or

iv requires the disclosure of confidential or exempt information

v he/she will inform the chairman who will then decide whether or not to reject the question.

(d) **Response**: An answer may take the form of:

i a direct oral answer (the respondent's reply must be no longer than 5 minutes in duration);

ii where the desired information is in a publication of the council or other published work, a reference to that publication; or

iii where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

(e) **Supplementary question**: A member asking a question under the above rule may ask one supplementary question without notice of the chairman to whom the first question was asked. A period of time of 1 minute will be allowed in which to ask any supplementary question. The supplementary question must arise directly out of the original question or the reply. The respondent's reply may be no longer than 2 minutes in duration.

4.2.10 Motions on notice

(a) "On notice" motions may be submitted to Council under the Council rules and may be referred by Council to a committee for determination. Such referred notices will be included as motions on notice on the agenda of the next meeting of the relevant Committee.

(b) **Notice**

i Except for motions referred by Council and motions which can be moved without notice under paragraph 4.2.11 below, written notice of every motion, signed by at least two members of the committee, must be delivered to the proper officer not later than **7** clear working days before the date of the meeting to enable them to appear on the agenda.

ii A relevant motion will be accepted if it concerns urgent matters, the proposer has the consent of the chairman and the content of the motion is given to the proper officer by 10am on the day of the meeting.

(c) **Scope**

If the proper officer considers a question:

i is not about a matter for which the local authority has a responsibility or which affects the borough and which falls within the terms of reference of that committee;

ii is defamatory, frivolous or offensive;

iii is substantially the same as a question which has been put at a meeting of the council in the past six months; or

iv requires the disclosure of confidential or exempt information

v he/she will inform the chairman who will then decide whether or not to reject the motion.

(d) **Motions set out in the agenda:** Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that he/she proposes to move it to a later meeting or withdraw it.

4.2.11 Motions without notice

The following motions may be moved without notice:

(a) to appoint a chairman of the meeting at which the motion is moved;

(b) in relation to the accuracy of the minutes;

(c) to change the order of business in the agenda;

(d) to refer something to an appropriate body or individual;

(e) to appoint a working group or a member arising from an item on the summons for the meeting;

(f) to withdraw a motion;

(g) to amend a motion;

(h) to proceed to the next business;

(i) that the question be now put

(j) to adjourn a debate

(k) to adjourn a meeting;

(l) that the meeting continue beyond 3 hours in duration;

(m) to suspend a particular procedure rule;

(n) to exclude the public and press in accordance with the Access to Information Rules;

(o) to not hear further a member named under Paragraph 4.2.18 (b) or to exclude them from the meeting under 4.2.18 (c).

4.2.12 Rules of debate at committee meetings

All members of a committee, after the chairman, have an equal right to speak and ask questions at committee. A committee member may contribute as often as necessary in the discussion, subject always to the ruling of the chairman.

The recommendation contained within the report before the committee shall be deemed to have been moved and seconded as the motion for debate.

(a) **No speeches until motion seconded**
No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

(b) **Right to require motion in writing**

Unless notice of the motion has already been given, the chairman may require it to be written down and handed to him/her before it is discussed.

(c) **Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the chairman.

(d) **Amendments to motions**

An amendment must be moved and seconded and be relevant to the motion. The amendment will be one of the following:

i to refer the matter to an appropriate body or individual for consideration or reconsideration

ii to leave out words

iii to leave out words and insert or add others or

iv to insert or add words

as long as the effect of (ii) to (iv) is not to negate the motion.

Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

If an amendment is not carried, other amendments to the original motion may be moved save that no amendment can be considered that reproduces an amendment previously rejected.

If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

After an amendment has been carried, the chairman will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote

A member may move more than one amendment to the same motion.

(e) **Alteration of motion**

A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

A member may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

Only alterations which could properly be made as an amendment may be made.

(f) **Withdrawal of motion**

A member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after

the mover has asked permission to withdraw it, unless permission is refused.

(g) **Right of reply**

The mover of a motion has a right to reply at the end 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 has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.

The mover of the amendment has no right of reply to the debate on his or her amendment.

(h) **Motions that may be moved during debate**

When a motion is under debate, no other motion may be moved, except the following procedural motions subject to paragraph (i) below:

i to withdraw a motion;

ii to amend a motion;

iii to proceed to the next business;

iv that the question be now put;

v to adjourn a debate;

vi to adjourn a meeting;

vii that the meeting continue beyond 3 hours in duration;

viii to exclude the public and press in accordance with the Access to Information Rules;

ix to not hear further a member named or to exclude them from the meeting under paragraph 4.2.18 below.

(i) **Closure motions**

i A member may move, without comment, the following motions at the end of a speech of another member:

a to proceed to the next business;

b that the question be now put;

c to adjourn a debate; or

d to adjourn a meeting.

ii If a motion to proceed to next business is seconded and the chairman thinks the item has been sufficiently discussed, he/she will give the mover of the original motion a right of reply and then put the procedural motion (proceed to next business) to the vote. If the procedural vote is approved, the motion on the table lapses.

iii If a motion that the question be now put is seconded and the chairman thinks the item has been sufficiently discussed, he/she will put the procedural motion (that the question be now put) to the vote. If it is

passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

iv If a motion to adjourn the debate or to adjourn the meeting is seconded and the chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion (to adjourn) to the vote without giving the mover of the original motion the right of reply.

(j) **Point of order**

A member may raise a point of order at any time. The chairman will hear them immediately. A point of order may only relate to an alleged breach of these rules of procedure or the law. The member must indicate the rule of procedure or law and the way in which he/she considers it has been broken. The ruling of the chairman on the matter will be final.

(k) **Personal explanation**

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the chairman on the admissibility of a personal explanation will be final.

4.2.13 Voting

(a) **Majority voting**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put[4].

(b) **Chairman's casting vote**

If there are equal numbers of votes for and against, including the chairman's own vote (which must be cast at the same time as the rest of the vote is taken), the chairman will have a second or casting vote. There is no restriction on how the chairman chooses to exercise a casting vote.

(c) **Show of hands**

Unless a recorded vote is demanded under (d) or (e) below, the chairman will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

(d) **Recorded vote**

If three of the members of the committee present at the meeting demand it before the vote is taken, the names for and against the motion or

[4] The time the question is put is the time at which the Mayor or chairman puts the matter to the vote. Members are not normally required to be in the meeting for the entire time the item is under consideration.

amendment or abstaining from voting will be taken down in writing and entered into the minutes.

(e) **Right to require individual vote to be recorded (mandatory standing order)**
Where any member requests it immediately after a vote is taken, their vote will be so recorded in the minutes to show whether he/she voted for or against the proposal or abstained from voting.

(f) **Voting on appointments**
If there are more than two people 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.

A vote on appointments will take place by ballot if 3 members present at the meeting demand it ahead of the vote being taken. The chairman will announce the numerical result of the ballot immediately the result is known.

4.2.14 Minutes

(a) **Signing the minutes**
The chairman will sign the minutes of the proceedings at the next suitable meeting. The chairman will move that the minutes of the previous meeting be signed as a correct record. The only aspect of the minutes that can be discussed is their accuracy.

(b) **Form of minutes**
Minutes will contain a record of the substance of the proceedings and the decisions of the committee (and where appropriate the reasons for the decision).

4.2.15 Record of attendance

All members present during the whole or part of a meeting (including members exercising their right to observe a meeting) must sign their names on the attendance book before the conclusion of every meeting to assist with the record of attendance.

4.2.16 Exclusion of public

Members of the public and press may be excluded only in accordance with the Access to Information Rules in Part 4 of this Constitution or 4.2.19 (Disturbance by the Public).

4.2.17 Delegated authority

The delegations section of this Constitution sets out those matters that are delegated to each committee. Decisions in respect of these matters will be minuted as *resolutions.* The Council may refer back resolutions (as provided for in paragraph 4.1.24(c) of this Constitution).

Decisions on other matters falling within the committee's terms of reference will be minuted as *recommendations* and will require adoption by the Council.

Any five members (one of which must be a ward member if the business relates to a particular ward or affects one ward more than it does any other ward) may sign and deliver to the chairman a requisition requiring the chairman to put before the committee a motion that the business be referred to the next ordinary meeting of the Council for decision. If seconded, the motion will be voted on without discussion.

4.2.18 Members' conduct

(a) **Chairman standing**

When the chairman stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

(b) **Member not to be heard further**

If a member persistently disregards the ruling of the chairman by behaving improperly or offensively, or he/she deliberately obstructs business, the chairman or any member may move that the member be not heard further until permitted to speak again by the chairman. If seconded, the motion will be voted on without discussion.

(c) **Member to leave the meeting**

If the member continues to behave improperly after such a motion is carried, the chairman may move that either the member leaves the meeting for a time specified by the chairman or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

(d) **General disturbance**

If there is a general disturbance making orderly business impossible, the chairman may adjourn the meeting for as long as he/she thinks necessary.

4.2.19 Disturbance by Public

(a) **Removal of member of the public**

If a member of the public interrupts proceedings, the chairman will warn the person concerned. If they continue to interrupt, the chairman will order their removal from the meeting room.

(b) **Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the chairman may call for that part to be cleared.

4.2.20 Planning Committee procedure

Members whose ward is affected by a planning proposal are normally permitted by the chairman to address the Planning Committee considering the proposal, subject to the rules adopted by the Planning Committee on public speaking and the council's adopted Scheme.

Planning Applications

The chairman will:

(a) announce and invite the officer representatives to provide a brief introduction and evaluation of each application;

(b) invite members of the public who have registered a request to speak in accordance with the council's Scheme to give their timed addresses to the committee for a maximum of three minutes;

(c) invite questions of clarification from the committee to the member of the public if applicable;

(d) invite any ward member who has requested to speak about an application affecting their ward for a maximum of five minutes;

(e) if the application has been considered by the Site Viewing Group, invite members of the Group to give their comments to the committee;

(f) invite further questions or comments from the committee;

(g) seek to put the officer recommendation to the vote by seeking a mover and seconder[5]

4.2.21 Licensing Committee and Sub-Committee procedures

The full Licensing Committee procedure will be the same as for a committee. The individual sub-committees will determine cases and appeals in accordance with guidance from the Secretary of State, which will be made available to the parties to the individual hearings[6].

4.2.22 Suspension and amendment of procedure rules

(a) **Suspension**

All of these rules of procedure, except the mandatory standing orders, may be suspended by motion on notice or without notice if two-thirds of members of the committee are present. Suspension can only be for the duration of the meeting.

(b) **Amendment**

Any proposal to change these rules of procedure requires the approval of a report to Resources Committee and approval by Council. Any such changes will not come into force until the subsequent meeting of the Council.

[5] & [6] Any committee/sub-committee member who is not present for the complete presentation and debate on an application will not be able to vote on the recommendation or determine the application as the case may be. If a committee/sub-committee member needs to leave the room during the proceedings, the chairman may upon request grant a short adjournment but must do so if the meeting would become inquorate were the member to leave the room. The chairman's decision shall be final.

4.3 Access to Information Procedure Rules

4.3.01 General

These rules apply to all meetings of the Council, and committees including the Standards Committee (but not to Referrals and Referral appeals) (together called "meetings"). They do not apply to meetings of advisory groups.

4.3.02 Additional rights to information

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

4.3.03 Rights to attend meetings

Members of the public may attend (but not speak at) all meetings subject only to the exceptions in these rules.

4.3.04 Notices of meeting

The council will give at least five clear days' notice of any meeting by posting details of the meeting at the offices of the council.

4.3.05 Access to agenda and reports before the meeting

The council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors).

4.3.06 Supply of copies

The Council will supply copies of:

(a) any agenda and reports which are open to public inspection;

(b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

(c) if the Managing Director thinks fit, copies of any other documents supplied to councillors in connection with an item

to any person on payment of a charge for postage and any other costs.

4.3.07 Access to minutes and other documents after the meeting

The Council will make available copies of the following for six years after a meeting:

(a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;

(b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;

(c) the agenda for the meeting; and

(d) reports relating to items when the meeting was open to the public.

4.3.08 Background papers

(a) **List of background papers**

The report author 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:

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

ii which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information.

(b) **Public inspection of background papers**

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

4.3.09 Summary of the public's rights

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Council's main offices.

4.3.10 Exclusion of access by the public to meetings

(a) **Confidential information – requirement to exclude public**

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.

(b) **Exempt information – discretion to exclude public**

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.

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.

(c) **Meaning of confidential information**

Confidential information includes information given to the council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

(d) **Meaning of exempt information**

Exempt information means information falling within the following categories or as otherwise prescribed by the Secretary of State (subject to any condition):

Paragraph	Category	Conditions – apply to all categories
1	Information relating to any individual	
2	Information which is likely to reveal the identity of an individual	
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	
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 office holders under, the authority	1. Information falling within Paragraph 3 is not exempt if it is required to be registered under: a. the Companies Act 1985; b. the Friendly Societies Act 1974; c. the Friendly Societies Act 1992; d. the Industrial and Provident Societies Acts 1965 to 1978; e. the Building Societies Act 1986; or f. the Charities Act 1993. 2. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town & Country Planning General Regulations 1992. 3. Information which: a. falls within any of the paragraphs 1 to 7; and b. is not prevented from being exempt by virtue of 1 and 2 above, is exempt information if, and so long as, all the circumstances of the

Paragraph	Category	Conditions – apply to all categories
		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	
6	Information which reveals that the authority proposes: a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b. to make an order or direction under any enactment	
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime	

(e) **Public interest test**

Information falling under paragraphs 1 - 7 which is not prevented from being exempt by the qualifiers above, is only exempt information 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.

(f) **Exclusion of access by the public to reports**

If the Proper Officer thinks fit, the council may exclude access by the public to reports which in his/ her opinion relate to items during which the meeting is likely not to be open to the public. Such reports will be marked "Not for publication", together with the category of information likely to be disclosed.

(g) **Differentiation of confidential and exempt information from other information**

Reports and other documents that relate to confidential or exempt items of business shall wherever possible be printed on pink colour paper.

4.3.11 The party whip

The council views the exercise of party whips as incompatible with the Licensing, Planning, Appointments, Audit and Standards Committee functions and no party whip shall be applied to members in the performance of those functions.

For the purpose of this rule, the council defines ‘whipping’ as:

“Any instruction given by or on behalf of a political group to any councillor who is a member of the group as to how that councillor shall speak or vote on any matter before the Council or any committee, or the application or intention to apply any sanction by the group in respect of that Councillor should he or she vote in any particular manner”.

4.4 Financial Procedure Rules

1. INTRODUCTION, GENERAL AND INTERPRETATION

1.1 Financial procedure rules provide the framework for managing the financial affairs of the council. They apply to every member and employee of the council and to anyone acting on its behalf. Financial procedure rules must be adhered to at all times. All persons exercising responsibilities under these regulations are accountable to the Section 151 Officer for compliance with these regulations. The Section 151 Officer is accountable to the council. All officers with delegated responsibilities for undertaking financial responsibility are also accountable to their Director/Assistant Director for compliance with the financial procedure rules.

1.2 Section 151 of the Local Government Act 1972 requires that every local authority in England and Wales should “make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs". This officer is known as the Chief Finance Officer and a suitably qualified person has been appointed to this role at the council. The statutory Chief Finance Officer role may be capable of being performed in a proportion of the time that an individual works for an authority. To differentiate between the statutory functions and the non-statutory functions of the postholder the terms "Section 151 Officer" and "Head of Finance" are used respectively in these financial procedure rules.

1.3 Directors (and any other officer delegating duties under these financial procedure rules) should maintain a written record where decision making has been delegated to employees, including seconded employees. Where decisions have been delegated or devolved to other responsible employees in writing, references to Directors/Assistant Directors in these regulations should be read as referring to them. Where delegations have not been recorded formally Directors/Assistant Directors shall retain responsibility.

1.4 All members and employees 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, and provides value for money.

1.5 Should a breach of the financial procedure rules come to light it must be reported immediately to the Section 151 Officer. The Section 151 Officer is responsible for maintaining a continuous review of financial procedure rules and for submitting any additions or changes necessary to the Resources Committee and then full Council for approval. He/she is also responsible for reporting material breaches of the financial procedure rules to the senior management team, Resources Committee or the full Council as he/she considers appropriate according to the severity of the breach. Disciplinary action can be taken for breaches of financial procedure rules.

1.6 The Section 151 Officer is responsible for issuing advice and guidance to underpin financial procedure rules that members, employees and others acting on behalf of the council are required to follow.

1.7 This document should be read and applied in conjunction with other internal regulatory documents forming part of the council's Constitution. In applying the financial procedure rules, officers should have regard to the equalities duty on the council.

1.8 The term 'current' as it applies in these rules shall mean the last approval given by Council.

Financial procedure rule A: financial management

Introduction

A.1. Financial management covers all financial accountabilities in relation to the running of the authority, including the policy framework and budget.

The Council

A.2. The full Council is responsible for adopting the council's Constitution, the Members' Code of Conduct and the Employees' Code of Conduct, and for approving the policy framework and budget within which the council operates. It is also responsible for approving and monitoring compliance with the council's overall framework of accountability and control. The framework is set out in its Constitution. The Council is also responsible for monitoring compliance with the agreed policy and related committee decisions.

The policy committees

A.3. Policy Committees are responsible for discharging functions delegated to them by the full Council in accordance with the policy framework and budget.

A.4. The Resources Committee is responsible for proposing the policy framework and budget to the Council.

Scrutiny and regulatory committees

Audit Committee

A.5. The Audit Committee will receive the annual audit plans submitted by the council's external and internal auditors. The committee is responsible for reviewing, and making appropriate proposals to Council concerning the external auditor's reports, the annual audit letter, Internal Audit's Annual Report and other issues concerning the financial stewardship and performance of the council's affairs. The Audit Committee also formally receives and approves the Council's Statement of Accounts and Annual Governance Statement.

Standards Committee

A.6. The Standards Committee is established by the Council and is responsible for promoting and maintaining high standards of conduct amongst members. In particular, it is responsible for advising the council on the adoption and revision of the members' code of conduct, and for monitoring the operation of the code.

Other regulatory committees

A.7. Development control and licensing are exercised through relevant committees under statutory powers given to the council. These committees report to the Council.

The statutory officers

Managing Director

A.8. The Managing Director as Head of Paid Service appointed under section 4 of the Local Government and Housing Act 1989 is responsible for the corporate and overall strategic management of the authority as a whole. He/she must report to and provide information for the council, the overview and scrutiny function and other committees. He/she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Managing Director is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all the council's decisions.

Monitoring Officer

A.9. The Monitoring Officer appointed under section 5 of the Local Government and Housing Act 1989 is responsible for promoting and maintaining high standards of conduct and therefore provides support to the Standards Committee and the elected members of the council more generally. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the senior management team, Resources Committee or the Council as appropriate and for ensuring that procedures for recording and reporting decisions operate effectively. Reports are also made to statutory regulators as necessary.

A.10. The Monitoring Officer must ensure that Council and committee decisions and the reasons for them are made public.

A.10. He/she is responsible for advising all members and officers about who has authority to take a particular decision.

A.12. He/she is responsible for advising a committee or Council about whether a decision is likely to be considered contrary or not wholly in accordance with the policy framework.

A.13. He/she (together with the Section 151 Officer) is responsible for advising a committee or the Council about whether a decision is likely to be considered contrary or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:

(a) Initiating a new policy;

(b) Taking, or failing to take action, which will, or is likely to result in, any defined budget for the current year being exceeded by an amount as determined from time to time by the Section 151 Officer;
(c) Committing or seeking to commit expenditure in future years above the approved level;
(d) Causing the council's total budgeted sum to increase by more than £100,000 in any one year.

A.14. He/she is responsible for maintaining an up-to-date constitution.

Section 151 Officer

A.15. The Section 151 Officer has personal statutory duties in relation to the financial administration and stewardship of the council's financial affairs. These are determined by law and cannot be overridden.

A.16. He/she is responsible for:
(a) The proper administration of the authority's financial affairs;
(b) Setting and monitoring compliance with financial management standards;
(c) Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management; and providing financial advice to members and corporate management;
(d) Preparing the revenue and capital budgets (in conjunction with other senior managers);
(e) Ensuring the provision of financial information;
(f) Determining and agreeing the accounting procedures to maintain accordance with UK accounting requirements, SORP's and CIPFA-recommended best practice;
(g) Ensuring that the council's annual statement of accounts is prepared in accordance with prevailing best practice as promulgated and supported by CIPFA and in accordance with required deadlines;
(h) Maintaining an adequate, effective and continuous internal audit that complies with CIPFA recommended best practice;
(i) The certification of applications and claims for subsidy and grants;
(j) Determining and agreeing financial procedures and for the financial records for the council;
(k) Treasury, borrowing and investment management;
(l) Advising the council on prudent policies in respect of the maintenance of reserves and balances;
(m) Insurance advice to the council.

A.17. He/she (together with the Monitoring Officer) is responsible for advising a committee or the 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:
(a) Initiating a new policy;
(b) Taking, or failing to take action, which will, or is likely to result in, any defined budget for the current year being exceeded by an amount determined from time to time by the Section 151 Officer;
(c) Committing or seeking to commit expenditure in future years above the approved level;

(d) Causing the council's total budgeted sum to increase by more than £100,000 in any one year.

A.18. Section 114 of the Local Government Finance Act 1988 requires the Section 151 Officer, after consultation with the Head of Paid Service and the Monitoring Officer, to report to Council and send a copy of the report to each member of the council and the council's external auditor if the Council, one of its committees, one of its officers or a joint committee on which the authority is represented:

(a) Has made, or is about to make, a decision which involves incurring unlawful expenditure;
(b) Has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the authority;
(c) Is about to make an unlawful entry in the authority's accounts.

Section 114 of the 1988 Act also requires:

(d) The Section 151 Officer to nominate a properly qualified member of staff to deputise should he/she be unable to perform personally the duties under Section 114;
(e) The council to provide the Section 151 Officer with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under Section 114.

Directors and Assistant Directors

A.19. Directors and Assistant Directors are individually responsible for:

(a) Ensuring that policy committees are fully advised of the financial implications of all proposals and that the financial implications have been agreed with the Section 151 Officer;
(b) Consulting with the Section 151 Officer and to seek approval on any matter liable to affect the council's finances materially before any commitments are incurred;
(c) Demonstrating the proper financial management and effective deployment of resources allocated to their respective services;
(d) Ensuring that all employees have access to a copy of financial procedure rules and that these are retained in a current state;
(e) Ensuring that other key personnel receive sufficient training to enable them to discharge their responsibilities under these regulations, contract procedure rules and related rules and procedures introduced from time to time;
(f) Ensuring that managers and other employees comply with financial procedure rules at all times;
(g) Ensuring the financial probity and correctness of all reports, advice and opinions submitted to members and others that may act on such information. Where he/she has any doubt in this regard, the Director/Assistant Director must consult with the Section 151 Officer prior to issuing a report, providing advice or offering an opinion;
(h) Ensuring that the Section 151 Officer is consulted on and approves any proposal that may affect the ability of 'local' financial systems and processes to be reconciled with any relevant corporate financial information system;

(i) Entering into contracts on behalf of the authority in accordance with the powers delegated to them in the Constitution;

(j) Ensuring that vouchers and other financial documents are not destroyed other than in accordance with the council's Retention of Documents Policy;

(k) Maintaining a complete management trail allowing financial transactions to be traced from accounting records to source and vice versa;

(l) Ensuring that all financial systems' inputs are genuine, complete, accurate, timely and not previously processed

Management of in-year finances

A.20. (a) Transfer of budgets (virements). The council is responsible for agreeing a scheme of procedures for virements of expenditure or income between defined budget headings as recommended by the Resources Committee acting on the advice of the Section 151 Officer. The council's scheme for controlling virements is set out in Financial Procedure Rules B24 – B39.

(b) Use of contingency provisions. When approving the annual capital and revenue budget, the council may, at its discretion, set aside a specific sum or sums to meet unforeseen eventualities.

(c) Supplementary estimate. Each Director/Assistant Director is responsible for arranging the effective delivery of their services within the totality of annual budgets allocated to him/her by council. In circumstances which cannot be dealt with under the council's scheme of virement, and where it is considered appropriate to do so, the Resources Committee may grant a supplementary estimate to be met from any contingency provision established under A20 (b) above. Where insufficient funds exist, the Resources Committee may, on the advice of the Section 151 Officer, seek council approval to the granting of a supplementary estimate to be met from relevant balances and/or reserves.

(d) Urgency: Nothing in these financial procedure rules shall preclude expenditure being incurred where an emergency or disaster involving destruction of, or danger to, life or property occurs, or is imminent, that may not be contained within the totality of budgets allocated to Directors/Assistant Directors. If, in the opinion of the relevant Director/Assistant Director, in consultation where possible with the Head of Paid Service and the Section 151 Officer, the urgency of the situation will not permit delay, the Director/Assistant Director may authorise such expenditure as is measured and reasonable in the circumstance. Where a Director/Assistant Director has had to act without having been able to consult the Head of Paid Service and/or the Section 151 Officer, they shall be informed as soon as is practicable. Action under this regulation shall be reported at the first opportunity to the Resources Committee.

Treatment of year-end revenue balances

A.21. The council is responsible for agreeing any procedures, on the advice of the Section 151 Officer, for carrying forward under- and over-spending on revenue budgets. A budget for this purpose shall mean a cost centre in the council's detailed budget estimates, a costed sum approved for a specified project or scheme, or a lump sum amount voted for a particular activity e.g. responsive repair and maintenance works. It does not apply to slippage, or budget savings on capital schemes.

A.22. The unspent portion of budgets will be transferred by the Section 151 Officer to reserves and balances after the year end. The unspent portion of budgets will not be carried forward to the following years' service budgets without the express authority of the council, which decision shall be made on the advice of the Resources Committee. The Section 151 Officer will report to the Resources Committee as soon as is practicable after the year end in which budgets have under-spent and which budgets overspent together with the net position. The Resources Committee will make recommendations to Council on the advice of the Section 151 Officer on how any net overspend should be funded.

The Annual Report

A.23. The Audit Committee is responsible for approving the Annual Report and Statement of Accounts.

Financial procedure rule B: financial planning and budgeting

Policy framework

B.1. These financial procedure rules apply to all plans and strategies within the council's policy framework.

B.2. The Council is responsible for approving procedures for setting and varying budgets on the advice of the Section 151 Officer, for agreeing plans and strategies forming the policy framework and, without prejudice to the overview and scrutiny function, for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework.

B.3. The Council is responsible for setting the level at which committees may reallocate budget funds from one service to another (virements). The Resources Committee is responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by the Council. Consideration of such matters will be on the advice of the Section 151 Officer.

Code of Corporate Governance

B.4. The Council is responsible for agreeing the local Code of Corporate Governance.

B.5. Within such time scale as may be laid down by statute the Council, through the Audit Committee, shall approve publication of the Annual Report and Statement of Accounts. The Leader and Managing Director shall, having consulted with the Audit Committee, concurrently present a statement of compliance with the framework and the Code of Corporate Governance

Annual budgeting

B.6. Financial procedure rules relating to budgets apply to both revenue and capital.

Budget formats

B.7. The Section 151 Officer shall determine the format of how budgets, revenue and capital, are presented and reported on. Revenue and capital budgets shall be submitted to the Resources Committee for consideration together and will be fully integrated and cross-referenced.

Budget preparation

B.8. The Section 151 Officer is responsible for ensuring that a revenue budget is prepared on an annual basis for consideration by the Resources Committee, before submission to the Council in the fourth quarter of the financial year. Fully costed service budgets shall be prepared by the Section 151 Officer in conjunction with the delegated budget holder having regard to service priorities set by the Council. Budgets proposed to the Resources Committee shall include allocations to each service and projects (where appropriate), proposed taxation levels and contingency funds (where appropriate). Such budgets shall be in accordance with the Council's Medium Term Financial Plan, include revenue and capital projections covering three years, and follow appropriate risk management processes in their compilation.

B.9. It is the responsibility of Director/Assistant Directors to ensure that budget estimates reflect service priorities prior to collation by the Section 151 Officer for submission to the Resources Committee.

B.10. The budget submission for the coming year shall show in respect of each defined item of income and expenditure:

(a) The original estimate, any revised estimate, and estimated outturn for the current year;

(b) The actual outturn for the previous year;

(c) Estimates for the coming year and for the ensuing two years with appropriate explanation of any significant issues or variations anticipated in the future.

In relation to (a) above the Section 151 Officer, shall report on any material variations.

B.11. Changes to the budget which increase the council's total expenditure and require either the use of the council's general reserves or borrowing must be referred by the Section 151 Officer to the Resources Committee for consideration before being referred to the full Council for approval.

Budget monitoring and control

B.12. In order to enable budgets to be monitored effectively, the Section 151 Officer will provide appropriate financial information as agreed with Directors/Assistant Directors and other managers. The Section 151 Officer will monitor expenditure and income against budget, and will report to the Senior Management Team and to the Resources Committee on the council's financial position against its budget at each ordinary meeting of the Committee. This will include the detailed actual position in comparison to the budget for the year, projected outturn position for the end of the year, and any proposed action to be taken to deal with any variances. The report will show performance against individual detailed service budgets and also on a subjective basis.

B.13. Directors/Assistant Directors shall effect appropriate arrangements, subject to their having been approved by the Section 151 Officer, to process all income and expenditure in a timely manner and charge it to an appropriate account code, so that information, and interpretations thereof, provided in accordance with B12 above fairly reflects the true position.

B.14. It is the responsibility of Directors/Assistant Directors and budget managers to control income and expenditure within their area, taking account of financial information provided by the Section 151 Officer. Each Director/Assistant Director shall ensure that all expenditure committed by their services is within a revenue, capital, or other budget approved by Council. Any potential expenditure or loss of income, which cannot be funded from within the totality of the service budget, supported by use of the approved Scheme of Virements, shall be reported to the Section 151 Officer as soon as this is anticipated by the Director/Assistant Director.

B.15. The inclusion of items in approved revenue or capital budgets shall constitute approval to incur expenditure, subject to compliance with Contract Standing Orders or other requirements included within these Regulations.

Capital plans and budgets

Preparation and approvals

B.16. The Section 151 Officer is responsible for ensuring that a rolling 3-5 year capital programme is prepared on an annual basis for consideration by the Resources Committee and submission to Council as part of its annual budget-setting process, and that capital and revenue budgets are fully integrated.

B.17. The programme will be informed by the council's Capital Strategy and Medium Term Financial Plan and by such capital and revenue resources as the Section 151 Officer recommends be made available over the programme period.

B.18. The Section 151 Officer, in conjunction with Directors/Assistant Directors, will prepare and submit to the Resources Committee the estimates of capital payments planned to be incurred in the ensuing years. Capital estimates will be integrated with and cross-referenced to revenue budget estimates.

B.19. The capital programme submitted to the Resources Committee for consideration as part of the annual budget-setting will include the total sum set aside for capital projects in the year under consideration and for future relevant years, together with details of individual projects being submitted for approval. The capital programme submitted to the Resources Committee will also include details of and provision for capital schemes already approved and in progress from previous years. Projects may come forward on an individual basis during the year in question and these may be approved as and when desirable during the year.

B.20. The capital programme will include the total sum approved for capital commitments for the year as well as the aggregation of projects already in progress i.e., it will set out a sum available in total for new capital schemes coming forwards for approval during the year.

B.21. So far as is possible, all new schemes for the coming year will be identified in the budget report. Any subsequent new schemes will be approved following processes laid down in the capital strategy within the total made available for capital schemes. The Resources Committee may ring fence sums of capital or agree schemes in principle with release of detailed sums delegated to the Section 151 Officer if it considers it appropriate.

B.22. All new capital schemes will be evaluated against the criteria set out in the capital strategy or as otherwise agreed by the Resources Committee and will include risk assessments in their planning and execution.

Maintenance of reserves

B.23. It is the responsibility of the Section 151 Officer to advise the Resources Committee and the Council on prudent levels of reserves and balances for the council. The Section 151 Officer will prepare, keep under review and present to the Resources Committee an overarching policy on the council's reserves and balances that provides a justification for each individual reserve together with a recommended minimum level to be maintained. Consideration of these issues will include the application of risk management processes.

Scheme of Virement

Introduction

B.24 Virement is an in-year mechanism for formally determining and seeking agreement to the transfer of funds from one approved budget heading to another. The virement policy as set out herein applies to all transfers of budget, of any value and for any reason including for reason of organisational restructure.

B.25. It is important that the council's financial systems reflect any virements that are made. The Scheme of Virement therefore requires that the exercising of authority in this respect is done in liaison with the Section 151 Officer.

B.26. No virement will be carried out unless it has been done in accordance with these rules, has been approved by the Section 151 Officer and is recorded in a register maintained by him/her, and the council's corporate financial management information system has been updated accordingly. The recording of an approved virement does not alter the original budget approved before the start of the year; it is, rather, an adjustment that will be shown as a revised budget.

B.27. The rules on virement apply to revenue and to capital, and to all accounts under the council's control.

B.28. A virement can never increase nor decrease the total amount of budget resource available: the net effect of all virements must be nil.

Levels of authority

B.29 All virements shall require the formal authorisation of the Section 151 Officer and the relevant Director/Assistant Director unless paragraph B30 applies.

B.30. In the case of a proposed virement:

(a) of a revenue budget of £10,000 or more the approving authority shall be the Resources Committee after consideration of a report of the S151 Officer;

(b) of more than £20,000 but less than £50,000 from and to capital budgets within the remit of a policy committee, the approving authority shall be the relevant policy committee after consideration of a report of the S151 Officer;

(c) of a capital budget of £50,000 or more, or £20,000 or more in the case of a proposed virement between capital budgets within the remit of different policy committees, the approving authority shall be the Resources Committee after consideration of a report of the S151 Officer.

B.31. In no instance should a virement be considered where approval would have the effect, or be seen to have the effect of frustrating, circumventing or amending the council's policies or budget framework. Proposals for any new capital or revenue scheme, new sources of income, and significant variation in approved charges shall be considered by the Resources Committee and, if appropriate, Council.

Principles of application

B.32. The proposed virement must be for a purpose or budget previously approved by Council. Sufficient funds must remain in the transferor budget to meet all remaining commitments for the year.

B.33. No virement shall take place without prior consultation with the transferor budget holder.

B.34. The virement must not commit expenditure in any following year. Base budgets for the following year(s) shall be 'reset' to exclude any virement made.

B.35. Any proposed transfer of funding to 'employee' budgets must not increase total employment costs beyond the current year. Employment cost for this purpose shall include payments to and for staff, agency and other temporary engagements, and overtime.

B.36. Where not specifically budgeted for within a scheme or project, consultancy and agency staff fees shall be deemed to be included within 'employee' costs for the purpose of this scheme.

B.37. Budgets for central and departmental recharges, depreciation, interest receivable, capital receipts/payments/charges, and similar corporate 'accounts' are excluded from this scheme.

Control and reporting arrangements

B.38. The Section 151 Officer shall include in his/her monthly financial performance report, details of all virements carried out since the previous report.

Financial procedure rule C: risk management and resource control

Introduction

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

Risk management

C.2. The Resources Committee is responsible for approving amendments to the council's risk management policy and strategy and for reviewing the effectiveness of the council's risk management practices. It is also responsible for ensuring that appropriate insurance arrangements are in place.

C.3. The Section 151 Officer is responsible for preparing the council's risk management policy and strategy and for ensuring that there is proper management of risk throughout the council. The Section 151 Officer is also responsible for advising the Resources Committee on proper insurance cover or alternative arrangements.

Internal control

C.4. Internal control refers to the management processes and systems of control devised by management and endorsed by members to help ensure the council's objectives are achieved in a manner that promotes economic, efficient and effective use of resources and that the council's assets and interests are safeguarded. The operation of sound internal control is an essential component of good corporate governance.

C.5. The Section 151 Officer is responsible for advising on effective systems of internal control. Arrangements need to ensure compliance with all applicable statutes and regulations, relevant statements of best practice and the Council's Code of Corporate Governance. Collectively these aim to ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.

C.6. It is the responsibility of Directors/Assistant Directors 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 personal and service based financial and outcome performance targets.

Audit arrangements

C.7. The Accounts and Audit (England) Regulations 2011, require every local authority to maintain adequate and effective internal audit arrangements. The council's internal auditors have the responsibility to review independently and report formally on the adequacy and effectiveness of the council's control environment. The council must, at least once in each year, conduct a review of the effectiveness of its internal audit arrangements.

C.8. The Section 151 Officer shall maintain an adequate and effective system of internal audit of all accounting, financial and other operations of the council, and in particular shall arrange for the examination, review and appraisal of:

(a) The soundness, adequacy and application of internal control;
(b) The safeguards applied to council assets to protect them from loss, theft, fraud, waste, inefficiency, extravagance, or poor value for money;
(c) The suitability and reliability of financial and other management information;
(d) Compliance with rules, regulations, legislation, policy and procedures.

C.9. The internal audit service, in consultation with the Section 151 Officer, shall prepare an annual report setting out:

(a) An opinion on the overall adequacy and effectiveness of the Council's control environment;
(b) Disclosure and qualifications to that opinion;
(c) A summary of the audit work undertaken; and
(d) Any issues that are relevant to the preparation of the Annual Governance Statement. This shall be submitted to the Audit Committee as soon as is practicable after the end of the year to which it relates.

C.10. Internal Audit staff have authority to:

(a) Enter council premises or land at any time, subject to any statutory or contractual restrictions that may apply;

(b) Have access to all data, records, documents and correspondence, howsoever held, relating to any financial or other business interest of the council, and to remove or copy any or all such material from council or third party locations, for the purpose of their work. Access to data etc shall be facilitated promptly and expeditiously in the context of the particular request. Internal Audit will ensure compliance with the Data Protection Act in respect of all relevant data during and after an audit, including security and destruction;

(c) Require and receive such explanations as they consider necessary concerning any matter under examination;

(d) Have direct right of access to the Leader, Managing Director, the overview and scrutiny function, Audit Committee and external auditor.

All managers are required by these regulations to co-operate with Internal Audit and to facilitate their exercise of their duties including providing such access, information and explanation as may be required.

C.11. Any dispute or question about the extent or application of the powers conferred on Internal Audit in these regulations shall be referred to the Section 151 Officer whose decision shall be final.

Preventing fraud and corruption

C.12. The Section 151 Officer is responsible for the development and maintenance of a counter-fraud and corruption policy, which shall include arrangements for adhering to the council's obligations under bribery, proceeds of crime and money laundering legislation and the like. The Monitoring Officer shall be advised in any instance where a member may be implicated in any suspected breach of such policy.

C.13. The Section 151 Officer and any other person named in the relevant policy shall be notified immediately by the relevant Director/Assistant Director of any suspected irregularity:

(a) Concerning income, expenditure, cash, stores or other property of the Council;

(b) In the exercise of the functions of the council that may appear to place an officer(s) or member(s) under suspicion of obtaining financial benefit, directly or indirectly, as a result of the exercise of any council function with which he/she is associated.

All employees and members of the council have a responsibility to bring to the attention of the Section 151 Officer any suspected irregularity.

C.14. Where notification has been received under Regulation C13, the Section 151 Officer shall, subject to any relevant legal restrictions, take such steps as he/she considers necessary by way of investigation and report. To carry out any investigations, the Section 151 Officer may use internal audit or such other resources as he/she considers appropriate.

C.15 Under no circumstances will the reporting Director/Assistant Director undertake any investigation without the express authority of the Section 151 Officer or any other person authorised to initiate an investigation (e.g. under policies relating dealing with suspected council tax or housing benefit fraud).

C.16. The Section 151 Officer shall ensure that the council has resources allocated for the investigation of fraud, whether actual, alleged or suspected, and including both internal and external attempts to defraud the council, and instances of theft, corruption or other possible criminal or disciplinary impropriety.

C.17. All investigations and inquiries shall be carried out in line with relevant law and prevailing best practice and existing council policies where applicable.

C.18. The Section 151 Officer shall prepare an annual report setting out

(a) a summary of investigative work undertaken;

(b) any issues that are relevant to the preparation of the Annual Governance Statement.

The report shall be submitted to the Audit Committee as soon as is practicable after the end of the year to which it relates.

C.19. Should it be found that any major irregularity has, is, or is about to occur, the Section 151 Officer shall immediately inform the Managing Director and the chairmen of the Audit and Resources Committees unless prohibited by any rule of law.

C.20. The Section 151 Officer is responsible for determining whether any irregularity shall be referred to the police. There shall however be a presumption when considering any case that suspected criminal acts perpetrated against the council should be referred to the police for investigation.

Security of assets

C.21. Directors/Assistant Directors should ensure that records and assets are properly maintained and securely held. They should also ensure that effective contingency plans are in hand for the security of assets and continuity of service in the event of disaster or system failure is in place.

C.22. The Corporate Landlord shall be responsible for maintaining a terrier of all land and buildings owned by the council, or premises in which the council has an interest. He/she shall record the holding ownership, the purpose of the holding, location, extent and plan reference, purchase details, particulars of nature of interest and rents payable, and particulars of tenancies granted. He/she shall ensure that all council buildings comply with all relevant legislation and that all relevant permissions and consents are secured.

C.23. The Monitoring Officer shall be responsible for the safe custody of all title deeds, formal contracts and agreements.

C.24. Directors/Assistant Directors shall be responsible for maintaining adequate and proper security at all times for all buildings, stocks, stores, furniture, equipment, vehicles, plant, cash and other assets of the council, under his/her control. Provisions for the monitoring of ICT assets are set out in Section D of these regulations.

C.25. Maximum limits for cash holdings, in whatever receptacle, shall be agreed with the Section 151 Officer, and shall not be exceeded without his/her express permission and with regard to the appropriate insurance limit.

C.26. Officers, who in the course of their duties collect monies on behalf of the council, shall take all reasonable steps to secure safe custody and shall comply with any instructions given by the Section 151 Officer.

C.27. Each Director/Assistant Director shall make arrangements to maintain a register of keys for external doors, safes, cash boxes and others items of similar importance under his/her control. The register shall list the key holders and out of hours contact arrangements. The register should be held securely and only be available to authorised officers. All keys issued to staff are to be carried on the person, or held in a secure place, by those responsible at all times. Wherever practicable, safe keys must not be left on the premises where the safe is situated. The loss of keys must be reported to the relevant Director/Assistant Director and Section 151 Officer immediately.

C28. All safes shall meet with such specifications determined by the Section 151 Officer after consultation with the council's insurers.

C.29. With regard to computing systems, software and data integrity, the Head of the ICT service is responsible for:

(a) Ensuring that proper security and privacy arrangements are specified for the council, in respect of information held by or on behalf of the council on computer installations, and for ensuring that its use is in accordance with Data Protection and other relevant legislation.

(b) Ensuring that effective contingency plans, disaster recovery and back-up procedures exist that enable business critical information systems to resume speedily in the event of an interruption. These should be documented and distributed to all appropriate personnel. He/she shall from time to time arrange for such plans to be tested.

(c) Ensuring that there is an effective process for establishing that the council, its employees, contractors, partners and agents working in support of the council, comply with copyright, design, patent and similar legislation.

Procedures laid down by the Head of ICT under this Section should be adopted formally, and shall include provision for the allocation of responsibility for day-to-day compliance.

C.30. Each Director/Assistant Director shall ensure that all employees and third party contractors/partners are aware of, and observe such rules and guidance, as may be issued for the security of assets.

C.31. Directors/Assistant Directors are responsible for ensuring that all visitors to their services, except in public areas, are signed in and wear authorised identification. They shall also ensure that any visitor is adequately supervised to ensure confidentiality of information and security of council assets at all times.

C.32. Directors/Assistant Directors, acting with the advice of the Section 151 Officer, shall ensure that the principles of separation of duties and good control procedures are observed in the allocation of accounting duties. They shall make arrangements so that:

(a) Duties of providing information regarding sums due to or from the council and of calculating, checking and recording such sums shall be separated from the duty of cash or income handling and disbursing them;

(b) Officers responsible for examining and checking the accounts for cash, stocks, stores and similar transactions shall not themselves be engaged in any of these transactions;

(c) The organisational structure provides internal controls and minimises the risk of fraud or other malpractice.

Treasury management

C.33. The council seeks to follow CIPFA's Code of Practice for Treasury Management in Local Authorities.

C.34. The council is responsible for approving the Treasury Management Policy after consideration by the Resources Committee. The Section 151 Officer has responsibility for implementing and monitoring the policy.

C.35. The Section 151 Officer is responsible for reporting to the Resources Committee a proposed Treasury Management Strategy for the coming financial year on an annual basis.

C.36. He/she is responsible for reporting to the Resources Committee at least twice in each financial year on the activities of the treasury management operation and on the exercise of his/ her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation within the period of the succeeding financial year.

C.37. All decisions on borrowing, investment or financing shall be delegated to the Section 151 Officer, who is required to act in accordance with the principles in CIPFA's Code of Practice for Treasury Management in Local Authorities.

C.38. All money in the hands of the council is controlled by the Section 151 Officer.

C.39. All external investments shall be made in the name of the Borough Council of Wellingborough and shall be undertaken by the Section 151 Officer.

C.40. The Section 151 Officer is responsible for authorising the opening of any new bank accounts or for closing bank accounts, for managing and controlling all bank accounts held by the council, and for liaison with the council's bankers. He/she will also approve the financial limits of authorised signatories to bank accounts. The term 'bank account' includes accounts with building societies, the post office or any financial institution and also includes credit or debit card facilities.

Staffing arrangements

C.41. The Head of Paid Service is responsible for providing overall management of employees. He/she is also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining remuneration of employment.

C.42. Directors/Assistant Directors are responsible for ensuring that:

(a) Staffing levels can be funded within the totality of the approved current and forward years' budget provision allocated to each Director/Assistant Director.

(b) Rules relating to virement as they apply to the engagement of staff are observed.

C.43. The Head of Paid Service is responsible for ensuring that there is an official establishment defined and agreed by the Resources Committee for the council, i.e. a document and/or computer record that identifies the corporate structure of the council down to the level of each post, and that grades and job titles are identified for each post. The official establishment must cover every post in the council's employ.

C.44 The Section 151 Officer shall ensure that the annual employee budget presented for approval balances with the official establishment.

C.45. Directors/Assistant Directors may appoint employees only for posts identified in the official establishment and on grades set out therein, subject to the provisions of the scheme of delegation.

C.46. The Directors will ensure that the corporate employee database and payroll reflect only the official grading of posts, and that additions to the payroll are effected only for posts within the official establishment.

C.47. Changes to the official establishment may only be made with the authorisation of:

(a) the relevant Director/Assistant Director, and

(b) the Section 151 Officer and Head of Paid Service, who will ensure that the official establishment, budgetary and payroll records are updated,

but only when the net effect of any changes is no increase in cost for the current, or a full year. Where a change to the official establishment results in an increased net cost, it shall be effected only on the authority of the Resources Committee. Such changes are subject to compliance with the scheme of delegations.

C.48. Directors/Assistant Directors may engage temporary staff to cover for the exigencies of the moment and/or staff absences/vacancies. Whilst not reflected on the official establishment, payment may be effected through the payroll if in the opinion of the Section 151 Officer it is appropriate to do so. The Section 151 Officer will ensure that all such 'employment' is clearly shown on the system as temporary and will ensure that no contractual commitment is entered into that would cause the temporary or interim worker to gain full employment rights.

C.49. The annual budget report submitted by the Section 151 Officer shall include a section identifying any changes made to the official establishment since the previous budget report and defining the establishment for the coming year.

Use of consultants

C.50. A consultant organisation or consultant may be engaged, where in the opinion of the Managing Director or relevant Director/Assistant Director he/she considers that it/ he/she will add value to the council's determination of a particular technical, professional, managerial or political matter. This scheme applies to commissioned work and managing or advising consultancy and does not embrace the engagement of agency or other personnel covering vacancies within established posts. Costs of consultants must be contained within existing budgets.

C.51. The engagement of such consultants shall be undertaken in accordance with the council's contract procedure rules and informed by prevailing advice on best practice as published by reputable and authoritative sources of guidance on such matters.

Identification of need

C.52. Prior to inviting consultancy support the relevant Director/Assistant Director shall identify and set down in writing the reasons for the use of consultants, the project objective(s), required 'deliverables', and timescales, which shall then form the basis of any consultancy contract.

Project brief and monitoring arrangements

C.53. In letting and managing a consultancy contract, a Director/Assistant Director will, having regard to the need for proportionality as to the level of detail and having regard to the risks attaching to the consultancy task:

(a) Ensure that the outcomes and timescales of a consultancy are determined in writing in advance of any contract being let;

(b) Assign responsibility within his/her service for the day-to-day management of the consultancy;

(c) Determine the monitoring arrangements, review points, and any documentation and/or access and/or other protocols necessary for the conduct of the consultancy;

(d) Ensure that adequate and appropriate records are kept of consultant hours and/or outputs where payment is based on time used or production of specified outputs;

(e) Ensure that consultants are engaged by a process fully in compliance with the council's rules on procurement and any applicable legal or EU procedures;

(f) Ensure that all consultants are engaged on the basis of a written contract, set down and agreed before the commencement of the consultancy services, and that such contract requires the consultant(s) to comply with and be bound by any prevailing policies, standing orders, financial procedure rules and other instructions that are relevant to the consultancy task as though the consultant(s) were employees of the council. In all cases where it is proposed to appoint the consultant on that consultant's terms and conditions or on terms that differ from those set out in the invitation to tender or like document legal advice must be sought;

(g) Ensure that all documentation or other outputs generated by the consultancy are and remain the property of the council in all respects, but especially including copyright and intellectual property rights, and that such material shall be in the possession of the council at the end of the consultancy. In the event that such rights remain with the consultant the terms of contract must include a right for the council to use such material for its own purposes;

(h) Ensure that where consultants are retained to supply a product or service of significant ongoing tangible value to the Council, e.g. architects, engineers, software consultants etc., the consultant(s) have adequate professional indemnity and public liability insurance cover in place. The existence of such cover shall be a contractual requirement.

Financial procedure rule D: systems and procedures

Introduction

D.1. Sound systems and procedures are essential to an effective framework of accountability and control. Collectively they help underpin the council's arrangements for corporate governance.

D.2. The council has many systems and procedures relating to the control of the council's assets. These include purchasing, costing and management systems. Each must contain effective controls to ensure that all transactions are recorded, properly processed and errors detected promptly.

General responsibilities

D.3. The Section 151 Officer is responsible for the sound and proper operation of the authority's accounting systems, the form of accounts and supporting financial procedures and records. This includes the interfacing of systems that feed to the council's financial management information system. Any changes proposed to be made by Directors/Assistant Directors to their existing systems or the establishment of new systems must be approved beforehand by the Section 151 Officer where such interfacing operates or would operate. Such approval must be obtained before any changes are made, developmental work starts or commitment is entered into.

D.4. Directors/Assistant Directors are responsible for ensuring that:

(a) There is the proper operation of financial processes within their service;

(b) Data exists to enable them to plan, formulate and deliver the council's objectives, targets and budgets;

(c) Performance is communicated to relevant managers on an accurate, complete and timely basis;

(d) Intelligence exists to warn of potential deviations from targets, plans and budgets requiring management attention;

(e) Systems and procedures are fully documented and operate effectively and securely;

(f) Their employees receive relevant financial training approved by the Section 151 Officer;

(g) A scheme of delegation identifying officers authorised to act on their behalf on financial matters is maintained and kept up to date. A copy of this, together with specimen signatures shall be supplied to the Section 151 Officer. The scheme shall cover authorisation of payments to be made to staff, contractors and suppliers, the collection of income, placing of orders including variations, and similar matters. In each instance, the financial limits within which the member of staff or agent has authority to act shall be identified. Financial limits shall be set for each postholder by the relevant Director/Assistant Director with the approval of the Section 151 Officer. The Section 151 Officer has a duty to ensure that a measure of consistency is maintained across the council but without prejudicing the efficiency of day-to-day operation of services. Directors/Assistant Directors are required to ensure periodically that the scheme of delegation in their service is functioning effectively.

Accounting for income

Types of income

D.5. The council receives income from a number of sources including:

(a) council tax and national non-domestic rates;

(b) government grants, e.g. Revenue Support Grant, Redistributed National Non-Domestic Rates;

(c) Commercial property;

(d) Sales, fees and charges;

(e) Capital receipts;

(f) Interest received.

D.6. Income can be vulnerable to loss and effective income collection systems are necessary to ensure that all revenues due to the council are collected in full and in a timely manner.

D.7. In order to maximise the council's income, it is important that all income due is properly identified, collected, receipted, banked and recorded in adequate accounting systems.

Key controls

D.8. The key controls for income are that:

(a) All income due to the council is identified and charged correctly, in a timely manner and in accordance with corporate charging policies;
(b) All income is collected and properly accounted for;
(c) All monies received are recorded in an approved manner;
(d) All income should be banked or remitted in line with the requirements of the Section 151 Officer;
(e) Responsibility for cash collection (i.e. cash handling) should be separated from the person raising the debt;
(f) Effective action is taken to pursue non-payment within defined timescales;
(g) Formal approval for debt write-off is obtained in accordance with council policy and actioned promptly;
(h) Retention and storage of all appropriate income documents is in accordance with the document retention rules.

Responsibilities of the Section 151 Officer

D.9. The responsibilities of the Section 151 Officer are:

(a) To authorise arrangements for the collection of all income due to the council and to approve the procedures, systems and documentation for its collection.
(b) To establish and initiate appropriate recovery procedures, including legal and bailiff action where necessary (subject to legal advice where appropriate), for debts that are not paid promptly.
(c) To authorise the write-off of bad debts up to an approved limit and to ensure that larger sums are referred to the Resources Committee as appropriate.
(d) To ensure that appropriate accounting adjustments are made following write-off action for all debts.
(e) Debts will be collected by the Section 151 Officer unless specifically authorised otherwise by him/her. Directors/Assistant Directors will notify the Section 151 Officer of all debts due promptly so that he/she can issue debtor accounts expeditiously. Such notification to the Section 151 Officer will include all information required by him/her and in a form required by him/her to enforce collection effectively. This may include evidence to back up enforcement during legal proceedings.

Responsibilities of Directors/Assistant Directors

D.10. The responsibilities of Directors/Assistant Directors are:

(a) To advise on levels of fees and charges for the supply of goods or services, to inform the corporate budget setting process.

(b) To supply the Section 151 Officer with details relating to work done, goods supplied, services rendered or other amounts due in a timely manner, so that sums due to the council are recorded correctly. This includes ensuring that sufficient evidence of a usable quality is taken and held for debt collection purposes such as proving invoices or initiating legal proceedings.

(c) To separate the responsibility for identifying amounts due and the responsibility for collection, as far as is practicable.

(d) To ensure that proper banking and accounting procedures are observed, which will include the issue of official receipts or tickets and to ensure that appropriate details are recorded onto bank paying-in slips to provide an audit and management trail. These details should match the payment to the account or invoice to be credited.

(e) To assist the Section 151 Officer by providing any further information requested by him/her to facilitate the follow up and recovery of outstanding debts and to assist in the following up of outstanding debts on behalf of the Council.

Documentation and cash handling

D.11. All books and forms of account and all official receipt forms or books, licences, tickets and all documents or vouchers or tokens representing receipts or money shall be in a form approved by the Section 151 Officer.

D.12. The arrangements for ordering, storing and control of such receipts, forms, books and other documents shall be approved by the Section 151 Officer. All receipts and issues of such documents shall be properly recorded and acknowledged in a manner approved by him/her.

D.13. All cash received on behalf of the council shall be properly acknowledged by the issue of an official council receipt or other document approved by the Section 151 Officer, unless alternative arrangements have been approved by him/her.

D.14. Receipts for payments made by cheque should be made when requested by the payer. Payments received by automated methods, such as by debit/credit cards or via the internet, must be recorded in such a manner as to facilitate reconciliation of the amounts received with the account(s) to be credited.

D.15. Bankings must always be intact, i.e. to include all monies received that day (or other agreed period).

D.16. No expenditure should be made out of income received which should all be banked in full. Refunds of overpayments must be made through the creditors system, unless specifically sanctioned by the S151 Officer.

D.17. Third-party cheques should only be accepted where the cheque is from an approved source, e.g., utility undertaking and where it is used in full or part settlement of a council debt. In no circumstances should they be cashed, or be accepted and change given.

D.18. Council cheques should only be accepted when it has been confirmed with Financial Services that no "stop" exists.

D.19. No cheques from anyone should be cashed at all apart from, in limited situations, Borough Council of Wellingborough cheques being cashed or opened. Where a request is made to open a cheque, such action must be approved beforehand by the Section 151 Officer.

D.20. Under no circumstances should personal cheques belonging to employees be cashed-in, or money borrowed by employees from, income or other council monies. Breach of this financial regulation will be regarded as gross misconduct.

Invoices and record keeping

D.21. Demand notices or invoices shall be raised in respect of all debts except those regulated by the sale of tickets, and ad hoc cash sales, situations where payment is made in advance of a service being provided, or such other situations as the Section 151 Officer may determine as appropriate, such situations being recorded in writing as soon as is practical.

D.22. Where income is derived from a certificated grant claim to the government, the documentary provisions related to that claim shall apply for record keeping purposes.

D.23. For debts arising for council tax or business rates there are statutory provisions that must be followed for raising demand notices. These provisions shall be set out in separate procedure manuals drawn up by the Section 151 Officer.

D.24. Where a debt is to be invoiced and recovered by Financial Services, it shall be the responsibility of the Director/Assistant Director in the originating department that has arranged or provided the service to ensure that:

(a) Liability is properly established;
(b) The service is documented in a contract or agreement that has been correctly entered into by all relevant parties;
(c) That the contract or agreement or other relevant evidence is provided to Financial Services if requested;
(d) All liabilities should be raised against individuals or corporate entities.

Liabilities shall not be raised in the name of “The Occupier” or similar forms and neither should trading names be used in the place of proper legally recognised persons.

D.25. It is imperative that proper evidence supports invoice requests as this prevents invalid invoices being issued. Invalid invoices generally lead to debit reversal to the originating department cost centre or bad debts and write offs.

D.26. All notifications of debt to debtors will be by official invoice issued by the Section 151 Officer. Under no circumstances will services operate unofficial debtor systems or seek to manage debt via correspondence with the debtor unless otherwise agreed with Financial Services.

D.27. All invoices for income due to the council shall be prepared and issued by Financial Services, on the basis of an invoice request that is supported with the relevant evidence. Invoice requests that are not adequately supported will be returned to the originating department for rectification.

D.28. Invoices shall be set out and issued in the manner approved by the Section 151 Officer.

D.29. Invoices may be reduced in value if the services provided have been incorrectly charged at a higher level. Where the value of an invoice needs to be reduced, a written instruction must be provided to Financial Services detailing the reasons and the revised amount and signed by the relevant Director/Assistant Director (D4(g) refers).

D.30. Invoices may only be cancelled where:

(a) The debt has been raised against the incorrect liable party;
(b) A variation to a lease or licence results in a lower charge;
(c) The planned service has not been provided;
(d) The information recorded on the invoice is factually wrong; or
(e) The "debtor" has no liability in law.

Where an invoice is cancelled, the reason for cancellation must be recorded in a written instruction and signed by the relevant Director/Assistant Director. In all other circumstances where an invoice needs to be cancelled, the write off procedure must be used.

D.31. No customer should be advised that a debt is uncollectable or will be written off or that it will be considered for write off or be given similar undertakings unless the decision making process with regard to debt write off has been completed.

Debt collection

D.32. The invoicing, collection and enforcement of sundry income is the responsibility of Financial Services who shall initiate proceedings to recover monies owing to the council in an expeditious manner. The Section 151 Officer will ensure that there are recovery procedures for all debts due and which have remained unpaid. These will take place automatically.

D.33. Where a debtor is also a creditor to the council, the amount due to the council shall be deducted from amounts payable by the council where, in the opinion of the Section 151 Officer, acting on legal advice as to lawfulness, such a course would seem to be more expeditious and/or cost effective than recovery action through the courts.

Bad debts

D.34. Where recovery processes have been fruitless and the debt has become irrecoverable or in the opinion of the Section 151 Officer the cost of collection is unjustifiable, it will be written off.

D.35. The procedure for writing off irrecoverable debt will be:

(a) A write-off request schedule must be prepared detailing in each case:
  (i) name and address of the debtor;
  (ii) value of the debt;
  (iii) service provided;
  (iv) reasons why the debt is irrecoverable.

  This can include a summary write off request form relating to an attached schedule in which case total numbers and values must be included.

(b) The write off request form should account for the full indebtedness of an individual or organisation and any information relevant to determining their financial obligations to the council, and should also identify previous write offs for that debtor.

(c) Where credits exist in the name of the debtor, they should to the extent it is lawful be offset against the debt in order to minimise the extent of write off.

(d) The write off request form must be supported by appropriate working papers that support the reason for writing off the debt.

(e) The request must be approved by the Section 151 Officer.

(f) Depending upon the write off thresholds outlined below, the request may be supported with a minute/decision sheet relating to a Resources Committee decision.

D.36. Where unclaimed credits are held within the council's accounts, they may be considered for write on. Where this happens, the following shall apply:

(a) A write-on request schedule shall be prepared detailing in each case:
  (i) name and address of the account holder;
  (ii) value of the credit;
  (iii) service that the credit relates to;
  (iv) reasons why the credit should be written on, eg. unable to trace, waiver of rights by creditor.

  This can include a summary write on request form relating to an attached schedule in which case total numbers and values must be included.

(b) The write on request form must be supported by appropriate working papers that support the reason for writing on the credit except where the balance is £5.00 or less.

(c) The request will be considered and determined by the Section 151 Officer.

D.37. All write off and write on paperwork shall be retained for such period of time as required by document retention rules.

Write off thresholds

D.38. The cost of undertaking recovery proceedings can be expensive and given the low value of some debts, it may not be economic to commence such action. The Section 151 Officer shall set de minimis levels for recovery action and review and amend them on a periodic basis.

D.39. Authority to write off debts with an individual value of £2,000 or less is delegated to the Section 151 Officer. Debts over £2,000 may only be written off by the Resources Committee on the advice of the Section 151 Officer.

D.40. With the exception of court order cases, the process of writing off debt is not irreversible and in the event that monies are recovered in the future, the relevant amount will be credited back into the council's accounts.

D.41. The Section 151 Officer is responsible for:

(a) Maintaining and keeping updated by submitting proposals to the Resources Committee, a policy for fees and charges, in consultation with relevant Directors/Assistant Directors.
(b) Determining mechanisms for the recovery, of unpaid sums due to the council, in conjunction with the Monitoring Officer, and where appropriate relevant Directors/Assistant Directors.
(c) Making arrangements for the collection of all income due to the council and approving the procedures, systems and documentation for its collection.
(d) Reviewing the ordering, issuing and control of official receipting documentation.
(e) Documenting and processing the council's sundry debts (accounts receivable) liability and payments process.
(f) Regularly advising relevant managers of the status of debts outstanding.
(g) Seeking approval of the Resources Committee to write-off amounts in excess of the prescribed limit(s).
(h) Agreeing, determining and advising responsible officers of the minimum amount for which an invoice may be raised.
(i) Agreeing and determining the use and terms acceptable for credit and debit card receipting.
(j) Ensuring that appropriate accounting adjustments are made following write-off action.
(k) Where money or the security of financial documents may be at risk, ensuring, where practical, that at least two employees are present when post is opened so that funds or the financial document received is properly identified and recorded.

D.42. Director/Assistant Director responsibilities

Directors/Assistant Directors shall make appropriate arrangements for:

(a) Identification, collection, receipt, custody, control, disposal and proper accounting of all monies received, or receivable by the council in accordance with any requirements of the Section 151 Officer.

(b) Immediate acknowledgement of sums received by an officer, by the issue of a sequentially pre-numbered receipt, ticket, voucher, or other document approved by the Section 151 Officer. Accounting for all receipts issued to officers, ensuring that they are used for official purposes and that the monies so receipted have been promptly collected and paid over to the council, or its bankers, intact and without deduction for other purposes.

(c) Cessation of service where there is a history of persistent poor payment in consultation with the Section 151 Officer and subject to legal advice.

(d) Levying and collecting charges in advance or at the time for services provided. Where this is not feasible responsible officers shall promptly issue a sundry debtor account.

Credit limits

D.43. There is a general presumption that discretionary services provided to a customer should be paid for on time. In the event of a repeated failure to pay in accordance with the credit terms and where appropriate, the Section 151 Officer will recommend to the service department that the provision of services should cease. In the event that the recommendation is not accepted by the service department, then the Director/Assistant Director must provide reasons in writing to the Section 151 Officer as to why services should continue to be supplied.

Procurement, ordering and paying for works, goods and services

D.44. Public money should be spent with demonstrable probity and in accordance with the Council's policies. All employees must comply with the council's procurement policies and procedures.

D.45. The following provisions relate to ordering by the council:

(a) Every officer of the authority must advise the Monitoring Officer of any real or perceived links or personal interests they may have with suppliers or contractors if they are engaged in contractual or purchasing decisions on behalf of the authority.

(b) Official orders must be in a form approved by the Section 151 Officer. Official orders must be issued for all work, goods or services to be supplied to the authority, except for supplies of utilities, periodic payments such as rent or rates, petty cash purchases or other exceptions specified by the Section 151 Officer.

(c) Each order must conform to approved procurement guidelines and the standardisation of supplies and materials. Standard terms and conditions must not be varied without legal advice and the prior approval of the Section 151 Officer.

(d) Apart from petty cash, and other payments from advance accounts, the normal method of payment from the authority shall be by BACS or cheque (or other instrument or approved method), drawn on the council's approved bank accounts by the Section 151 Officer.

(e) Direct debit facilities shall not be set up other than by the Section 151 Officer and no officer shall commit to payment by that means without the prior agreement of the Section 151 Officer.

(f) Any payment by cheque over £10,000 shall be countersigned by an officer approved to do so by the Section 151 Officer. Two authorised officers shall countersign cheques over £100,000.

(g) Official orders must not be raised for any personal or private purchases, nor must personal or private use be made of the council's contracts. Breach of this financial regulation will be regarded as gross misconduct.

(h) All goods and services are ordered only by persons authorised to do so in line with each Director/Assistant Director's scheme of delegation and are correctly recorded.

(i) Goods and services received are to be checked to ensure they are in accordance with the order. The person who placed the order should preferably not receive goods.

(j) Unless specifically agreed with the Section 151 Officer in each instance, or where it is an unavoidable incident of particular contracts (e.g. utility standing charges, plant and equipment service contracts and software licences) advance payment shall not be made for goods or services. He/she may authorise specific categories and/or values of expenditure as standing exceptions to this regulation, and may amend or delete any such exceptions from time to time.

(k) Payments must be made to the correct person, for the correct amount and properly recorded, regardless of the payment method.

(l) Payments by the council are made only on the basis of an official invoice, except for recurring payments, for contract payments and for other exceptions as may be specifically approved by the Section 151 Officer.

(m) Appropriate evidence of the transaction and payment documents must be retained and stored for the defined period, in accordance with the Council's document retention rules.

(n) Expenditure, including VAT, must be accurately recorded against the correct budget code.

(o) Processes must be in place to maintain the security and integrity of data for transacting business electronically.

(p) Invoices must be settled within the period defined by government prompt payment requirements or stipulated in the contract relating to the purchase, whichever is the shorter. Where invoices are disputed that fact must be clearly recorded, together with the date that the dispute was settled, before such invoices are passed for payment.

D.46. The Section 151 Officer shall:

(a) Ensure that sufficient fidelity guarantee insurance is in place to cover those officers authorised to initiate or make payments.

(b) Make payments from the authority's funds on the proper authorisation that the expenditure has been duly incurred in accordance with financial procedure rules.

(c) Subject to the receipt of properly signed-off invoices in good time, arrange payment to suppliers promptly.

(d) Make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order or the like.

(e) Make payments to contractors on the certificate of the appropriate Director/Assistant Director, which must include details of the value of work, retention money, amounts previously certified and amounts now certified.

(f) Agree and determine a scheme for the issue and usage of corporate credit cards where the costs of ordering and procuring is excessive when judged against the value of purchases.

Directors/Assistant Directors responsibilities

D.47. It is the responsibility of Directors/Assistant Directors to ensure that a proper scheme of delegation has been established for the procurement, certification and authorisation of payment within their area, and to take steps periodically to test that the scheme is operating effectively.

They shall ensure that:

(a) Departmental procurement practices accord with the council's policies on procurement.

(b) Relevant officers authorised to sign orders or certify payments do so with a full signature where done manually, or under a password controlled electronic process. Initialled authorisations will be rejected by Financial Services.

(c) Official orders are used for all goods and services, other than exceptions specified, and that they are used only for goods and services to be consumed by or for work carried out on behalf of services under the Director/Assistant Director's control.

(d) The authoriser of the order should be satisfied that the works, goods or services ordered are appropriate and needed, that there is adequate budgetary provision and that quotations or tenders have been obtained where required by these regulations and other instructions.

(e) Goods and services are checked on receipt and works checked when in progress and on completion to verify that they are in accordance with the order. A different officer from the person who authorised the order should where possible, carry out this check. Appropriate entries should then be made in inventories or stores records.

(f) Payment is not made unless a proper VAT invoice has been received, checked, coded and certified for payment. When an authorised officer certifies an invoice for payment, he/she is confirming:

  (i) That the official order procedure has been observed and that Standing Orders have been complied with.

  (ii) Receipt of goods or services.

  (iii) That the invoice has not previously been paid.

  (iv) That expenditure has been properly incurred and is within budget provision.

  (v) That prices and arithmetic are correct and accord with quotations, tenders, contracts or catalogue prices.

  (vi) That the correct accounting treatment of tax has been followed in line with guidance issued by the Section 151 Officer.

  (vii) That the invoice is correctly allocated to an approved budget code under the Director/Assistant Director's jurisdiction.

(viii) That discounts have been taken where available and where it is cost effective for the council to take them.

(iv) That appropriate entries have been made in inventories, stores records or stock books and in accounting records.

(g) Division of duties. Different employees shall be involved in the ordering, receiving and payment processes. Where practicable, a different officer from the person who authorised the order, and in every case, a different officer from the person checking an invoice, should authorise the invoice.

(h) All reasonable steps are taken to ensure that payments are not duplicated.

(i) Invoices are duly and correctly processed in good time to make payment to suppliers within stipulated timeframes.

(j) Loans, leasing or rental contracts are not entered into without agreement of the Section 151 Officer.

(k) The Section 151 Officer is notified of outstanding expenditure (formal commitments) relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Section 151 Officer.

(l) With regard to contracts for construction and alterations to buildings and for civil engineering works, that procedures exist to document and agree with the Section 151 Officer the systems and procedures to be adopted in relation to financial aspects, including certification of interim and final payments, checking, recording and authorising payments, the system for monitoring and controlling capital schemes and the procedures for validation of subcontractors' tax status.

(m) The Section 151 Officer is notified immediately of any expenditure to be incurred as a result of statute or court order or the like where there is no budgetary provision.

(n) All appropriate payment records are retained and stored for the period defined by the council's document retention schedule.

(o) No Director/Assistant Director shall commit expenditure against any budget head for which he/she is not accountable, without the specific and written authority of the relevant Director/Assistant Director. No capital commitments shall be entered into other than for capital schemes that had been previously authorised by the relevant Committee. No commitments in respect of ICT shall be entered into without the prior agreement of the manager responsible for ICT services.

(p) Suppliers' invoices are not amended manually.

Engagement of, and payments to, employees

D.48. No advances of pay shall be made without the express agreement of the Section 151 Officer. Any advances of pay that are made shall be effected through the council's payroll system unless determined otherwise by him/her.

D.49. The Section 151 Officer is responsible for:

(a) Calculation and payment of all staff emoluments and entitlements for current and former employees.

(b) Reconciliation of and reporting on payroll expenditure against approved current budgets and future budget allocations.
(c) Securely retaining payment details, including pension payments history in accordance with the council's document retention schedule.
(d) Ensuring that current HM Revenue and Customs requirements are properly applied and that the correct liabilities are duly accounted for within the statutory periods.
(e) Providing guidance to Directors/Assistant Directors with regard to the council's potential tax and national insurance liabilities.
(f) Ensuring that adequate arrangements exist for administering superannuation matters, including advising the council on discretions under the Local Government Pension Scheme.
(g) Controlling and paying to third parties sums deducted from pay by law or at the employee's request in a timely manner.

D.50. Directors/Assistant Directors shall be responsible for ensuring that:
(a) Appointments are made in accordance with the regulations and can be afforded within budgets delegated to them.
(b) The Section 151 Officer is notified of all appointments, terminations or variations that may affect the pay or pension of an employee or former employee, in the form and to the timescale required by him/her.
(c) Adequate and effective systems and procedures are operated, so that:
    (i) Payments are only authorised to bona fide employees.
    (ii) Payments are only made where there is a valid entitlement, and budget provision exists to fund employment.
    (iii) Conditions and contracts of employment are correctly applied.
    (iv) Employees' names listed on the payroll are checked at regular intervals to verify accuracy and completeness.
    (v) Appropriate time keeping and charging rates are operated, such that he/she may ensure effective deployment of employees.
(d) An up-to-date list of the names of officers, authorised to sign records is provided to the Section 151 Officer together with specimen signatures.
(e) Payment to employees is processed only through the payroll system unless otherwise agreed by the Section 151 Officer.
(f) Careful consideration is given to the employment status of individuals employed on a self-employed consultant or subcontract basis. In cases of doubt, advice should be sought from the Section 151 Officer.
(g) Travel and subsistence claims and other allowances are appropriately examined and approved. Certification is taken to mean that journeys were authorised and expenses properly and necessarily incurred. Due consideration should be given to any tax implications affecting claims.
(h) The Section 151 Officer is notified of the details of any employee benefits in kind, by a date determined by him/her for each year to enable full and complete reporting to HM Revenue and Customs.
(i) Appropriate payroll documents are retained and stored for the defined period in accordance with document retention rules.
(j) Statistical returns are accurately completed by the due date.

Payments to members

D.51. The Section 151 Officer is responsible for the payment of allowances and other sums due to members in accordance with the council schemes.

Travel and subsistence

D.52. The Section 151 Officer is responsible for implementing any members travel and subsistence scheme. In particular he/she will maintain a register of members' attendance.

D.53. The Section 151 Officer is responsible for:

(a) Making all payments in respect of travel and subsistence expenses to employees when properly due and authorised by the appropriate Director/Assistant Director.

(b) Determining the specification of all reimbursement forms to be used.

(c) Ensuring that all employees making expenses claims in respect of the use of their private cars on council business have complied adequately with relevant council policies relating to such use.

D.54. Directors/Assistant Directors shall make arrangements to ensure that:

(a) Claims are properly certified by an officer specifically authorised to do so.

(b) A current list of authorised officers, with specimen signatures, is provided to the Section 151 Officer.

(c) The lower of actual costs, or the allowances permitted under the scheme, are certified for payment.

Petty cash, change floats, and credit card purchases

D.55. The council's resources may be held as cash only where there is a business need. Any cash holdings must be authorised by the Section 151 Officer who will review the need for such cash holdings periodically and may, at his/her discretion, withdraw or alter the size of cash holdings.

D.56. Any requests for cash holdings shall be made by the relevant Director/Assistant Director to the Section 151 Officer. Directors/Assistant Directors will also furnish him/her with a schedule of all cash holdings with details of the officer responsible for their custody.

D.57. In all instances vouchers seeking payment shall be properly certified for payment by officers authorised to do so and coded. All vouchers shall have attached to them securely receipts and/or other appropriate documentation in support of the full value of the payment that is requested. Vouchers shall be stored in line with the council's document retention policy.

D.58. The Section 151 Officer shall determine the form for vouchers to be used to seek disbursement from petty cash holdings or imprests (i.e. cash advances or a loan of funds). No other form of voucher shall be used to obtain disbursement of official monies in this manner.

D.59. Cash reimbursements shall be limited to minor purchases (when supported by receipts) not exceeding £50, or other sum determined by the Section 151 Officer. Payments must not be broken up to avoid this limit. Petty cash floats may not be used for reimbursements of employee expenses, payments of invoices, or refunds. Official monies must never be used for cashing personal cheques.

D.60. Periodically, and at least quarterly, responsible officers shall perform, in conjunction with another officer regular checks to ensure that the balance of credit on the account together with the sums disbursed equal the amount of the approved imprest. A record of such reconciliation, signed by both officers, shall be retained.

D.61. Directors/Assistant Directors shall ensure that any imprest held by an officer leaving his/her post is checked prior to his/her leaving and either paid back into the council's bank account or transferred to another authorised officer.

D.62. Official credit cards shall only be applied for by the Section 151 Officer. Credit cards will only be issued to and retained by employees who have a business need that cannot be satisfied by other means. The Section 151 Officer will review at least annually the business case for the issue and retention of each credit card and will, in consultation with the appropriate Director/Assistant Director, withdraw all cards that seem to him/her to be no longer be necessary.

D.63. Official credit cards will only be used for purchases of goods and services for the council from third parties. They will never be used for personal transactions under any circumstances and breach of this financial regulation will be regarded as gross misconduct. They will not be used for expenses in relation to the running of any employee's own motor vehicle, such matters being dealt with either through the issue of official orders and receipt of invoices or through personal expense claims. It is permissible for official credit cards to be used for expenses where the expense would be reimbursable in full on production of a receipt, e.g. rail fares or hotels (accommodation only). In the event of any ambiguity regarding what is permissible expenditure, holders should consult the Section 151 Officer, whose decision shall be final.

D.64. Official credit cards may never be used for obtaining cash advances.

D.65. Employees holding official credit cards must ensure that VAT receipts are obtained, where relevant, for all transactions and that all supporting documentation is handed over promptly to permit the payment of credit card bills.

Stocks and stores

D.66 Financial procedure rules relating to stocks and stores relate to items for which stock control records are maintained and where the value of stocks and stores is reflected on the balance sheet.

D.67. The Section 151 Officer is responsible for:

(a) Adopting appropriate accounting policies and advising Directors/Assistant Directors of the basis to be adopted for valuing stocks and stores.

(b) Ensuring that the valuation(s) of all stocks and stores is fairly reflected in the Annual Financial Statement of Accounts.

(c) Determine minimum standards to be complied with under Regulation D73 (a), (b), and (e) below.

D.68. Each Director/Assistant Director is responsible for:

(a) Ensuring that there are effective and efficient procedures for procuring, holding and the issue of stocks and stores, and that such procedures are to the satisfaction of the Section 151 Officer.

(b) Ensuring that objective statistical methods are used, in accordance with best practice, to determine order quantities and maximum and minimum order levels.

(c) Furnishing the Section 151 Officer with details and a signed certificate of the value of stocks and stores held within their services as and when required by him/her.

(d) Arranging for goods to be checked at the time of delivery to ensure that quantity, quality and price comply with the contractual or order specification.

(e) Ensuring that comprehensive, complete and up to date stores/stock records are maintained and that such records are in a form that is satisfactory to the Section 151 Officer. Where stores/stock recording systems are computerised, they shall interface appropriately with the council's main financial management system and interface controls will be to the minimum standard determined by the Section 151 Officer.

(f) Regular and systematic stocktaking, ensuring that every item is checked at least once annually, and that fast moving, valuable or desirable items are checked more frequently.

(g) Ensuring that procedures for the disposal of surplus or obsolete stock are correctly complied with. These are set out in financial regulations F15 - F35.

Asset inventories

D.69. Asset inventories shall be held and kept up to date by Directors/Assistant Directors, who will ensure that all areas under their authority have an asset inventory. They shall contain clear descriptions of all fixed and moveable assets having a current value in excess of £500, other than land and buildings, which are listed in the property terrier and ICT equipment for which a separate inventory is kept by the manager responsible for ICT.

D.70. Where assets have unique serial numbers, they shall be recorded in the asset inventory.

D.71. The Section 151 Officer is responsible for:

(a) Ensuring that all equipment, furniture, fixtures and fittings, plant, machinery, tools and other valuables are appropriately insured.

(b) Determining the form for official inventories.
(c) Determining the basis for valuation of items recorded in asset inventories.

D72. The manager responsible for ICT is responsible for the maintenance of a comprehensive hardware and software inventory for all council ICT equipment held throughout the council.

D.73. Directors/Assistant Directors are responsible for:

(a) Ensuring they each compile and keep up to date an inventory of assets in the official form (other than land and buildings, and ICT equipment), and that appropriate entries are made at the time of purchase and disposal.
(b) Arranging for an independent annual inspection of all items on the inventory.
(c) Informing the Section 151 Officer if it appears that assets cannot be accounted for.
(d) Ensuring that all purchases of ICT equipment and software are made through ICT Services.
(e) Advising the Section 151 Officer of the valuation of inventories for insurance purposes.
(f) Determining the method by which redundant or surplus assets shall be disposed of. Asset disposals shall be undertaken in accordance with these regulations.
(g) Ensuring that all assets are used wholly and exclusively for council business.

Contracts for building, construction or engineering works

D.74. The Section 151 Officer is responsible for:

(a) Maintaining a contract register which shall include contracts whose total value is over £50,000 and schedules of payments, retentions, fees and other specific matters relating to each such contract.
(b) Making payments to contractors on account only on approved certificates or the like issued by the person authorised to issue such certificates or the like under the terms of the contract.
(c) Examining, at his/her discretion, and making such enquiries as may be necessary to satisfy him/herself as to the fairness and accuracy of the accounts.
(h) Ensuring that the release of retention monies and final payments under a contract are not made prior to checks on contractor final claims being undertaken by a qualified independent officer. The Section 151 Officer shall ensure that this check function does not amount to interference with the proper exercise of any discretion afforded to a certifier under the terms of the contract.

D75. Directors/Assistant Directors must:

(a) Inform the Section 151 Officer of all major contracts, and contract extensions entered into;
(b) Advise the Section 151 Officer of all relevant contract payments;

(c) Ensure that any variation order is authorised in writing and can be met within the approved budget;
(d) Seek claims for liquidated damages when appropriate;
(e) Inform the council's legal advisers and the Section 151 Officer of the reference of any dispute to an adjudicator or an arbitrator by the contractor.

Taxation

D.76. The Section 151 Officer is responsible for:

(a) Managing the council's tax affairs, approving systems and processes where in the opinion of the Section 151 Officer they impact significantly on the council's tax position, and advising Directors/Assistant Directors on all taxation issues affecting the council.
(b) Maintaining the authority's tax records, making all tax payments by the due dates, receiving tax credits and submitting tax returns by their due date as appropriate or, at his/her discretion, authorising such activities being carried out by another manager.

D.77 All VAT returns and other official communications relating to the council's tax affairs shall be signed by the Section 151 Officer.

D.78. Directors/Assistant Directors are responsible for ensuring that:

(a) The correct amount of VAT is paid and/or collected on rateable purchases and supplies, in accordance with guidance issued by the Section 151 Officer.
(b) Proper arrangements are made to correctly administer tax liabilities for contractors engaged in construction and maintenance works.

Trading accounts/business units

D.79. It is the responsibility of the Section 151 Officer to advise on the establishment and operation of trading accounts and business units in consultation with the Monitoring Officer.

D.80. Directors/Assistant Directors shall:

(a) Take advice from the Section 151 Officer and the Monitoring Officer where a business unit for which they are responsible wishes to enter into a contract to supply services to a third party.
(b) Ensure that the appropriate accounting principles are applied to trading accounts as advised by the Section 151 Officer. Ensure that each internal trading unit prepares an annual business plan.

Banking and investment arrangements

D.81. The Resources Committee is responsible for approving the council's banking and brokering arrangements, and authorised signatories on the advice of the Section 151 Officer.

D.82. The Section 151 Officer shall:

(a) Make arrangements for all banking services.

(b) Ensure that surplus cash is systematically invested on a daily basis consistent with the council's treasury management policy and strategy.

(c) Ensure all cheques or other financial instructions issued on behalf of the council bear his/her impression or manuscript signature, save that cheques in excess of £10,000 shall be countersigned in person by an approved officer: Instruments exceeding £100,000 in value shall be countersigned by two approved officers.

(d) Be responsible for the ordering and control of cheques and similar secure stationery, and make sound arrangements for the safe custody of cheque stocks, and the control and reconciliation of those issued.

(e) Effect secure arrangements for the telephonic and electronic transmission of payments and receipts, including the application of effective internal controls to mirror those set out above.

D.83. Directors/Assistant Directors are responsible for ensuring that the employees for whom they are responsible comply with all guidance and instructions issued by the Section 151 Officer in this regard.

Document retention – general

D.84. Hard copy documentation or electronic media admissible by the courts created or maintained for transactions covered by these financial procedure rules or the council's contract procedure rules shall as a general rule be retained for a period not less than 7 years after the transaction/project ceases to be current and/or the financial year to which it relates. Documentation for transactions entered into as deeds shall be retained for not less than 13 years. Documentation for transactions relating to the provision of professional advice services shall be retained for not less than 16 years unless in the opinion of the council's legal advisers earlier disposal may be allowed. For more specific guidance please refer to the council's document retention policy.

D.85 Documents may not be disposed of where:

(a) Legal action against the council in respect of the particular transaction is threatened or underway;

(b) Legal action by the council is contemplated or is underway.

D.86. Directors shall ensure that appropriate policies are in place governing information management issues, such policies including record retention periods, and security of information held in electronic form.

D.87. All quotations, tenders and the like (including unsuccessful ones) obtained for contracts or orders made in accordance with these financial procedure rules shall be retained for not less than 3 years.

D.88 When making decisions over document retention officers must comply with the Data Protection Act 1998 and the principles of data protection.

Financial procedure Rule E: external arrangements
Partnerships

E.1. For the purpose of these regulations a partnership is defined as a joint working arrangement between otherwise independent bodies that:

(a) Agree to co-operate to achieve a common goal;
(b) Create new organisational structures or processes to achieve this goal separate from their own organisations;
(c) Plan and implement a jointly agreed programme often with joint staff or resources;
(d) Share relevant information;
(e) Pool risks and rewards.

Service contracts (other than those awarded to wholly public sector owned companies over which the council exerts control similar to that it exerts over its own departments) or grant funding arrangements that are usually described colloquially as "partnerships" are not partnerships for this purpose but are regarded either as contracted services dealt with under procurement rules or under the grant aid regime as the case may be.

Responsibilities and expectations

E.2. The council requires that potential partners:

(a) Are aware of the extent of their responsibilities under the council's financial procedure rules and the procurement requirements set out therein.
(b) Support the concept of risk management within the partnership and actively work with the council to ensure that risk management processes are in place to identify and assess all potential risks.
(c) Ensure that project appraisal processes are in place to demonstrate the viability of any project in terms of resources, staffing, expertise, and expected outcomes.
(d) Agree and formally endorse the roles and responsibilities of each of the partners involved in the project before the initiative commences.
(e) Communicate regularly with other partners throughout the initiative so that potential problems are identified, shared and successfully resolved.
(f) Openly and explicitly, share a vision of collective and individual expectations.
(g) Demonstrate an ability and willingness to add real value to any relationship.
(h) Be open and honest about any conflicts of interest that might arise, and demonstrate a willingness to agree mechanisms to resolve these from the outset.
(i) Demonstrate a willingness to take on a role in the broader programme appropriate to the skills and resources of the partnering organisations.
(j) Will be comfortable with, support, and comply with the principles of "open- book" accounting.
(k) Hold as confidential any information received as a result of partnership activities or duties that is of a sensitive or confidential nature.

(l) Act as champions and ambassadors for the project.

E.3. Where the council establishes a company or other entity to facilitate the delivery of the council's objectives, it shall ensure that the entity adopts the council's financial procedure rules, contract procedure rules, and governance arrangements to the extent that it is legally possible and prudent to do so, and then maintains adherence to them. Additionally, the council will ensure that such entities are within the remit of the council's internal audit arrangements (or that the entity has its own internal audit arrangements where in the opinion of the Section 151 Officer it is beneficial to do so and that all internal audit output is made available to the Section 151 Officer for such use as he/she considers appropriate professionally).

E.4. The Director/Assistant Director with responsibility for the service area relevant to any subsidiary entity shall report to the Resources Committee (and if applicable to other relevant committees) at least annually on the operational performance of the entity in the context of the council's aims and objectives. Where the council's financial contribution (including contributions in kind) exceeds £100,000 such reports shall be at least quarterly.

E.5. Where the council considers that a subsidiary entity could beneficially carry out works/provide services to or for the council that are ancillary, peripheral or external to the matter for which the subsidiary entity was established, nothing in the council's procedures shall preclude that, providing that appropriate procurement rules are adhered to by the council.

E.6. The Section 151 Officer shall report to the Resources Committee on the financial position of partnerships including wholly owned companies that may be established by the council alone or in which the council has a share along with other public sector bodies.

E.7. Partnership companies or other entities established by the council shall permit at all times full access to any records that the Section 151 Officer may, in his/her opinion, require, and that access shall be extended to any persons acting on his/her behalf.

The Council, usually through the relevant policy committee, is responsible for:

E.8. Considering, and where appropriate, approving the formation of any strategic partnership or any proposed change to existing external relationships, on the recommendation of the appropriate Director/Assistant Director.

The Managing Director shall:

E.9. Be the council's principal advisor and representative on partnership and external bodies. The Managing Director may delegate this role to other officers of the council.

E.10. The Monitoring Officer is responsible for

(a) Ensuring that governance and standards of conduct arrangements to be adopted by partnerships and joint ventures are appropriate and meet all applicable legal requirements.

(b) Ensuring that partnership contractual documentation requires any partner(s) to comply with the council's financial procedure rules and procurement rules to the extent it is legally possible and prudent to do so, and then maintain adherence to them.

E.11. Directors/Assistant Directors are responsible for:

(a) Ensuring that accounting, audit, control, governance, and risk management arrangements adopted by partnerships are robust and adequate enough to safeguard the interests of the council.

(b) Provide advice on the key funding elements of any project, including:

- (i) Appraisal of financial viability for the current and future years.
- (ii) Risk appraisal and management.
- (iii) Resourcing, including taxation issues.
- (iv) Audit, security and control requirements.
- (v) Budget 'carry-forward' arrangements.

(c) Maintaining a register of partnerships entered into by the council.

E.12. Directors/Assistant Directors shall:

(a) Ensure that appropriate approvals are obtained before any negotiations over the formation of partnerships are concluded.

(b) Ensure that all partnerships entered into are notified to the Section 151 Officer.

(c) Ensure that, before entering into partnerships, a comprehensive risk assessment has been carried out, a risk register drawn up, and appropriate mitigation action taken.

(d) Ensure that such partnerships do not impact adversely upon the services provided by the council.

(e) Ensure that all partnership agreements and arrangements are properly documented.

(f) Provide information to the Section 151 Officer as may be required by him/her to enable a note to be entered into the authority's statement of accounts concerning material items.

External funding

E.13. The Section 151 Officer is responsible for ensuring that:

(a) All funding due from external bodies is received and properly recorded in the authority's accounts.

(b) Match-funding requirements are considered prior to entering into any partnerships, and that future revenue budgets reflect these requirements.

(c) Audit requirements are met.

E.14. Directors/Assistant Directors are responsible for ensuring that:

(a) The Section 151 Officer and the council's legal advisers are consulted on the terms and conditions of any funding agreement before any commitment is entered into.

(b) All claims for funds are made by the due date.
(c) The project progresses in accordance with the agreed project plan and that all expenditure is properly incurred and recorded.
(d) Where the project is not proceeding materially according to plan, the Director/Assistant Director shall inform the Section 151 Officer and the Monitoring Officer as soon as this becomes apparent.
(e) Ensuring that records are kept of resource usage and/or service delivery that accord with the requirements of the external funding source.
(f) All requirements and stipulations relating to the payment of external funding and the auditing thereof, are understood and acted upon.

E.15. Officers are responsible for ensuring that all applications for external funding are authorised by the Section 151 Officer and are submitted to him/her in a timely manner to permit property scrutiny.

Contracts for the provision of services to third parties

E.16. The Section 151 Officer is responsible for:
(a) Issuing guidance with regard to the financial aspects of third party contracts.
(b) Ensuring that the council's accounting and costing conventions identify the fair cost of trading and working for third parties.

E.17. Directors/Assistant Directors are responsible for ensuring that:
(a) The approval of the Resources Committee is obtained before any contracts are entered into.
(b) A register of all contracts entered into with third parties is maintained.
(c) Appropriate insurance arrangements are made through the Section 151 Officer.
(d) The services for which they are responsible do not put the council at risk from bad debts.
(e) No contract entered into with third parties is subsidised by the council either directly or indirectly.
(f) Wherever possible, payment is received in advance of the delivery of the service.
(g) The service has the appropriate expertise to undertake the contract.
(h) Contracts do not adversely affect services provided to the council.
(i) Contracts are properly documented.
(j) Appropriate information is provided to the Section 151 Officer to enable any appropriate notes to be entered into the statement of accounts.

Financial procedure rule F: asset disposals (including stocks and stores)
Introduction

F.1. As a public authority the council should, in the disposal of its landholdings and other assets, always seek to obtain the best price reasonably obtainable, in terms of money or monies worth, unless it is absolved from this duty by statute, regulation or other lawful authority. If in the particular case of any disposal these rules cannot be followed in such a way as to ensure both propriety and optimum value, the matter must be reported to the Resources Committee for authority to proceed in a different way.

Land disposals

F.2. For the purposes of the following rules:

(a) The term "land" includes land of which the council owns the freehold or leasehold interest and includes any property constructed on land or land itself.

(b) The term "disposal" applies to any relevant interest in land, including freehold, leasehold, tenancies, licences, restrictive covenants, wayleaves, easements, options, etc.

F.3. Local authorities are given powers under the Local Government Act 1972 to dispose of land in any manner they wish, including sale of their freehold interest, granting an option, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies) unless the Secretary of State consents to the disposal. Any authorisations from government required in particular cases where the council does not propose to seek best consideration and is not relying on the General Disposal Consent 2003 or any successor thereto shall be applied for by the Section 151 Officer.

F.4. All disposals of land for other than best consideration where the council is seeking to rely on the Local Government Act 1972: General Disposal Consent 2003, or any successor thereto, or to make an application to the Secretary of State must be authorised by the Resources Committee on the basis of a report prepared jointly by the Directors/Assistant Directors responsible for property assets and finance. The report shall be supported by the following information (as appropriate) to enable members to come to a reasoned conclusion as to whether the disposal will be a proper use of the council's powers, having regard to the council's fiduciary duty and the need to be satisfied that the outcome will be at least as beneficial as the opportunities foregone by agreeing a reduced receipt:

(a) Values taken from a valuation report, undertaken by an appropriately qualified valuer in accordance with any relevant guidance or directions on such transactions setting out the unrestricted and restricted values together with the value of any conditions.

(b) An assessment with supporting evidence, of the monetary value to the council of those benefits of the proposal which are capable of monetary assessment (e.g. operational savings or income generation, levering-in of additional financial resources) together with an assessment with supporting evidence of the value of non-monetary benefits of the proposal (e.g. economic benefits such as job creation, environmental improvements, health and safety benefits, design quality etc., and social benefits to the community).

(c) Confirmation that the disposal will contribute positively to an agreed council priority and will not adversely affect a higher priority project or area, together with a clear statement showing where the scheme fits within service priorities (as it may be necessary to cover the shortfall on the receipt from a review of the capital programme).

(d) A clear statement that the benefits which the council or community will derive cannot be achieved unless the sale takes place at an undervalue and confirming that no alternative means of funding is available. In cases where the proposed disposal is to an identified person or organisation without a tender process this will normally only be possible by provision of a robust business plan and analysis of the financial standing of the person or organisation.

(e) Details of the proposed terms of the transaction aimed at ensuring (as far as is possible) that the disposal will contribute to the achievement of well-being locally.

(f) Confirmation that the land is held under powers which permit it to be disposed of under the terms of the Local Government Act 1972 or, if not, that action has been taken to appropriate it (for example, under section 122 of the 1972 Act)

(g) A statement from the Monitoring Officer confirming that the proposed disposal falls within the scope of powers given to the council to dispose of land at an undervalue and that the nature and amount of subsidy comprised in the undervalue complies with rules over State Aid.

(h) If the Section 151 Officer deems it necessary a statement for the council's external auditors as to their opinion on whether or not the proposed transaction is compatible with the council's fiduciary duty.

F.5. All negotiations in respect of land disposals must be carried out by or under the supervision of a properly qualified surveyor, who is not a member of the council and who is in a position to judge adequately the conditions prevailing in the local property market. If required, disposals must be certified by an appropriately qualified valuer as having been made at the best consideration reasonably obtainable.

F.6. All valuations must be carried out in a manner that will satisfy external audit requirements, and the advice of the Section 151 Officer will be taken in that respect.

F.7. Negotiation meetings with prospective purchasers should take place at either the council's offices or the purchaser's office (which for these purposes includes the offices of any agents or solicitors appointed by the council or purchaser in connection with the disposal) within normal office hours (subject to the necessity for such negotiations to be extended in beyond those hours). All negotiation meetings shall be subject to written record. A signed record of all negotiation meetings shall be retained.

F.8. In respect of transactions or of a series of transactions the estimated value or the aggregated value of which exceeds £100,000, the Section 151 Officer shall be involved in or apprised of all major steps in the negotiations. In the case of transactions for disposal by way of short tenancy, disposal should still be on terms that secure the most advantageous consideration possible (both monetary and non-monetary) commensurate with achieving corporate objectives. Concessionary lettings are not allowed and services seeking such arrangements will be required to 'sponsor' concessionary arrangements by grant funding to the organisation concerned. This is to ensure openness and transparency on the part of the council in relation to the assistance it gives to organisations.

F.9. No land owned or leased by the council for its operational purposes shall be disposed of to another body or person unless it is surplus or in the opinion of the Corporate Landlord the disposal of the land is in the overriding corporate interests of the council.

F.10. The Section 151 Officer shall effect any transfer in the accounts that may be required.

F.11. No land owned by the council or of which the council is lessee shall be disposed of except by way of lease renewal until a report has been prepared by the Corporate Landlord containing:

(a) An inspection report describing the land and, where appropriate, its physical characteristics and development constraints.
(b) Where appropriate a report on title by the council's legal advisers.
(c) Any information from the council's records which would affect the land's value or, where appropriate, development potential.
(d) Where appropriate an assessment of the development potential of the land.

F.12. In formulating his/her conclusions as to whether or not to proceed, the Corporate Landlord must have given consideration to:

(a) Issues that need to be resolved before marketing of the land can proceed;
(b) The method of disposal;
(c) The title to be transferred;
(d) The price the council should receive along with the "asking" and "reserve" price;
(e) Any special conditions of sale;
(f) Any appointment of external advisers or agents that may be desirable.

Land disposal procedures

F.13. The method used to dispose of land shall be the most effective method to secure the best consideration reasonably obtainable, as determined by the Corporate Landlord in consultation with the Section 151 Officer and acting on advice from appropriately qualified persons. Because every transaction is unique, each case will have to be considered on its merits, but the main objectives are to achieve best value for the council, to act within the appropriate legal framework, and to act in a fair and transparent manner.

F.14 Where land is to be disposed of by:

(a) auction - a current written valuation shall be obtained, and the sale shall be subject to a reserve price of not less than that valuation;

(b) public tender - the council's contract procedure rules relating to tenders for contracts shall apply subject to any necessary adaptation approved by the Section 151 Officer to meet the requirements of a land disposal (tenderers shall still be provided with information about any criteria to be used in evaluating the bids). Land may also be disposed of by informal tender, or competition, including where specific prospective purchasers are invited to tender. In this case the application of the contract procedure rules will not be appropriate, but participants shall be informed in advance of the procedures and the criteria for assessing proposals on a like for like basis.

(c) private treaty (negotiation) - this may be appropriate in order to respond to development proposals from the private sector, where disposal is to a 'special purchaser' (a purchaser with an interest in an adjoining property or with an inferior or superior interest in the property) or where the end use for the land is of importance to council policy. However, it is a disadvantage that this method is less capable than others of demonstrating fairness, and that the best price reasonably obtainable has been secured (particularly if negotiations are restricted to a single party). This method must, therefore, be used with caution, and the progress of negotiations shall be recorded in writing and retained on the disposal file and a qualified valuer must certify that the disposal price represents the best consideration reasonably obtainable.

(d) exchange of land - disposal by exchange of land will be appropriate when it is advantageous to the council and other parties to exchange land in their ownerships. Inequality in land value may be compensated for by other means where appropriate. In such circumstances the council must obtain an independent valuation to verify that 'best consideration' will be obtained. If an undervalue is involved, the appropriate procedure for disposal at an undervalue set out in these rules must be followed.

F15. Certain disposals of land may fall within the definition of “works” contained in the Public Contracts Regulations 2006, which give effect to European law on public procurement. This will need to be considered, for example, where the council is providing land within a development scheme or is imposing obligations on a developer in order to meet its regeneration objectives, whether through the use of a Section 106 agreement or development agreement. Legal advice should be sought at an early stage to determine whether any proposed disposal to a developer should be advertised under the Public Contracts Regulations.

F16. Particular legal rules apply to the disposal of open space and legal advice should be sought if disposal of an open space is proposed. Decisions to dispose of open space must be made in two stages. The first stage is to recommend disposal of the land in principle, subject to the advertising of the proposed disposal and allowing time for objections. The second stage is to make recommendations for disposal or retention of the land, having regard to any objections which have been received to the proposed disposal.

Equipment etc. disposals

F.17. This section applies to all plant, equipment and other smaller assets. It includes vehicles, plant, machinery, office equipment etc. It also applies to items of stocks and stores with an individual value of less than £5,000.

F.18. Save for any ICT equipment, any vehicle or article of equipment, machinery, furniture, etc, which is surplus to the requirements of one of the council's service units must be valued by or under the instructions of the Director/Assistant Director which has responsibility for it. The degree of accuracy in the valuation will depend largely upon the intrinsic value placed upon the article.

F.19. The Director/Assistant Director should use his/her best endeavours to obtain best price on the open market.

F.20. If on investigation a better value can be obtained in a trade-in for new replacement equipment than on a sale on the open market, the Director/Assistant Director may conduct the disposal on the basis of trade-in. The new equipment must be genuinely required for service delivery purposes.

F.21. Where the Director/Assistant Director is satisfied that there is no economic value in the item for its original or intended use, and that no reasonable alternatives are available, equipment may be disposed of for scrap value or as waste.

ICT equipment

F.22. All ICT equipment for disposal should be passed to the manager responsible for ICT.

F.23. Where possible the manager responsible for ICT should re-use the equipment within the council. If the equipment is not required by the council, it may be given free of charge to voluntary or not-for-profit organisations based within the borough provided to do so would not compromise data security and the recipient agrees to abide by all applicable software licensing rules. If the equipment has value and is not being passed to a voluntary or not for profit organisation the best price possible to should be obtained.

F.24. The manager responsible for ICT shall otherwise follow the principles set out above for equipment disposals in disposing of ICT equipment.

F.25. The manager responsible for ICT is required to schedule and retain documentary evidence of the disposal of ICT equipment for a period, as outlined in the document retention rules for documents.

F.26. The manager responsible for ICT must ensure that all ICT equipment disposed of has sensitive data or material that would contravene the Data Protection Act or other legislation erased irretrievably.

Major reusable items (with an intrinsic resale value in excess of £5,000).

F.27. This section applies to items of surplus stocks and stores with an individual value of £5,000 or more.

F.28. These should where appropriate be:

(a) The subject of public advertisement in local or national newspapers and/or appropriate trade journals and open tendering procedures; or

(b) Placed for sale on an appropriate website; or

(c) Placed for disposal with an appropriate disposal agency.

F.29. The method selected by the Director/Assistant Director to dispose of surplus stocks and stores shall be what in his /her opinion is the most effective method to secure the best net price having regard to the cost of disposal and the cost of retaining the items.

F30. Bids should be invited on the basis of identical terms and conditions of sale. The bid documentation should stipulate that the council is not obliged to accept the highest or any tender.

F.31. Alternatively these items may be disposed of

(a) By way of public auction, with or without reserve price including via electronic auction on a recognised auction website

(b) By way of trade-in for new or replacement items if this method will achieve better value than sale on the open market. The new items must be genuinely required for service delivery purposes.

(c) By way of negotiation with a special purchaser but only if this method will achieve better value than sale on the open market or by way of a trade-in.

F.32. Disposals of reusable items must be authorised by the Resources Committee where the disposal may achieve a receipt in excess of £10,000. The responsible Director/Assistant Director must prepare a report containing:

(a) An inspection report describing the item(s) and its/their condition;
(b) The reason why the item(s) are recommended for disposal;
(c) Any information from the council's records or within the knowledge of its employees which would go to the value of the item(s) to be disposed of;
(d) Recommendations where appropriate on the following:
    (i) Issues that need to be resolved before marketing of the item(s) can proceed.
    (ii) The method of disposal.
    (iii) The price the council should receive along with the "asking" and any "reserve" price, if the equipment is to be sold by public auction.
    (iv) Any special conditions of sale.
    (v) The appointment of external advisers or agents.
    (vi) Whether negotiations should proceed with a special purchaser.

Disposals of other assets

F.33. This section applies to all other tangible or intangible assets including stocks and shares, works of art, debts, goodwill, intellectual property such as copyright etc.

Investments

F.34. The disposal of all investments is delegated to the Section 151 Officer.

F.35. All disposals shall be made in compliance with the best prevailing advice of CIPFA or other reputable and authoritative sources such as the Bank of England, Stock Exchange, HM Treasury or retained investment advisers.

F.36. All procedures relating to the disposal of investments shall be detailed in a treasury management document produced by the Section 151 Officer.

Other tangible assets and intangible assets

F.37. All ‘other assets’ other than investments (e.g. debts, patents, trade marks) which are to be disposed of shall be valued by a person who is professionally qualified in the particular field. Where the value of the asset(s) to be disposed of exceeds £10,000, Resources Committee authorisation must be obtained by the appropriate Director/Assistant Director. The responsible Director/Assistant Director must prepare a report containing:

(a) A description of the asset;
(b) The reason why the asset is recommended for disposal;
(c) Any information from the council's records or within the knowledge of its employees which may affect the asset’s value;
(d) Any necessary advice from the Monitoring Officer and the Section 151 Officer;
(e) Recommendations on:

(i) The method of disposal;
(ii) An estimate of the price which the council should receive along with the "asking" price and any "reserve" price, if appropriate;
(iii) Any special conditions of sale;
(iv) The appointment or external advisers or agents;
(v) Whether negotiations should proceed with a special purchaser.

F.38. The method of disposal of other assets will depend upon the nature of the asset, its intrinsic value and the professional advice of any employee or appointee who is qualified to advise in the particular field.

4.5 Contract procedure rules

INTRODUCTION AND PURPOSE

1. BASIC PRINCIPLES

1.1. These rules are the council's procedure rules for buying for the council from external suppliers. They do not apply to internal purchases or service provision, only where you need to buy something from outside the council.

1.2. The Section 151 Officer is responsible for keeping the rules under review and monitoring compliance.

1.3. They are the rules by which we spend money on the supplies, services and works we need to deliver our services. The rules are part of the council's Constitution and have been produced as part of our approach to the way we buy things.

1.4. All procurements must comply with these rules, the Borough Council of Wellingborough financial regulations, English law and European law in force in England.

1.5. The council's "best value duty" is very important. It means that we must always consider how each procurement is consistent with the council's duty to secure continuous improvement in what we do having regard to economy, efficiency and effectiveness. We therefore need to question whether we should be buying anything at all and if we do, whether we can do it best ourselves, or jointly, or rely on someone else to get better value.

1.6. Government and EU public procurement policy require that the council must permit, and be seen to be permitting, freedom of opportunity to trade with the council and to be open and transparent about how we do things.

1.7. If we fail in this duty, a supplier or contractor may have cause for a complaint against us and in the worst case may be able to claim damages. Any contract awarded as a result of what is determined to be an improper process may also be set aside.

1.8. The most important principles are transparency, openness and fair competition. Whenever we are buying things for the council we must always treat prospective suppliers fairly and aim to get the best value outcome for the council.

1.9. Whether or not procurement is subject to the EU Regulations, it must be conducted in accordance with the basic EU Treaty principles. In particular, this means all procurements must be carried out in a fair, open and transparent way.

1.10. The key principle is to ensure that everyone in the marketplace who could provide the goods, supplies, works or services to the council is able to do so if they wish provided they meet certain minimum standards.

1.11. If you are buying costly goods, works or services, the rules for higher value orders and contracts are more rigorous than for those of lower value. This is so that the benefits of a more thorough, complex process are not outweighed by cost relative to the value of the supplies, services or works in question.

1.12. At the highest end of the value scale, we must follow full EU Public Procurement Directives, requiring us to observe certain additional procedures. In these cases you must consult the Section 151 Officer and Welland Procurement Unit before you start buying what you need.

1.13. Any changes to the relevant English or European law must be observed until these rules are revised. If these rules or the procurement toolkit conflict in any way with English law or European law in force in England then that legislation takes precedence.

1.14. The strategic advice of, where relevant, the Section 151 Officer and/or the Welland Procurement Unit must be sought during the earliest stages of planning any procurement.

1.15. All procurements must realise value for money by achieving the optimum combination of whole life costs and quality of outcome.

1.16. These contract procedure rules are designed to ensure that procurements:

- 1.16.1. achieve value for money for public money spent;
- 1.16.2. are consistent with the highest standards of probity;
- 1.16.3. are allocated in a fair and compliant manner;
- 1.16.4. comply with all legal requirements and established government and commercial codes of conduct;
- 1.16.5. support the council's own corporate aims and service policies;
- 1.16.6. comply with the council's financial regulations, health and safety, equality and environmental sustainability requirements; and
- 1.16.7. manage the council's risk effectively.

1.17. The council will follow the Local Government Transparency Code and include details of all contracts above £5,000 in the contract register which is available on the website. Copies of contracts will be provided upon request. On occasion, the council may be required to redact information from a contract but this action will only be taken on legal advice.

2. OFFICER RESPONSIBILITES

Officers

2.1. Before starting a procurement process, we need to make sure that we have carefully identified the need and fully assessed the options for satisfying it. Before you start, you must consider:

- 2.1.1. What is important to the council in this procurement? Do you just need the supplies, works or services? Or are there other things you want to bring about (for example, improved environmental performance or job creation). In certain cases the procurement regime could help achieve

these objectives but you must consult with the Section 151 Officer and Welland Procurement Unit;

2.1.2. Can you buy what you need with another service or another council? If you think you could save the council money or achieve other advantages if you bought what you need with someone else, consider if there is an existing framework arrangement or contract which you can use. This framework or contract could be one already set up by the council, another council, a joint purchasing body or run centrally by government;

2.1.3. Alternatively, there may be some kind of recognised purchasing consortia in place whereby members of the consortia may utilise the purchasing arrangements in order to procure goods and/or services;

2.1.4. Will you or your partners be buying the same thing more than once? If so, it might be better to create a framework agreement so you can set up suppliers to provide you with the supplies, works or services you need when you need them. Again, could you set up a framework with other councils or is there already a joint purchasing organisation which could supply your needs?

2.2. Should you decide that the goods and/or services are likely to be required in the future by the council, it may be that the best way in which to buy the goods and/or services is by setting up a framework agreement. There are many types of contracts which will be suited to a framework arrangements and it is important that you consult with the Section 151 Officer before commencing the procurement to ensure that the type of contract being used is most suitable.

2.3. For major, specialist, high value or important contracts for example, those which involve the transfer of council employees to a contractor or the outsourcing of a service, Directors/Assistant Directors must:

2.3.1. seek a decision from the committee as to whether tenders are to be invited under the Director/Assistant Director's recommended contract strategy;

2.3.2. once tenders have been evaluated, seek a further decision from the committee as to whether a contract is to be awarded and to whom; and

2.3.3. Directors/Assistant Directors must always consult with the Section 151 Officer to consider if members should be involved in decisions during the tender process for strategically important procurements, for example by determining the contract award criteria.

2.4. As a minimum, you must clearly and carefully specify the supplies, services or works to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions that are agreed. You also need to ensure that you will have the funds in the budget to pay for them.

2.5. This means you must decide in advance of the starting process the size, scope, and specification of the supplies, service or works required. If you are buying with someone else, you must decide this scope with your partners first.

2.6. You must consider options for the delivery of any supplies, works or services before you commence the process. The options are:

2.6.1. not buying the supplies, having the works done or providing the services at all;
2.6.2. providing the goods, works or services ourselves (for example, by taking surplus supplies from another department or using their staff);
2.6.3. getting someone else to provide the ongoing supplies, works or service ("outsourcing"/ provision by the private, voluntary, "third" sectors or another local authority or public body);
2.6.4. providing the supplies, works or services in partnership with someone else (with the private, voluntary, "third" sectors or another local authority or public body);
2.6.5. by commissioning jointly with another council; and / or
2.6.6. shared service delivery with another council i.e. by delegating our functions to another council, setting up a joint committee or setting up a new company to deliver the services for us or with other authorities jointly.

2.7. The officer responsible for purchasing or disposal must comply with these contract procedure rules and the financial regulations. The officer is responsible for ensuring that any agents acting on behalf of the council do so in compliance with these rules and the financial regulations and should seek written confirmation of their agreement.

2.8. The officer must have regard to the guidance in the Procurement Toolkit.

2.9. The officer must check whether a suitable corporate contract or other publicly available contract exists before seeking to let another contract. Where a suitable corporate contract or publicly available contract exists, its use should be considered.

2.10. The officer must keep the records detailed in rule 5.

2.11. Where the EU procedure is required, the officer must contact the Welland Procurement Unit before embarking on the procurement.

2.12. Officers should take all necessary legal, financial and other professional advice.

2.13. Where any employee of the council or of a supplier may be affected by any transfer arrangement, the officer must ensure that the Transfer of Undertaking (Protection of Employment) issues are considered and obtain advice from the Section 151 Officer before proceeding with any procurement.

2.14. The officer must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.

2.15. Where an officer has a potential conflict of interest with a supplier from whom a quotation/tender is being sought, the officer must declare this immediately to the relevant Director/Assistant Director and Monitoring Officer. The officer may be required to withdraw from the procurement process. Any officer who fails to declare

such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

Directors/Assistant Directors

2.16. Directors/Assistant Directors must ensure that they and their officers comply with these contract procedure rules.

2.17. Directors/Assistant Directors must ensure that value for money is achieved in all procurements within his/her service area.

2.18. Directors/Assistant Directors must ensure that they have in place a scheme of delegation that records in writing what actions officers in their service areas are authorised to take under these contract procedure rules. Such lists must be copied to the Section 151 Officer.

2.19. In the interests of forward planning, Directors/Assistant Directors should prepare, maintain and review a rolling schedule in respect of purchasing activities within their service area with an estimated value over £50,000.

2.20. Directors/Assistant Directors are responsible for ensuring that the council's central contracts register is updated as required following purchasing activity within their service area.

2.21. Where a Director/Assistant Director has a potential conflict of interest with a supplier from whom a quotation/tender is being sought, the Director/Assistant Director must declare this immediately to the relevant Director/Assistant Director and the Monitoring Officer. The Director/Assistant Director may be required to withdraw from the procurement process. Any Director/Assistant Director who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

3. EXEMPTIONS

3.1. Exemptions cannot be applied to procurements subject to the EU Procedure.

3.2. A procurement will be considered compliant where another authority/public body is acting as 'lead buyer' and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of best value and other applicable legislation including, where relevant, the EU Procurement Directives. This includes recognised wider public sector arrangements including, for example, those let by the Crown Commercial Service or successor organisations, etc. A Director/Assistant Director will be required to approve such a procurement.

3.3. For procurements valued below the relevant EU Threshold, the relevant Director/Assistant Director with approval from the Head of Finance may grant formal exemptions which fulfil one or more of the following criteria:

3.3.1. Sole source of supply: where suitable supplies or services are genuinely only available from one supplier (e.g. if a patent, copyright or other exclusive design right exists). Similarly, for any highly specialised/niche supplies or services, where for all practical purposes

no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the relevant Director/Assistant Director and Section 151 Officer.

3.3.2. Reasons of compatibility: if compatibility with existing supplies, equipment or services is essential and where those supplies, equipment or services cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics etc.

3.3.3. Genuine emergencies: critical preventative remedial work where there is real and imminent risk to the safety of people or property arising from hitherto unforeseen 'catastrophic' events or incidents such as fire, bombing, flood, major landslide etc.

3.3.4. Urgent situations not of the council's own making: the urgency must have been reasonably unforeseeable (e.g. an existing supplier going into liquidation, urgently imposed statutory changes etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the council's own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources etc.) shall not in itself justify exemption.

3.3.5. Procurements which have been registered as partnerships or grants.

3.3.6. Works orders placed with utility companies, e.g. for re-routing cables or pipework. The term 'utilities' does not include telecommunications.

3.3.7. There are other circumstances which are sufficiently unusual and exceptional as to justify a departure from the general presumption that competition is the best way to demonstrate best value.

3.4. Exemption requests made under this Rule 3 must be submitted to the Section 151 Officer for central logging, in the format detailed in the procurement toolkit. Wherever possible completed exemption request forms should be submitted by email.

3.5. An exemption will either:

3.5.1. Be approved by the relevant Director/Assistant Director in consultation with the Section 151 Officer and confirmed with the requesting officer; or

3.5.2. Held pending a request for further information; or

3.5.3. Rejected stating the reasons; or

3.5.4. Referred to relevant committee for determination if in the opinion of the Section 151 Officer this is required.

4. RELEVANT CONTRACTS

4.1. All relevant contracts made by or on behalf of the council must comply with these contract procedure rules.

4.2. Relevant contracts include any arrangements under which the council pays or receives money or equivalent value and it includes:

4.2.1. the permanent supply or disposal of assets/goods;
4.2.2. the execution of works;
4.2.3. the temporary hire, rental or lease of a supply;
4.2.4. the provision of services (including agency contracts for interim or temporary staff, consultancy contracts with the voluntary sector etc.);
4.2.5. any combination of the above.

4.3. For the avoidance of doubt, these rules do not apply to the following contracts:

4.3.1. employment contracts making an individual a direct employee of the council; or
4.3.2. land transactions to acquire or dispose of some interest in land (which are covered by the financial regulations); or
4.3.3. lending or borrowing of money; or
4.3.4. the instruction of barristers; or
4.3.5. specialist professional services necessary for legal proceedings (including expert witnesses, experts, mediators, adjudicators, arbitrators and costs draftsmen).

COMMON COMPETITION PRINCIPLES

5. RECORDS

5.1. Where the total value is less than £50,000, the document containing the invitation to quote as well as the quote received from bidders must be kept as well as:

5.1.1. Written or electronic records of any exemption and the reasons for it;
5.1.2. Written or electronic records of the evaluation criteria and the comparative scores;
5.1.3. Written or electronic records of communications with the successful bidder;
5.1.4. A copy of the signed contract.

5.2. See Rule 1.7 for details of the Transparency Code.

5.3. Where the total value exceeds £50,000 the officer must record:

5.3.1. the method of obtaining tenders ;
5.3.2. any contracting decision and the reasons for it;
5.3.3. any exemption and the reasons for it;
5.3.4. the award criteria in descending of importance;
5.3.5. tender documents sent to and received from bidders;
5.3.6. pre tender market research;
5.3.7. clarification and post tender negotiation (to include minutes of meetings);
5.3.8. the contract documents;
5.3.9. post contract evaluation and monitoring;

5.3.10. written records of communications with bidders and with the successful bidder throughout the period of the contract.

5.4. Written records required, as detailed in Rule 5, must be kept in accordance with the council's policy on document retention.

6. ADVERTISING

6.1. For procurements with a value below £50,000 no advertising is required unless a decision is taken that advertising is required (as identified by the Section 151 Officer or Managing Director) and therefore the procurement is designated as a tender. Where a procurement valued between £25,000 and £50,000 is designated as a tender, it must be advertised as described in Rule 6.2.

6.2. For procurements valued over £50,000 but below the relevant EU threshold (see appendix 1 for current thresholds) an advertisement must be placed on Contracts Finder and Source Northamptonshire and may be subsequently placed on additional media. If the procurement is likely to be of interest locally, an advert should be placed on the council website. For clarity, quotations valued under £50,000 should not be advertised on the council website or anywhere else.

6.3. The advertisement shall contain details of the proposed contract and specify a time limit within which interested parties may express an interest in quoting/ tendering for the contract.

6.4. The Welland Procurement Unit is responsible for managing the required advertising on Contracts Finder and Source Northamptonshire.

6.5. Where procurement is valued above the relevant EU threshold, the Welland Procurement Unit is responsible for managing the required advertising.

6.6. When advertising a framework agreement, the advertisement must indicate:

6.6.1. that it is a framework agreement which is being tendered;
6.6.2. the duration of the framework agreement (which must not exceed four years including any extensions;
6.6.3. the expected number of suppliers;
6.6.4. the estimated total value of the contracts to be covered by the framework agreement;
6.6.5. the award criteria for choosing suppliers and subsequent criteria for placing orders.

7. FRAMEWORK AGREEMENTS, DYNAMIC PURCHASING SYSTEMS AND E-AUCTIONS

Framework agreements

7.1. Framework agreement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made from the successful bidders in unpredictable quantities and at different times during the term of the framework agreement.

7.2. Lists of suppliers, previously known as approved lists, should now be procured as a framework agreement.

7.3. Framework agreements must comply with these orders, including but not limited to:

- 7.3.1. A framework agreement should be procured in accordance with the procurement thresholds set out in these rules. The value of the contract in relation to a framework agreement is the estimated maximum value over its lifetime.
- 7.3.2. A framework agreement shall not operate for more than four years except in duly justified and exceptional circumstances.
- 7.3.3. In any case where a framework agreement is in place:
  - 7.3.3.1. Subsequent call-offs from that framework agreement must not contain substantial amendments to the original terms of the framework agreement;
  - 7.3.3.2. Orders to be placed against a known price do not require further competition unless required by law;
- 7.3.4. In circumstances where the price was not specified under the framework agreement an order can only be placed if quotes have been requested from all capable suppliers in the framework agreement or where the mechanism for call-off defined within the framework agreement has been followed.

7.4. Where an officer wishes to use a framework agreement offered by another public sector body, he/she must demonstrate (to a Director/Assistant Director) that value for money will be achieved. Costs of procurement should be included within this consideration.

Dynamic purchasing systems

7.5. When using a dynamic purchasing system, the council shall comply with the regulations and directives which set out the full details of the legal requirements. In order to set up a dynamic purchasing system, the council must first contact the Welland Procurement Unit for support and guidance.

7.6. A dynamic purchasing system established by the council shall not operate for more than four years, except in duly justified and exceptional circumstances.

E-auctions

7.7. E-auctions may be used where appropriate and in circumstances where this approach will provide the council with value for money.

7.8. Before entering into an e-auction, advice and guidance must be sought from the Welland Procurement Unit.

8. COMPETITION REQUIREMENTS

8.1. The officer must establish the total value of the procurement (for the life of the contract including any potential extension periods which may be awarded). Where

the contract period cannot be calculated, the total value should be calculated for a period of four years.

8.2. Based on this value, quotations or tenders must then be invited in line with the financial thresholds detailed in Rule 10.

8.3. The Public Contract Regulations (2015) regulate procurements valued between £50,000 and the EU threshold for goods/services. For contracts valued between those limits, officers must ensure they take the following actions:

8.3.1. The procurement must be advertised, Rule 6 provides further detail. In addition, once the contract has been awarded, an award notice must be published. Appendix 2 contains further detail.

8.3.2. A one stage (open) quotation or tender process must be followed with no pre-qualification of suppliers permitted. Officers must therefore ensure that all procurement documentation, including the specification and conditions of contract, is available at the point the procurement is advertised.

8.4. Where the procurement is valued below £50,000, at least one of the quotations should be sought from a local supplier if possible, where local means within the borough or sub region.

8.5. Where the procurement is valued above the EU threshold, the advice and support of the Welland Procurement Unit must be sought before any competition is started.

8.6. An officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these orders.

9. PRE PROCUREMENT MARKET RESEARCH AND CONSULTATION

9.1. The council may consult potential suppliers, prior to the issue of the invitation to tender or request for quotation, in general terms about the nature, level and standard of supply, contract packaging and other relevant matters, provided that this does not prejudice any potential suppliers.

9.2. When engaging with potential suppliers, the council must not seek or accept technical advice on the preparation of an invitation to tender or request for quotation from anyone who might have a commercial interest in the process and where this may prejudice the equal treatment of all potential bidding organisations or distort competition.

9.3. In conducting pre procurement market research, the council must ensure that:

9.3.1. no information is disclosed to one supplier which is not then made available to all suppliers involved in the process or who are subsequently invited to bid;

9.3.2. no supplier shall be led to believe that the information they offer will lead them to being invited to quote, or awarded the contract;

9.3.3. a written record, including any communications made, any notes of any meetings held and the responses and names of individuals present shall be kept by the officer.

9.4. In undertaking any market testing activities, the officer responsible should refer to the guidance in the procurement toolkit.

The Public Services (Social Value) Act 2012

9.5. This Act requires contracting authorities to consider, at the pre procurement stage of any service contract and service framework agreement (including goods and works contracts procured in combination with services) above EU thresholds (including light touch regime services):

9.5.1. How the proposed procurement may improve the economic, social and environmental wellbeing of an area;

9.5.2. How the contracting authority may act with a view to securing that improvement in conducting the process of procurement; and

9.5.3. Whether to undertake any community consultation on the above.

9.6. Appropriate records should be kept of these considerations, including the reason for any decision regarding the matter of community consultation.

PROCEDURE BY VALUE OF REQUIREMENT

10. PROCUREMENT THRESHOLDS

Buying Goods and Services

10.1. Goods (including the use of goods) were once described by the UK Treasury as ‘anything you can drop on your foot’. However, the definition also includes electricity, gas, heat and water, off the shelf software and the hire of equipment without a driver. Services are defined as anything that isn’t either goods or works (see below). However, please note that some services are covered by the new light touch regime and officers should note the definition below before starting any procurement exercise.

10.2.

Value of procurement	Notices required	Procurement method	Notes
Under £5,000	None	At least one written quotation required. See rule 11 below	Procurements at this value are not subject to regulation but officers should ensure they achieve value for money and keep the records required at rule 5
Between £5,000 and £10,000	None	At least one written quotation required. See rule 11 below	Procurements valued above £5,000 are subject to Transparency Regulations.
Between £10,000 and £50,000	None unless advertised or tendered, then contact the Welland Procurement Unit for guidance	Multiple quotations should be sought via a one stage process. See rule 12 below	Procurements valued above £25,000 are subject to The Public Contracts Regulations 2015 and Transparency Regulations.
Between £50,000 and EU goods/services threshold	Advertising and award notices. See rules 6 and 8.3.1.	A single stage (open) tender is required. See rule 10.	Procurements valued above £25,000 are subject to The Public Contracts Regulations 2015 and Transparency Regulations.
Over EU goods/services threshold	OJEU advertising and award notices.	A method defined by EU procurement regulations	Refer to Welland Procurement Unit for further support

Buying Works

10.3. Works are defined as the execution of building and/or civil engineering works whether or not they are accompanied by other tasks.

Value of procurement	**Notices required**	**Procurement method**	**Notes**
Under £5,000	None	At least one written quotation required. See rule 11	Procurements at this value aren't subject to regulation but officers should ensure they achieve value for money and keep the records required at rule 5.
Between £5,000 and £10,000	None	At least one written quotation required. See rule 11	Procurements valued above £5,000 are subject to Transparency Regulations.
Between £10,000 and £50,000	None unless advertised or tendered, then contact the Welland Procurement Unit for guidance.	Multiple quotations should be sought via a one stage process. See rule 12	Procurements valued above £25,000 are subject to the Public Contracts Regulations 2015 and Transparency Regulations.
Between £50,000 and **EU goods/services threshold**	Advertising and award. See rule 6 and 8.3.1.	A single stage (open) tender is required. See rule 10.	Procurements valued above £25,000 are subject to the Public Contracts Regulations 2015 as well as Transparency Regulations.
Between **EU goods/services threshold** and the EU works threshold	Advertising and award notices are required. Please see rules 6 and 9.3.1.	A method defined by EU procurement regulations.	Procurements at this value are subject to Transparency Regulations and the Treaty of Rome principles but not the full Public Contracts Regulations 2015
Over EU works threshold	OJEU advertising and award notices	A method defined by EU procurement regulations	Refer to Welland Procurement Unit for further support

Buying Services covered by the light touch regime

10.4. The EU Procurement Directives 2014 list the services to be covered by a new light touch regime, see appendix 1 for the relevant threshold. The full list of services is available from the Welland Procurement Unit but in summary it covers the following:

10.4.1. Health, social and related services: domestic help, nursing staff, medical staff, staff for households, home helps, domestic services, social work services, guidance and counselling services;

10.4.2. Administrative social, educational, healthcare and cultural services: education and training services, organisation of cultural events. Culture is restricted to events. Does not include leisure;

10.4.3. Compulsory social security services;

10.4.4. Benefit services;

10.4.5. Other community, social and personal services: including services furnished by trade unions, political organisations, youth associations and other membership organisation services;

10.4.6. Religious services;

10.4.7. Hotel and restaurant services: catering, meals on wheels, canteen and cafeteria services. Includes school meals;

10.4.8. Legal services: With some narrow exceptions;

10.4.9. Other administrative and government services: for education, healthcare, housing, etc.;

10.4.10. Provision of services to the community: generally central government services, foreign and diplomatic, defence etc. Not local government;

10.4.11. Investigation and security services: alarm monitoring, guard services, surveillance services, patrol services. Does not include CCTV;

10.4.12. International services;

10.4.13. Postal services;

10.4.14. Other services: tyre re-moulding, blacksmiths.

Value of procurement	Notices required	Procurement method	Notes
Under £5,000	None	At least one written quotation required. See rule 11	Procurements at this value aren't subject to Regulation but officers should ensure they achieve value for money and keep the records required at rule 5
Between £5,000 and £10,000	None	At least one written quotation required. See rule 11	Procurements valued above £5,000 are subject to Transparency Regulations
Between £10,000 and £50,000	None unless advertised or tendered, then contact the Welland Procurement Unit for guidance.	Multiple quotations should be sought via a one stage process. See rule 12	Procurements valued above £25,000 are subject to the Public Contracts Regulations 2015 and Transparency Regulations
Between £50,000 and **EU goods/services threshold**	Advertising and award notices. See rules 6 and 8.3.1.	A single stage (open) tender is required. See rule 13 below	Procurements valued above £25,000 are subject to the Public Contracts Regulations 2015 and Transparency Regulations
Between **EU goods/services threshold** and the EU light touch regime threshold	Advertising and award notices. See rules 6 and 8.3.1.	A method defined by EU procurement regulations	Procurements at this value are subject to Transparency Regulations and the Treaty of Rome principles but not the full Public Contracts Regulations 2015
Over EU light touch regime threshold	OJEU advertising and award notices	A method defined by EU procurement regulations	Refer to Welland Procurement Unit for further support

11. AT LEAST ONE WRITTEN QUOTATION REQUIRED

11.1. Rule 10 defines the application of this rule where the requirement cannot be obtained via an existing corporate contract or framework agreement.

11.2. Whilst obtaining value for money remains the primary objective, multiple quotations need not be obtained providing compliance with that objective can be demonstrated.

11.3. However, a quotation (written) must be obtained before any order is processed and this must specify:

- 11.3.1. The goods, services or works to be supplied;
- 11.3.2. Where and when they are to be supplied,
- 11.3.3. The value of the transaction; and
- 11.3.4. The terms and conditions including payment terms.

11.4. In the case of an oral quotation, the officer must keep a written note or other evidence of the price and matters listed in rule 11.3 above.

11.5. In the case of works, the use of pre-agreed hourly/day rates is acceptable provided the hourly/day rates do not exceed EU thresholds.

11.6. The contract award must be authorised by the relevant Director/Assistant Director.

12. MULTIPLE QUOTATIONS REQUIRED

12.1. Rule 10 defines the application of this rule where the requirement cannot be obtained via an existing corporate contract or framework agreement.

12.2. Where the requirement is valued over £25,000, there can be no pre-qualification of suppliers. However, it is recommended that all quotation procedures are open (one stage).

12.3. The criteria for selecting the most advantageous quotation must be established before written quotations are invited.

12.4. Multiple quotations must be sought in all cases. Where the contract is valued below £50,000 one of those quotations should be from a local supplier if possible where local means in the district or sub-region.

12.5. The officer shall maintain the records detailed in rule 5.

12.6. Where the requirement can be satisfied by an existing corporate contract or framework agreement, then the order will be considered consistent with these rules as long as the call off arrangement defined within the individual contract is followed.

12.7. Where a requirement is valued over £50,000 it must be advertised in accordance with rule 6 and the requirements in rule 8.3 taken into account.

12.8. The contract award must be authorised by the contract manager and a relevant Director/Assistant Director.

13. SINGLE STAGE (OPEN) TENDER PROCESS

13.1. Rule 10 defines the application of this rule where the requirement cannot be obtained via an existing corporate contract or framework agreement.

13.2. Tendering under this procedure is ‘open’ as any supplier expressing an interest is automatically entitled to submit a tender.

13.3. Officers must ensure that all relevant documents are available at the point the tender is advertised. These documents will include at least the specification, conditions of contract and weighted evaluation criteria. Limited suitability questions may be used as part of the process, the Welland Procurement Unit should be consulted if it is intended to use such questions.

13.4. Tenders should be advertised in accordance with rule 6 and the requirements of rule 8.3 taken into account.

13.5. The officer shall maintain the records identified in rule 5.

13.6. The contract award must be authorised by the Director/Assistant Director.

14. TWO STAGE (RESTRICTED) TENDER PROCESS

14.1. Rule 10 defines the application of this rule where the requirement cannot be obtained via an existing corporate contract or framework agreement. The restricted procedure cannot be applied to procurements valued below the EU threshold.

14.2. This process contains two distinct stages, the selection of suitable bidders from those expressing an interest (usually via a pre-qualification questionnaire) and the invitation to tender.

14.3. Officers must ensure that all relevant documents are available at the point the tender is advertised. These documents will include at least the specification, conditions of contract and weighted evaluation criteria. Limited suitability questions may be used as part of the process, the Welland Procurement Unit should be consulted if it is intended to use such questions.

14.4. Tenders should be advertised in accordance with rule 6 and the requirements of rule 8.3 taken into account.

14.5. The officer shall maintain the records identified in rule 5.

14.6. The contract award must be authorised by the Director/Assistant Director.

15. PROCUREMENTS ABOVE EU THREHOLDS

15.1. Where the anticipated value of the contract exceeds the current EU threshold (see appendix 2 for the current EU thresholds) the formal advice of the Welland Procurement Unit must be sought prior to any tendering activity. Rules 9.5 and 9.6 must also be considered.

15.2. The minimum standards to be applied to such a procurement must be approved by committee or a chairman of committee before the OJEU notice is published.

16. STANDARDS AND AWARD CRITERIA/PROCEDURE

16.1. The officer must ascertain what relevant British, European and international standards apply and include the standards that are necessary to describe the required quality. The officer must ensure that the council does not discriminate in favour of British Standards.

16.2. The officer must define the award criteria in the invitation which must:

- 16.2.1. Be relevant to the works, services or goods to be provided under the contract; and
- 16.2.2. Secure an outcome which will provide value for money for the council.
- 16.2.3. Award criteria may include:
- 16.2.4. Most economically advantageous tender (MEAT): where considerations other than price are important; or
- 16.2.5. Lowest price: where the price is the prime factor; or
- 16.2.6. Highest price: where payment is to be received by the council.
- 16.2.7. If using the MEAT award criteria, the officer must define the relevant factors by reference to sub-criteria which may cover factors such as the following, depending on what is to be provided under the contract:
  - 16.2.7.1. price
  - 16.2.7.2. quality and performance
  - 16.2.7.3. running costs
  - 16.2.7.4. technical merit
  - 16.2.7.5. economic advantage based on past experience
  - 16.2.7.6. delivery date
  - 16.2.7.7. environmental considerations
  - 16.2.7.8. aesthetic and functional characteristics
  - 16.2.7.9. safety
  - 16.2.7.10. after sales service
  - 16.2.7.11. technical assistance
  - 16.2.7.12. other relevant matters.

16.3. Issues that are important to the council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include economic and social considerations, support for the economy or the use of sub-contractors.

16.4. The procurement documentation should clearly explain the basis for the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, how weights will be distributed etc.

16.5. Award criteria/ award procedures must not include:

- 16.5.1. Non-commercial considerations other than those permitted under the Social Value Act;
- 16.5.2. Matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

17. INVITATIONS TO TENDER/QUOTATIONS

17.1. The invitation to tender or quotation must specify what is to be provided in sufficient detail to enable the submission of competitive offers. As detailed in 8.3.2, all procurement documents (including the specification and conditions of contract) must be made available at the point the procurement is advertised.

17.2. The invitation to tender or quotation must state that the council is not bound to accept any quotation or tender and that late submissions may be rejected.

17.3. At its discretion, the council may either waive or insist upon strict compliance with any requirement set out in the Invitation to tender or quotation. The invitation to tender or quotation will include or be deemed to include such discretion of the council.

17.4. Invitations to tender (above £50,000) must specify that no tender will be considered unless it is enclosed in a sealed envelope which bears the word 'Tender' followed by the name of the contract but with no name or mark which indicates the sender (including a franking mark). Where a tender or quotation is personally delivered to the council, the bidder is to be informed to obtain an official receipt noting the date and time of receipt by the council.

17.5. The invitation to tender or quotation must specify the latest date and time for the return and the name and address to which returns are to be made.

17.6. The invitation to tender or quotation must specify the award criteria and procedure.

17.7. The invitation to tender must include a Tendering and Canvassing Certificate which the officer can obtain from the council's legal service.

17.8. The invitation to tender or quotation should include the contract terms, specification and other supporting documents that will apply to the Contract.

17.9. The Welland Procurement Unit will introduce an electronic tendering system and it is expected that above EU threshold invitations to tender will be published and tenders received via that system following its introduction.

18. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

18.1. Bidders must be given a sufficient period to prepare and submit a proper tender or quotation, consistent with the urgency and complexity of the requirement. Procurements over the EU thresholds must abide by the time periods laid out in the regulations.

Quotations

18.2. Quotations between £10,000 and £50,000 must be returned to the relevant officer.

18.3. Quotations and tenders above £10,000 cannot be accepted if received by fax or other electronic means unless they have been sought in accordance with an electronic tendering system approved by the Welland Procurement Unit.

18.4. It shall be the responsibility of the relevant officer to keep safe quotations above £10,000 until appointed time of opening. Each quotation must be:

- 18.4.1. Suitably recorded so as to be able to subsequently verify the date and precise time it was received and opened;
- 18.4.2. Adequately protected immediately on receipt to guard against amendments to its contents;
- 18.4.3. Recorded in a quotation register held within the directorate.

18.5. The relevant officer must ensure that all quotations are opened at the same time when the period for their submission has ended. The officer or their representative must be present. Quotations above £10,000 must be opened in the presence of two officers, one of whom should not be from the service responsible for the procurement.

Tenders

18.6. All tenders of a value greater than £50,000 must be returned to: Managing Director, Borough Council Wellingborough, Swanspool House, Doddington Road, Wellingborough, Northants, NN8 1BP.

18.7. Tenders received by fax or other electronic means will be rejected unless they have been sought in accordance with an electronic tendering system approved by the Welland Procurement Unit.

18.8. The Managing Director (or their nominated representatives) shall be responsible for the safekeeping of tenders until the appointed time of opening. Each tender must be:

- 18.8.1. Suitably recorded so as to be able to subsequently verify the date and precise time it was received and opened;
- 18.8.2. Adequately protected immediately on receipt to guard against amendments of its contents;
- 18.8.3. Recorded in the tender register held within the directorate.

18.9. The Managing Director (or their nominated representative) must ensure that all tenders are opened at the same time when the period for their submission has ended. The relevant officer or his/her representative must be present at the opening as well as another officer not from the service responsible for the purchase.

18.10. The opened tenders must be date stamped and signed by the Section 151 Officer or Monitoring Officer and another officer at the time of opening on the page containing the overall contract value, alternatively on pages containing price information where no overall value is quoted.

18.11. Tenders received after the closing date and time or tenders which were not submitted in accordance with these orders will be disqualified unless it is agreed otherwise with the Monitoring Officer.

18.12. An original version of the successful tender must be retained for a period of six years from the expiry date of the contract. Where the contract has been sealed, an original version of the successful tender must be retained for a period of twelve years from the expiry date of the contract. Unsuccessful tenders must be kept for twelve months from the commencement date of the contract.

19. CLARIFICATION PROCEDURES

19.1. The council can ask bidders for clarification of any details submitted as part of their bid. However, such clarifications must not involve changes to the basic features of the bidder's submission.

19.2. When requesting clarification, the officer must make reference to the procurement toolkit and if necessary take advice from the Welland Procurement Unit.

20. EVALUATION, AWARD AND DEBRIEFING

20.1. The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to the bidders without deviation from the scoring criteria and in line with any guidance contained in the procurement toolkit.

20.2. All bidders must be notified of the award decision simultaneously in writing (via email is acceptable) by the officer, whether or not their bid was successful.

20.3. For all tenders (including those over the EU threshold) the requirements of the EU regulations in relation to the information in the award notice should be adhered to, these requirements are available in the procurement toolkit.

20.4. Where the officer is not certain of the application of EU regulations to a tender or is unsure of the need to publish an OJEU Notice, the officer should consider the use of a VEAT (voluntary ex ante transparency) notice and seek advice from the Welland Procurement Unit.

20.5. If a bidder requests in writing a further debrief in relation to the award, the officer must give the appropriate information within ten working days of the written request.

20.6. The confidentiality of quotations and tenders and the identity of bidders must be preserved at all times and information about one bidder's response must not be given to another bidder.

CONTRACTS AND OTHER FORMALITIES

21. CONTRACT DOCUMENTS

21.1. All contracts must be in writing. Where the contract is of a non-complex nature and is for a value up to £50,000, the use of a purchase order is an acceptable form of contract. This must make reference to the quotation and terms agreed and attach a clear specification or description of the subject of the order.

21.2. Every contract valued above £50,000 must, as a minimum, state clearly in a form approved by the Monitoring Officer:

- 21.2.1. That the supplier must not assign or sub-contract without prior written consent;
- 21.2.2. Any insurance requirements;
- 21.2.3. Ombudsman requirements;
- 21.2.4. Requirements relating to legislation;
- 21.2.5. Equalities requirements;
- 21.2.6. Sustainability requirements;
- 21.2.7. A right of access to relevant documentation and records of the supplier for monitoring and audit purposes, if relevant;
- 21.2.8. Pricing mechanisms and arrangements for payment;
- 21.2.9. Rights of termination;
- 21.2.10. A duty on the supplier to provide such performance management information as may be reasonably required by the council;
- 21.2.11. A duty on the supplier to support the council in the discharge of its duty under Section 3 of the Local Government Act 1999.
- 21.2.12. A clause stating that the council will pay valid invoices within 30 days of receipt and specifying a duty on suppliers to do the same for sub contract invoices.

21.3. The formal advice of the Monitoring Officer and Section 151 Officer must be sought prior to award of the following contracts:

- 21.3.1. Where the total value exceeds £500,000;
- 21.3.2. Those involving lease arrangements;
- 21.3.3. Those which are complex or involve a recognisable risk;
- 21.3.4. Where it is an extension to an existing contract within its terms that will take the overall value over £500,000;
- 21.3.5. The invoice payments are made to a finance or factoring company;
- 21.3.6. Those involving the transfer of non land assets;
- 21.3.7. Those involving TUPE or pension arrangements; and/or
- 21.3.8. Where it is proposed to use a supplier's own terms over £50,000.

21.4. All contracts, over £500 must be concluded or evidenced in writing before the supply, service or work begins, except in genuinely exceptional circumstances where the Monitoring Officer or Section 151 Officer confirms in writing that the contract delivery can begin beforehand.

21.5. Contract documents must be retained in accordance with the council's document retention policy.

Performance bonds

21.6. For contracts above £250,000 the council may require the supplier to provide a bond (in a form approved by the head of the council's legal services and with an institution approved by the Section 151 Officer), or a parent company guarantee, or a suitable financial deposit for the due performance of the contract according to the nature of the contract. This would only usually be required where an officer obtained evidence that a supplier may not be able to meet its financial obligations. Further guidance is available in the procurement toolkit.

Signature
21.7. The Managing Director or Director/Assistant Director is authorised to sign contracts by the council's constitution and General Legal Authorities. When signing contracts on behalf of the council, officers must ensure that the person signing for the other contracting party has the authority to bind it.

Sealing
21.8. A contract must be sealed where:

- 21.8.1. The council wishes to enforce the contract for more than twelve years following its expiry (e.g. for land and construction works); or
- 21.8.2. The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works; or
- 21.8.3. Where there is any doubt about the authority of the person signing for the other contracting party; or
- 21.8.4. Where a bond is established on behalf of the supplier(s) or their guarantors; or
- 21.8.5. Where required by the parties to the agreement; or
- 21.8.6. Any contract with a value of £200,000 and above.

21.9. Where contracts are completed by each side attaching their common seal, the affixing must be attested by or on behalf of the relevant Director/Assistant Director. The relevant Director/Assistant Director is responsible for the process of sealing contracts.

22. PREVENTION OF CORRUPTION/DECLARATION OF INTERESTS

Officers
22.1. The officer responsible for the contract must comply with the council's Code of Conduct and must not invite or accept any gift or hospitality in respect of the award or performance of any contract.

22.2. Officers must avoid giving advice to members on pecuniary or Code of Conduct interests either immediately before or during a meeting. If officer advice is required, it is important that adequate time for consideration of that advice is given.

22.3. Officers should have regard and comply with the council's Anti-Fraud Policy when procuring goods, services and works.

Members
22.4. The decision whether or not to declare an interest is the individual member's responsibility. See Part 5 of the council's Constitution relating to Members' Code of Conduct.

22.5. If it comes to the knowledge of a member that a contract in which he/she has a pecuniary interest has been or is proposed to be entered into by the council and in which respect his/her approval or decision is sought, he/she shall immediately give written notice to the Monitoring Officer.

22.6. Members shall have regard to and comply with the council's Anti-Fraud Policy when involved in the procurement of goods, services and works.

Contracts

22.7. All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the Prevention of Corruption Acts.

22.8. All contracts must contain a clause requiring suppliers to comply with the council's Anti-Fraud Policy.

23. CONTRACT MANAGEMENT/VARIATION/EXTENSION/TERMINATION

Contract management

23.1. Directors/Assistant Directors will name a contract manager as noted in the contracts register for each new contract within their area of responsibility. All contracts must have a named contract manager for the entirety of the contract and that contract manager is responsible for the application of these rules.

23.2. For all contracts with a value over £50,000, the contract manager must identify the risks, maintain a suitable risk register, manage the identified risks and ensure contingency measures are in place as appropriate.

23.3. During the life of the contract, the contract manager must monitor the overall performance of the contract closely in order to ensure any issues of under performance are addressed as soon as possible and that the contract remains within budget.

Variation

23.4. In any case where a variation means that the value of a contract would exceed the relevant EU threshold, or where there is any material change to the contract, the contract must be treated as a new procurement under these rules. A material change is one which:

- 23.4.1. Would have allowed the admission of other bidders or the acceptance of another tender;
- 23.4.2. Extends the scope of the contract considerably to goods, services or works not initially covered;
- 23.4.3. Changes the economic balance in favour of the supplier in a manner not provided for.

23.5. For clarity, a change will be deemed immaterial if the value of the modification is both below the EU threshold and below 10% of the original contract value (15% for works) after any contract indexation.

Extension

23.6. A contract should not be extended beyond its term unless the contract documents specifically allow for this.

23.7. A framework agreement shall only be extended if its contract documents allow this and the original terms and extension added together do not exceed four years except in exceptional circumstances.

23.8. Where a business need has been identified which means that a contract is required to be extended beyond the term permissible in the contract, advice must be sought from the Welland Procurement Unit in the first instance and authority sought from the Monitoring Officer or Section 151 Officer if such an extension is proposed.

23.9. The officer must be satisfied that such an extension would achieve value for money and be reasonable in all relevant circumstances. The officer must record in writing the reasons for reaching these conclusions.

23.10. Where the contract is subject to EU regulations and the OJEU Notice and contract documentation did not state that the contract may be extended, advice must be sought from the Welland Procurement Unit on how to proceed.

23.11. If an officer wishes to extend a contract with a value below £500,000 and provided that rules 23.8 and 23.9 and in OJEU cases 23.10 have been complied with, permission must be sought from the Monitoring Officer and the Section 151 Officer. Contracts with a value over £500,000 can only be extended with permission of the relevant committee. The total contract value is the spend over the life of the contract including any extension periods.

Termination

23.12. A contract up to £100,000 must not be terminated unless:

- 23.12.1. Advice has been sought from the Monitoring Officer and Section 151 Officer; and
- 23.12.2. The relevant Director or Assistant Director approves the termination of the contract.

23.13. A contract which exceeds £100,000 can only be terminated where written approval has been obtained from the Monitoring Officer and Section 151 Officer and the relevant committee.

Assigning contracts

23.14. A contract up to £100,000 must not be assigned unless:

- 23.14.1. Advice has been sought from the Monitoring Officer and Section 151 Officer; and
- 23.14.2. The relevant Director or Assistant Director approves the assignment of the contract.

23.15. A contract which exceeds £100,000 can only be assigned where written approval has been obtained from the Monitoring Officer and Section 151 Officer and, the relevant committee.

24. Council specific policies

24.1. When you are buying anything for the council you must consider:

24.1.1. the importance and impact of the other policies of the council on what you are buying; and

24.1.2. the way in which you go about the procurement could be used to take forward the aims and objectives of the council.

APPENDIX 1: VARIABLE INFORMATION

The following information is subject to change during the currency of these contract procedure rules and shall be updated as changes occur.

EU thresholds
From 1 January 2016, the EU thresholds are:

- Supplies and services: £164,176
- Works: £4,104,394
- Light touch regime: approximately £598,148 (mainly care contracts)

These values are applicable until the 31 December 2017 and will then be revised.

The thresholds are revised every two years.

Advertising websites
All procurements valued between £50,000 and the relevant EU threshold must be advertised on Contracts Finder/Source Northamptonshire. To place an advert contact Clare Ellis (cellis@melton.gov.uk) or any member of the Welland Procurement Unit.

Once the contract has been awarded, an award notice must be published on Contracts Finder/Source Northamptonshire. Award notices will be published quarterly in arrears by the Welland Procurement Unit at dates to be announced. Please ensure that you record the following information and collate and return it quarterly to Clare Ellis (cellis@melton.gov.uk) by the date given:

- Name of contractor
- Date contract entered into
- Value of contract
- Whether the contractor is an SME or VCSE.

Welland Procurement Unit

The Welland Procurement Unit works with five councils in the East Midlands and may be contacted as follows:

Clare Ellis, Welland Procurement Officer, cellis@melton.gov.uk, 07876 574944

Paul Large, Procurement Strategy Manager, plarge@melton.gov.uk, 07769 918574

Receipts of tenders by email by use of a locked tender box facility
Tenders may not be returned to the council through conventional e-mail. This is not secure and any such tenders will be disqualified. A locked tender box is available through certain proprietary e-mail systems and may be accepted for use by the solicitor to the council. The Council does not currently have access to a locked e-mail tender box facility.

4.6 Officer Employment Procedure Rules

4.6.1 Recruitment and appointment

(a) Declarations:

i The council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, spouse, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing member or officer of the council; or of the partner of such persons.

ii No candidate so related to a member or an officer will be appointed without the authority of the Head of Paid Service or relevant chief officer or an officer nominated by him/her.

(b) Seeking support for appointment

i. The council will disqualify any applicant who directly or indirectly seeks the support of any member or officer for any appointment with the council. The content of this paragraph will be included in any recruitment information.

ii. No member or officer will seek support for any person for any appointment with the council.

4.6.2 Recruitment of Head of Paid Service and chief officers

(a) Where the council proposes to appoint a head of service or a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the council will:

i. draw up a statement specifying:

(1) the duties of the officer concerned; and

(2) any qualifications or qualities to be sought in the person to be appointed;

ii. 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; and

iii. make arrangements for a copy of the statement mentioned in paragraph (i) above to be sent to any person on request.

(b) Where a post has been advertised as provided in 4.6.2 (a), the council shall:

i. interview all qualified applicants for the post, or

ii. select a short list of such qualified applicants and interview those included on the short list.

(c) Where no qualified person has applied, the authority shall make further arrangements for advertisement in accordance with 4.6.2 (a) (ii)

4.6.3 Appointment of Head of Paid Service

(a) The full Council will appoint the Head of Paid Service following consideration of any recommendation of the Appointment Panel as to the person to be appointed.

4.6.4 Appointment of chief officers

(a) An Appointment Panel will appoint chief officers.

4.6.5 Appointment procedure for appointment of chief officers

(a) Prior to advertisement

i. The Head of Paid Service and/or relevant chief officer, and the recruitment advisers (if any) will meet to agree details of the recruitment process to be followed, including the use of assessment tests etc.

(b) Following advertisement:

i. The Head of Paid Service and/or relevant chief officer, and the recruitment advisers (if any) will meet to consider all the applications that have been received, to consider any recommendations of the recruitment advisers and agree a longlist. At this meeting, details of the interview process to be followed, including the particular assessment tools such as in-tray and other testing, the use of presentations etc. will also be agreed.

ii. Longlisted candidates undergo the assessment process which may include an interview with the Head of Paid Service and/or relevant chief officer

iii. The Appointment Panel will then meet to consider the results of the longlisting process, the officers' recommendations; and agree a shortlist of candidates for interview.

iv. The Appointment Panel will then meet again to interview the shortlisted candidates and decide whom to appoint. Officers and members will table suggestions for questions at the start of the

meeting, and the Panel will decide which questions to ask and who will ask them.

4.6.6 Other appointments

(a) **Officers below chief officer**. Appointment of officers below chief officer (other than assistants to political groups) may be made only by the Head of Paid Service or his/her nominee.

(b) **Assistants to political groups**. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

4.6.7 Disciplinary action

(a) **Dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer**

i. The Head of Paid Service, Chief Finance Officer and Monitoring Officer may not be dismissed by the council unless the procedure set out in the following rules is complied with.

ii. The Council must appoint a panel for the purposes of advising the full Council on matters relating to the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer. The panel must be a committee of the authority. The council must appoint the panel at least 20 working days before the meeting of full Council to consider whether or not to approve a proposal to dismiss the Head of Paid Service, Monitoring Officer or Chief Finance Officer.

iii. The council must invite relevant Independent Persons to be considered for appointment to the panel, with a view to appointing at least two Independent Persons to the panel. An Independent Person:

(1) means an Independent Person who has been appointed under section 28(7) of the Localism Act 2011 (in relation to the Members' Code of Conduct); and

(2) is an Independent Person who has been appointed by the council or where there are fewer than two such persons appointed by the council, such Independent Persons as have been appointed by another authority or authorities as the council considers appropriate.

iv. The council must appoint to the panel such Independent Persons who have accepted an invitation issued in accordance with Rule iii., in accordance with the following priority order:

(1) a relevant Independent Person who has been appointed by the council and who is a local government elector;

(2) any other relevant Independent Person who has been appointed by the council;

(3) a relevant Independent Person who has been appointed by another authority or authorities

v. The council may appoint more than two relevant Independent Persons in accordance with rule (iii) but is not required to do so.

vi. Before full Council takes a vote on whether or not to approve a dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer, the council must take into account, in particular:

(1) any advice, views or recommendations of the panel;
(2) the conclusions of any investigation into the proposed dismissal; and
(3) any representations from the officer in question.

vii. Paragraphs 13 and 13A (England) and Appendix 5A of the Conditions of Service Handbook of the Joint Negotiating Committee for Local Authority Chief Executives (13th October 2016) give effect to these statutory requirements and will be used in circumstances where disciplinary action against the Head of Paid Service, Monitoring Officer or s151 Officer is contemplated.

4.6.8 Dismissal

(a) Members will not be involved in the dismissal of any officer below chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals.

4.6.9 Definition of chief officer

(a) For the purpose of these Procedure Rules, "Chief Officer", in relation to the Council, means each of the following:
   (i) the head of its paid service designated under section 4(1) of the Local Government and Housing Act 1989;
   (ii) its monitoring officer designated under section 5(1) of that Act;
   (iii) a statutory chief officer mentioned in section 2(6) of that Act;
   (iv) a non-statutory chief officer mentioned in section 2(7) of that Act;
   (v) a deputy chief officer mentioned in section 2(8) of that Act.

4.7 RULES OF PROCEDURE FOR THE SITE VIEWING GROUP

4.7.1 Membership

The site viewing group comprises the chairman, vice-chairman and three members (two from the administration and one from the opposition).

4.7.2 Purpose

The site viewing group visit selected sites which are subject of a planning application. The members view physical features of the site which are considered to be helpful in clarifying the detail of the officer's assessment reported to committee. The planning application will not be debated by members during the site visit who are present to view physical features. Other members of the council may attend site viewing meetings of interest but they will organise their own travel arrangements.

4.7.3 Generation of site visits

(a) Site visits are generated by the following means:

(1) The decision on a planning application has been deferred by committee for a site visit.

(2) The Director, Assistant Director or Principal Manager regards the complexity of the physical features sufficient to warrant a viewing by members, and recommends a visit at the chairman's agenda meeting.

(3) A request is made for a visit by any member of the council or, if applicable the parish council. In this case, the councillor/parish council should register with planning@wellingborough.gov.uk, stating the reasons which would justify a site viewing with reference to material planning considerations. Site viewings are agreed by the chairman at his/her discretion.

(b) The visits generated by the planning committee (1) are minuted and set for the following month.

(c) Other visits (generated at (2) and and (3) are considered by the chairman of the Planning Committee at the agenda meeting. A timetable is drawn up for the sites to be visited.

(d) Members of the council, applicants (or agents) and relevant parish councils are notified by the next possible posting/email. Respondents to consultation are notified of a site viewing. Notification is not sent to those who did not respond to the consultation.

4.8 Procedure on site

4.8.1 Introductions of the site viewing group to the public attending on site are made by the lead officer.

4.8.2 The members of the site viewing group stay together in order to hear the proposal explained by the applicant/agent/architect, or in their absence, the officer.

4.8.3 The members may ask questions to gain clarity of the points made relative to the physical features of the site.

4.8.4 The lead officer will ask if any objectors/supporters wish to make any points. The officer will ensure that all representatives wishing to speak are heard clearly with regard to equity in the time given to each speaker and they are advised not to discuss the merits of the proposal only physical features.

4.8.5 Members will listen to the speakers and may ask questions for clarity.

4.8.6 A democratic services officer will attend, if available, and record notes of the key points during the site visit.

4.8.7 The chairman of the site viewing group will decide when the group should move to see other features of the site and will conclude the meeting at the appropriate time.

PART 5

CODES AND PROTOCOLS

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5. 1 MEMBERS' CODE OF CONDUCT

Section 27 of the Localism Act 2011 provides that a local authority must promote and maintain high standards of conduct by its elected and co-opted members. In discharging this duty a local authority is required, in particular, to adopt a code dealing with the conduct that is expected of its elected and co-opted members when they are acting in that capacity.

Part 1 – General principles and provisions

1 Underlying principles

This Code is underpinned by the following principles of public life which should be borne in mind when going about your business as a member of the Borough Council of Wellingborough ("the authority") and interpreting the meaning of the Code:

i. **Selflessness** Holders of public office should act solely in terms of the public interest.

ii. **Integrity** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships

iii. **Objectivity** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

iv. **Accountability** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

v. **Openness** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

vi. **Honesty** Holders of public office should be truthful.

vii. **Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

2 Application

2.1 This Code of Conduct applies to you whenever you are acting, claiming to act or giving the impression that you are acting in your capacity as a member of the authority, including:

2.1.1 at formal meetings of the authority, its committees and subcommittees (including joint committees and joint sub-committees)

2.1.2 in discharging your functions as a ward councillor (e.g. meetings with constituents and local organisations, acting as a community advocate etc.)

2.1.3 at meetings with officers

2.1.4 at site visits, and

2.1.5 when corresponding with the authority other than in a private capacity

2.2 Where you act as a representative of the authority:

2.2.1 on another authority required by the Localism Act 2011 to have a code of conduct, you must, when acting for that other authority, comply with that other authority's code of conduct; or

2.2.2 on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

2.3 This Code of Conduct does not apply to you when you are acting in a personal or private capacity (e.g. corresponding with your bank, or making enquiries about your own council tax or the waste collection arrangements affecting your property). Any discussion of authority business, including with fellow members or with the authority's officers, is likely to be regarded as carrying out the business of your office.

2.4 If you are acting in a personal capacity and believe that there is a likelihood that the person to whom you are dealing could reasonably believe that you are acting in your capacity as a member of the authority you should make it clear to them that you are acting in a personal capacity. When acting in a personal capacity you should also avoid styling yourself as 'Councillor' and using the authority's headed stationery and your @wellingborough.gov.uk e-mail address for correspondence. Particular care needs to be taken whilst blogging or using social media. If you have private blogs and refer to council business on them, you are likely to be viewed as acting in your official capacity even if you have a disclaimer on your blog to the effect that everything on there is put there in a personal capacity.

2.5 If you are acting in your capacity as a member of the authority, you cannot part way through the business or matter declare that you are acting in a personal capacity in order to legitimise conduct that would otherwise be a breach of this Code.

3 General conduct You are expected to:

3.1 provide leadership to the authority and communities within its area, by personal example

3.2 respect others and not bully any person

3.3 recognise that officers are employed by and serve the whole authority and not do anything which compromises, seeks to compromise or is likely to compromise the impartiality of those who work for, or on behalf of, the authority

3.4 respect the confidentiality of information which you receive as a member:

3.4.1 by not disclosing confidential information to third parties unless required by law to do so or where there is a clear and over-riding public interest in doing so; and

3.4.2 by not obstructing third parties' legal rights of access to information

3.5 not conduct yourself in a manner which could reasonably be regarded as likely to bring your office or the authority into disrepute

3.6 act solely in the public interest and should 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, a friend or close associate

3.7 not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you improperly in the performance of your official duties

3.8 make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit

3.9 when using or authorising the use by others of the resources of the authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

3.10 exercise your own independent judgement, taking decisions for good and substantial reasons:

3.10.1 attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views of political groups

3.10.2 paying due regard to the advice of officers, and in particular to the advice of the statutory officers, namely the Head of Paid Service, the Chief Finance Officer[1] and the Monitoring Officer and

3.10.3 stating the reasons for your decisions and actions where those reasons are not otherwise apparent

3.11 be accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office

3.12 not 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 their authority's code of conduct

3.13 ensure that the authority acts within any equality laws

3.14 declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts

[1] Also known as the Section 151 Officer.

arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in paragraphs 4 to 5 below

3.15 promote and support high standards of conduct, in particular as characterised by the above requirements, by leadership and example.

Part 2 - Interests

4 Registerable interests

4.1 You must within 28 days of this Code being adopted by or applied to the authority; or your election or appointment to office (where that is later), notify the Monitoring Officer in writing of the details of your interests within the following categories, for inclusion in the authority's register of interests:

4.1.1 any disclosable pecuniary interests you are required to disclose. You have a disclosable pecuniary interest if it is of a description specified in regulations made by the Secretary of State (see Appendix A) and either:

(a) it is an interest of yours, or

(b) it is an interest of:

(i) your spouse or civil partner;

(ii) a person with whom you are living as husband and wife, or

(iii) a person with whom you are living as if you were civil partners and you are aware that that other person has the interest.

4.1.2 details of 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

4.1.3 details of any body exercising functions of a public nature, any body directed to charitable purposes or any body one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are:

(a) a member, or

(b) in a position of general control or management;

4.2 You are expected to ensure that your register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your disclosable pecuniary interests and other registerable interests.

4.3 You may inform the Monitoring Officer if you consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation. If the Monitoring Officer agrees with your view, the interest is treated as a "sensitive interest" for the purposes of the Code

4.4 If a sensitive interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, will not include details of the interest (but may state you have an interest the details of which are withheld).

5 Disclosure of interests and participation at meetings

5.1 If you attend a meeting and

5.1.1 have and are or become aware, or should reasonably be aware, that you have an interest of the type described in paragraph 4.1 above in any matter to be considered, or being considered, at that meeting, and

5.1.2 the interest is not entered in the authority's register of members' interests,

you should (and must if the interest is a disclosable pecuniary interest) disclose to the meeting the fact that you have an interest in that matter and the nature of that interest, at or before the consideration of the item of business or as soon as the interest becomes apparent.

5.2 Where your interest is a "sensitive interest" for the purposes of the Code, you need not disclose the details of the sensitive interest to the meeting, but merely the fact that you have an interest in the matter concerned.

5.3 If you have and are aware or become aware, or should reasonably be aware, that you have

5.3.1 a disclosable pecuniary interest in any matter to be considered, or being considered, at a meeting, or

5.3.2 any other registerable interest in any matter to be considered, or being considered, at a meeting, and

(a) the matter to be considered, or being considered, at that meeting:

(i) affects your financial position or the financial position of a person or body through whom the interest arises ;or

(ii) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person through whom the interest arises, **and**

(b) the 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 judgment of the public interest[2],

you should not, and must not if the interest is a disclosable pecuniary interest,:

5.3.3 participate, or participate further, in any discussion of the matter at the meeting other than to the extent permitted by the

[2] A registerable interest that satisfies the tests in paragraphs 5.3.2 (a) and (b) shall be known as a prejudicial interest for the purpose of declarations of interest at a meeting.

authority's procedure rules in respect of registerable interests other than disclosable pecuniary interests[3]; or

5.3.4 participate in any vote, or further vote, taken on the matter at the meeting

unless you have first obtained a dispensation from the Monitoring Officer in advance of the meeting.

In addition, if the authority's procedure rules require you to leave the room where the meeting is held while any discussion or voting on the matter takes place, you must do so.

5.4 "Meeting" means any meeting organised by or on behalf of the authority, including:

5.4.1 any meeting of the authority, or a committee or sub-committee of the authority (including joint committees and joint subcommittees)

5.4.2 meetings of working parties

5.4.3 any briefing by officers (e.g. to political groups or lead advisers); and

5.4.4 any site visit to do with business of the authority

5.5 If you seek to discuss with an officer a matter that, if it were to be considered at a meeting of the authority, you would not be able to participate in the discussion of, or voting on, by virtue of the matter relating to a registerable interest of yours, you are expected to inform the officer of that interest in advance of any discussion and accept that the officer has discretion as to whether or not to discuss the matter with you; save that he or she cannot treat you less favourably than he or she would treat a member of the public wishing to discuss a matter of the same type.

6 Other interests

6.1 In addition to the requirements of Paragraph 5, where you have an interest described in paragraph 6.3 below in any business of the authority, and

6.1.1 where you are aware or ought reasonably to be aware of the existence of that interest, and

6.1.2 you attend a meeting of the authority at which the business is considered,

you are expected to disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

6.2 Where your interest is a "sensitive interest" for the purposes of this Code, you need not disclose the details of the sensitive interest to the

[3] These rules are to the effect that if the matter is one on which an ordinary member of the public would be allowed to address the meeting you are provided with the same opportunity. If an ordinary member of the public is not allowed to speak on the matter, you cannot do so.

meeting, but merely the fact that you have an interest in the matter concerned.

6.3 You have an interest for the purposes of paragraph 6.1 of this Code where:

6.3.1 a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person or body with whom you have a close association to a greater extent than it would affect the majority of the council tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the authority's administrative area, or

6.3.2 it relates to or is likely to affect any of the interests listed in the table in the Appendix A to this Code, but in respect of a member of your family (other than a "relevant person") or a person with whom you have a close association and you are aware that that other person has the interest

and that interest is not a disclosable pecuniary interest or any interest you should register in accordance with paragraph 4 of this Code.

6.4 If the matter to be considered, or being considered, at that meeting:

6.4.1 affects your financial position or the financial position of a person or body through whom the interest arises ;or

6.4.2 relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person through whom the interest arises, **and**

6.4.3 the 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 judgment of the public interest[4],

you should not:

6.4.4 participate, or participate further, in any discussion of the matter at the meeting other than to the extent permitted by the authority's procedure rules for such interests[5]; or

6.4.5 participate in any vote, or further vote, taken on the matter at the meeting

unless you have first obtained a dispensation from the Monitoring Officer in advance of the meeting.

In addition, if the authority's procedure rules require you to leave the room where the meeting is held while any discussion or voting on the matter takes place, you must do so.

[4] An *other interest* that satisfies the tests in paragraphs 6.4.1 to 6.4.3 shall also be known as a prejudicial interest for the purpose of declarations of interest at a meeting.

[5] These rules are to the effect that if the matter is one on which an ordinary member of the public would be allowed to address the meeting you are provided with the same opportunity. If an ordinary member of the public is not allowed to speak on the matter, you cannot do so.

6.5 If you seek to discuss with an officer a matter that, if it were to be considered at a meeting of the authority, you would not be able to participate in the discussion of, or voting on, by virtue of the matter relating to an interest of yours of the type described in paragraph 6.3, you are expected to inform the officer of that interest in advance of any discussion and accept that the officer has discretion as to whether or not to discuss the matter with you; save that he or she cannot treat you less favourably than he or she would treat a member of the public wishing to discuss a matter of the same type.

7 Gifts and hospitality

7.1 You should, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the authority.

7.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.

7.3 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the authority for this purpose.

Appendix A

Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest (DPI) are set out in Chapter 7 of the Localism Act 2011. Breaches of the rules relating to DPIs may lead to criminal sanctions being imposed.

Chapter 7 of the Localism Act 2011 provides that a pecuniary interest is a "disclosable pecuniary interest" in relation to a member (M), if it is of a description specified in regulations made by the Secretary of State and either:

(a) it is an interest of M's, or
(b) it is an interest of:
  (i) M's spouse or civil partner,
  (ii) a person with whom M is living as husband and wife, or
  (iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.

DPIs are defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI No. 1464) as follows:

Interest	*Prescribed description*
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).
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.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For this purpose:

"the Act" means the Localism Act 2011;

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or M’s spouse or civil partner, a person with whom M is living as husband and wife, or a person with whom M is living as if they were civil partners;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

5.2 Code of Recommended Practice on Local Authority Publicity

5.2.01 Background

(a) The following Code has been issued by the Secretary of State for Communities and Local Government in pursuance of his powers under Section 4(1) of the Local Government Act 1986. The Code was drawn up following consultations with interested parties in Local Government required by Section 4(4) of the 1986 Act. It has been approved by a resolution of each House of Parliament. Local Authorities are required by Section 4(1) of the 1986 Act, as amended by Section 27 of the Local Government Act 1988 to have regard to the Code in coming to any decision on publicity.

5.2.02 Introduction

(a) Local authorities are accountable to their electorate. Local accountability requires local understanding. This will be promoted by local authorities explaining their objectives and policies to their electors and ratepayers. In recent year authorities have increasingly used publicity to keep the public informed and to encourage greater participation. Local authorities also need to tell the public about the services which they provide. Increasingly, local authorities see the task of making the public aware of the services available as an essential part of providing all kinds of services. Good, effective publicity, aimed at improved public awareness of a council's activities, is to be welcomed. This Code is not intended to discourage such publicity.

(b) Publicity is, however, a sensitive matter in any political environment, because of the impact which it can have. Expenditure on publicity by some local authorities is 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 purpose of the Code is to set out such principles. It reflects the conventions which should apply to all publicity at public expense and which traditionally have applied in both central and local government.

(c) The principles set out below recognise the political nature of local government. They take account of the fact that some local authority publicity will deal with issues that are controversial because of particular local circumstances or because of a difference of view between political parties locally or nationally. The principles do not prohibit the publication of information on politically sensitive or controversial issues, nor stifle public debate. They set out the matters a local authority should consider, to safeguard both the proper use of public funds and those members of the public at whom publicity is directed. They apply to all publicity, but some aspects will be especially relevant to publicity which deals with controversial or sensitive issues. The underlying objective of the Code is to ensure the proper use of public funds for publicity.

5.2.03 Scope of the Code

(a) The Code is not concerned with the interpretation of Section 2 of the Local Government Act 1986. (That section provides that a local authority shall not publish (or assist others to publish) material which, in whole or in part, appears to be designed to affect public support for a political party). The Code is concerned with all the other publicity which a local authority may publish. In particular, it highlights factors which should be borne in mind about decisions on publicity which deals which matters or issues which are, politically or otherwise, controversial, but which are not prohibited by Section 2.

(b) Section 6 of the 1986 Act defines publicity as “any communication, in whatever form, addressed to the public at large or to a section of the public”. The Code will therefore be relevant across the whole range of local authorities’ work. It covers all decisions by a local authority on publicity and most public relations activities, such as paid advertising and leaflet campaigns, and local authority sponsorship of exhibitions and conferences, as well as assistance to others to issue publicity. The Code has no relevance to the methods which a local authority may uses to make its views known where these do not involve publicity in the sense of the 1986 Act.

(c) The Code does not affect the ability of local authorities to assist charities and voluntary organisations which need to issue publicity as part of their work, but it requires local authorities, in giving such assistance, to consider the principles on which the Code is based and to apply them accordingly.

(d) By virtue of Section 6(6) of the 1986 Act, nothing in the Code is to be construed as applying to any decision by a local authority in the discharge of their duties under the Local Government (Access to Information) Act 1985.

5.2.04 Code of Recommended Practice as published by the Secretary of State

Introduction

1. This Code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this Code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.

2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this Code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The Code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newssheets and maintenance of websites – including the hosting of material which is created by third parties.

3. Nothing in this Code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:

   • be lawful
   • be cost effective
   • be objective
   • be even-handed
   • be appropriate
   • have regard to equality and diversity
   • be issued with care during periods of heightened sensitivity

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.

6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.

7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.

8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.

9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.

11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.

12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.

13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.

14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.

16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.

17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.

18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.

20. Other than in the circumstances described in paragraph 34 of this Code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.

21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.

22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this Code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.

23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.

24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.

25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this Code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the government to take a particular view on any issue.

27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.

28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newssheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.

29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.

30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newssheets or similar publications published by the local authority, should do this on the front page of the publication.

Equality and diversity etc

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.

32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this Code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

5.3 Officer/Member Protocol

5.3.01 Introduction and principles

(a) The purpose of this protocol is to guide members and officers of the council in their relations to ensure the effective processing of the council's business.

(b) This protocol does not seek to be either prescriptive or comprehensive. It offers general guidance on some of the issues which most commonly arise. The approach which it adopts to these issues will serve as a guide to dealing with other circumstances.

(c) This protocol largely states existing good practice and convention. It seeks to promote greater clarity and certainty. If the protocol is followed it should ensure that Members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from members.

(d) The protocol reflects the principles underlying the respective Codes of Conduct which apply to elected members and officers as employees. The shared object of these Codes is to enhance and maintain the integrity (actual and perceived) of local government and the Codes, therefore, demand very high standards of personal and professional conduct by all.

(e) 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.

(f) This protocol should be read in conjunction with the Members Code of Conduct, the Council's Constitution and any guidance issued by the Standards Committee and/or Monitoring Officer.

5.3.01 Officers' role

(a) The role of Officers (for the purposes of this Code) is to:

i. Implement the policies set by members

ii. Ask for guidance on implementation of the policies set by members if they are unclear about any aspect of those policies

iii. Give professional advice to members

iv. Carry out their functions to the best of their ability and in the interests of the borough

v. Help all members/co-optees and all parts of the council equally.

5.3.02 Members' role

(a) The role of members (for the purposes of this Code) is to:

i. Develop and set policies which will then be implemented by the officers

ii. Monitor how those policies are being implemented.

iii. Provide guidance to the officers on how those policies are to be implemented either if members wish to do so or if officers request guidance.

iv. Represent the views of their ward constituents.

v. Consult with the communities they represent on the development of policy, community planning and other local initiatives.

vi. Consult with the Monitoring Officer and the Chief Finance Officer about vires, maladministration, financial impropriety and probity or where they have any doubt as to whether the particular decisions were, or are likely to be, contrary to the policy framework, or contrary to, or not wholly in accordance with the budget.

5.3.03 The relationship: general points

(a) Both members and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and form the council. Officers are responsible to the council. Their role is to give advice to members and the council.

(b) At the heart of the Code of Conduct, and this protocol, is the importance of mutual respect. Member/officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between members and officers should observe normal 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.

(c) Inappropriate relationships can be inferred from language or style. To protect both members and officers, officers will at committee and other public meetings address or refer to members as 'Councillor XX'. In these situations members should use post titles or Mr/Mrs/Ms YY. In other more private situations, first names can be used by both sides where circumstances clearly indicate that a level of informality is appropriate.

(d) 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. It is difficult for an officer to respond to such criticisms when made in public.

(e) If a member feels he/she has not been treated with proper respect, courtesy, or has any concern about the conduct or capability of an officer, and cannot resolve it through direct discussion with the officer, he/she should raise the matter with the respective Director/Assistant Director. He/she will then look into the facts and report back to the member. If the member(s) continues to feel concern, then he/she should report the facts to the Managing Director 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 for staff, which incorporate proper representation for the staff.

(f) An officer must not without good reason raise with a member matters relating to the conduct or capability of another officer or to the internal management of a service in a manner that is incompatible with the objectives of this protocol. Such concerns should be raised with line management, the Monitoring Officer, internal audit, or the Whistleblowing procedure as appropriate.

(g) Where an officer feels that he/she has not been properly treated with respect and courtesy by a member, he/she should raise the matter initially with his/her Director/Assistant Director or the Managing Director as appropriate, especially if they do not feel able to discuss it directly with the member concerned. In these circumstances the Director/Assistant Director or Managing Director will take appropriate action either by approaching the individual member and/or group leader or by referring the matter to the Monitoring Officer in the context of the Standards Committee considering the complaint.

5.3.04 Equalities

(a) Members and officers must comply with the council's Equal Opportunities Policy at all times in their dealings with each other. Members are required to promote equality under the Code of Conduct.

(b) The working relationship between members and officers must not be influenced by gender, sexual orientation, marital status, race, nationality, colour, religion, age or disability.

(c) For example, members and officers must not make sexual or racial remarks to each other, even if the remarks are meant as a "joke". Such behaviour can cause upset and offence and may leave the council open to legal action, including claims of unfair dismissal and discrimination.

5.3.05 Officer support to members

(a) Officers are responsible for day-to-day managerial and operational decisions within the council and will provide support to all members

(b) Certain statutory officers – the Managing Director, the Monitoring Officer and the Chief Finance Officer – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all members.

(c) The following key principles reflect the way in which the officers generally relate to members:

i. all officers are employed by, and accountable to the council as a whole;

ii. support from officers is needed for all the council’s functions including full Council, committees, individual members representing their communities etc;

iii. day-to-day managerial and operational decisions should remain the responsibility of the Managing Director and other officers;

iv. the council will seek to avoid potential conflicts of interest for officers arising from the separation of the policy committee and scrutiny role; and

v. all officers will be provided with training and development to help them support the various member roles effectively.

(d) Occasionally, 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.

(e) Officers within a service are accountable to their Director/Assistant Director and 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 manager.

5.3.06 The relationship: officer support to members and party groups

(a) Officers serve the council as a whole and not any political group, combination of groups or any individual member.

(b) Party groups are recognised in law 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. Senior officers may be requested 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.

(c) Officer support is likely to be in most demand from the party group which is in control of the council; however such support is available to all party groups. The following rules will apply:

i. 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;

ii. 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

iii. 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 when the matter in question is considered.

(d) 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 or employees of the council. Such persons are not bound by the Code 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.

(e) 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.

(f) Whilst any member may ask a relevant Director/Assistant Director or the Managing Director for written factual information about a service, such requests must be reasonable subject to Freedom of Information requirements.

(g) Requests will be met subject to any overriding legal considerations 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, he/she should raise the matter in the first place with the relevant Director/Assistant Director, and if still dissatisfied should raise the matter with the Managing Director who will discuss the issue with the relevant group leader(s).

(h) In relation to budget proposals:

i. the Administration shall be entitled to confidential 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

ii. the opposition groups shall also be entitled to confidential 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 or Council meetings, whichever is the earlier.

(i) It must not be assumed 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.

(j) Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Managing Director who will discuss them with the relevant group leader(s).

5.3.07 Support services to members and party groups

(a) The only basis on which the council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport etc.) to members is to assist them in discharging their public duties as elected members. Such support services should never be used for private purposes or in connection with party political activity other than the business of recognized political groups within the council.

5.3.08 Members as representatives on outside bodies

(a) Members are entitled to all reasonable assistance from officers to support them in their membership of outside bodies to which they have been appointed by the council. Such assistance will include the provision of information about the body prior to appointment and the availability of a named contact officer for each body for briefing purposes and to assist the member to report back to the council on the activities of that body.

5.3.9 Publicity and press releases

(a) The council's publicity arrangements are governed by the local Communications Strategy and The Code of Recommended Practice on Local Authority Publicity.

5.3.10 Member/officer dealings and correspondence

(a) Members have the right to deal with the person in the council best able to help with their enquiry. Members should normally only deal with the Managing Director and Directors/Assistant Directors. Other individual officers can be contacted about routine matters within their competence. Members must be aware of their position of influence and must not seek to abuse this, particularly with junior employees

(b) For example, the role of officers is to implement council policy. Members must never seek to persuade or bully officers to "bend the rules" in favour of them or anybody they are representing.

(c) Similarly members should normally only address correspondence to the Managing Director or the Director/Assistant Director most concerned with the subject, unless other arrangements have been made. They will normally reply personally.

(d) Correspondence between an individual member and an officer should not normally be copied by the officer to any other member, unless the member has himself or herself sent copies to other members in which case copies will normally be sent to those members as well.

(e) Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member.

5.3.11 Access to premises

(a) Members are normally welcome to visit any premises owned and used for the delivery of services by the council. Except when visiting as a member of the public, or in the course of their employment, they should normally agree arrangements for the visit with the local manager.

(b) If members wish to visit premises outside their ward as part of their council duties they should also inform the member for that ward and the relevant committee chairman. Where committee chairmen wish to visit premises outside their own ward, they should inform the member for that ward. Members, as members, may not visit premises for purposes unrelated to their duties as a member.

(c) They must comply with any health and safety, security or other workplace rules and regulations and not interfere with the provision of services to the public.

(d) Members have no special rights to enter premises owned by the council, but let to or otherwise legally occupied by other persons, nor any premises not owned or leased by the council.

5.3.12 Individual relationships – personal friendships

(a) The council recognises that there may be long-standing or close social or personal relationships between members and officers, which commenced before or after a member was elected to the council or before or after a person became employed by the council. In such circumstances, the member should disclose the relationship to his or her group leader and the Managing Director (who will inform the Monitoring Officer). The employee should disclose the relationship to his/her Director/Assistant Director. The Monitoring Officer will arrange for such relationship to be entered as declarations in the Register of Member and Officer Interests respectively.

(b) In order to maintain the integrity of the individuals concerned and of the council, it is important that such relationships are not hidden. To do so can lead to suspicion and mistrust. The group leaders and Directors/Assistant Directors will endeavour to ensure that neither the member nor the employee is placed in a position where such a relationship between the member and the employee might conflict (or be perceived to conflict) with the provisions of this protocol.

5.3.13 Chairmen Directors/Assistant Directors

(a) It is important that there should be an effective working relationship between the Leader of the Council, the chairmen of the council's committees and the council's senior management team who deal with their meetings. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question officers' ability to deal with other members and other party groups.

(b) Whilst the person presiding at a meeting and group spokesmen will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Director/Assistant Director is under a duty to submit a report on a particular matter. Similarly, a Director/Assistant Director will always be fully responsible for the contents of any report submitted in their name. The report will be amended only where the amendment is compatible with the professional judgment of the author of the report. Any issues arising between a chairman and an officer in this respect should be referred to the Managing Director for resolution as appropriate.

(c) In relation to action between meetings, the law only allows for decisions relating to the discharge of functions to be taken by a meeting of the council or a committee of the council or an officer. No decision can be taken by a chairman alone or indeed by any other single member. The urgent action procedure should be used in these situations.

(d) At some meetings a resolution may be passed which authorises named officers to take action between meetings in consultation with the chairman or other named members. The officer, rather than that member, is responsible for the action and the officer is accountable for it.

(e) Council officers are accountable to their Director/Assistant Director and whilst officers should always seek to assist a chairman (or indeed any member) they must not in so doing, go beyond the bounds of whatever authority they have been given by their Director/Assistant Director. Officers will seek advice from their Director/Assistant Director as necessary and appropriate, and members should not put staff in a position where there would be conflict between themselves and their manager.

5.3.14 Ceremonial events

(a) The Mayor or in his/her absence the Deputy Mayor, will be the appropriate person to lead borough council ceremonial events and events which are not specifically associated with a particular committee.

(b) The Leader of the Council or chairmen of committees or, where they are not available, the vice-chairmen of committees are the appropriate representatives for ceremonial events within the scope of their meeting's functions. If such persons are unavailable, another member may be nominated by the chairman or vice-chairman.

(c) Ward members should always be informed of, and, where possible, invited to, ceremonial events taking place within their own wards, as may county and parish members as appropriate. Publicity for such events is organised by the council's press office. Any member taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasion for party political advantage bearing in mind that the member is representing the council as a whole.

(f) Gifts received in the name of the council by the Mayor or the Deputy Mayor or another member undertaking an official engagement or otherwise on council business (unless of a personal or insignificant nature) are the property of the council and must be handed to the council. Gifts of a personal or insignificant nature should be treated in accordance with the Code of Conduct.

5.3.15 Conclusion

(a) Mutual understanding, openness on sensitive issues and basic respect are the greatest safeguard of the integrity of the council, its members and officers.

(b) Copies of the protocol will be issued to all members as part of the Constitution upon election. Questions of interpretation of this protocol will be determined by the Monitoring Officer.

5.4 Employee Code of Conduct

5.4.1 Introduction

(a) The public is entitled to expect the highest standards of conduct from all employees who work for local government. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist local authorities and their employees in their day-to-day work. The Code is produced in the light of the challenges that employees face in the new and more commercially orientated environment. This includes the introduction and extension of, market testing, changes in the management of the housing services, care in the community, management buyouts, etc.

5.4.2 Status of the Code

(b) The Code is voluntary for local authorities to adopt but sets out the minimum standards that should apply. The aim of the Code is to lay down guidelines for local government employees which will help maintain and improve standards and protect employees from misunderstanding or criticism.

(c) The Code has been approved by the local council associations in England and Wales and the Local Government Management Board (LGMB) in consultation with a range of other relevant bodies.

5.4.3 Who the Code is aimed at

(a) The Code applies to all local government employees in England and Wales.

(b) Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than it will others. The Code is intended to cover all employees under a contract of employment within local government, including office holders such as registrars. Activities carried out by employees acting as members of companies or voluntary organisations should be subject to the minimum standards within this Code.

5.4.4 Standards

(a) Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service.

(b) Employees must report to the appropriate manager any impropriety or breach of procedure.

5.4.5 Disclosure of information

(a) The law requires that certain types of information must be available to councillors, auditors, government departments, service users and the public. The council itself may decide to be open about other types of information. The council has procedures in place to determine Freedom of Information requests.

(b) Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the council should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law.

5.4.6 Political neutrality

(a) Employees service the council as a whole. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.

(b) Subject to the council's conventions, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

(c) Employees, whether or not politically restricted, must follow every lawful expressed policy of the council and must not allow their own personal or political opinions to interfere with their work.

(d) Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in this section

5.4.7 Relationships

(a) Councillors

Employees are responsible to the council through its Directors/Assistant Directors. For some, their role is to give advice to councillors and Directors/Assistant Directors and all are there to carry out the council's work. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

(b) The local community and service users

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the council.

(c) Contractors

All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate 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.

Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to the appropriate manager.

5.4.8 Appointment and other employment matters

(a) Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.

(b) Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

5.4.9 Outside commitments

(a) Some employees have conditions of service which require them to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the council's interests.

(b) Any intellectual property created during employment with the council will remain the property of the council unless an employee makes a specific request for the ownership of the materials. In such a case any request will be considered by the council on an individual basis.

5.4.10 Personal interests

(a) Employees must declare to an appropriate manager any non-financial interests that they consider could bring about conflict with the council's interests.

(b) Employees must declare to an appropriate manager any financial interests which could conflict with the council's interests.

(c) Employees should declare to an appropriate manager membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership conduct.

5.4.11 Equality issues

(a) All local government employees should ensure that policies relating to equality issues as agreed by the council are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

5.4.12 Separation of roles during tendering

(a) Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

(b) Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

(c) Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

(d) Employees contemplating a management buyout should, as soon as they have formed a definite intent, inform the appropriate manager and withdraw from the contract awarding processes.

(e) Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

5.4.13 Corruption

(a) Employees must be aware that it is a serious criminal offence for them corruptly to 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.

5.4.14 Use of financial resources

(a) Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the council.

5.4.15 Hospitality

(a) Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the local council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the council should be seen to be represented. They should be properly authorised and recorded.

(b) When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the council.

(c) Employees should not accept significant personal gifts from contractors and outside suppliers, although the council allows employees to keep insignificant items of token value such as pens, diaries, etc.

(d) When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the council may be taking affecting those providing the hospitality.

(e) Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the council gives consent in advance and where the council is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees should ensure that authorities meet the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

5.4.16 Sponsorship - giving and receiving

(a) Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basis conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

(b) Where the council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative of that employee must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

5.5 Monitoring Officer Protocol

5.5.1 Introduction

(a) The Monitoring Officer is a statutory designation made under Section 5 of the Local Government and Housing Act 1989. That Act, and the Local Government Act 2000 (as amended), makes the appointed officer responsible for performing a number of functions in respect of the council.

(b) The duties placed upon the Monitoring Officer in exercising these statutory functions must be performed by him or her personally. Where the Monitoring Officer is unable to act owing to absence or illness or there arises a conflict of interest in the opinion of the monitoring officer, those duties are to be performed personally during that period by a member of the Monitoring Officer's staff that he or she has for the time being nominated as his or her deputy. For the purposes of this protocol, the term 'Monitoring Officer' thus includes those persons when carrying out those personal duties.

(c) To enable these functions to be carried out the council is also placed under a number of duties. These include a duty to provide the Monitoring Officer with such staff, accommodation and other resources as are, in the Monitoring Officer's opinion, sufficient to allow him/her to perform those duties.

(d) The object of this protocol is therefore to provide some general information on how those statutory duties upon the Monitoring Officer and the council will be discharged at this council.

(e) The council has also placed 'proper officer' and other obligations on the Monitoring Officer, through the council's Constitution and elsewhere, but these are delegated functions of the authority rather than personal duties under statute. Whilst the exercise of these functions will equally require good working arrangements, they may differ slightly from time to time and, for the sake of commonality and clarity, they are not directly addressed here.

5.5.2 Functions

The principal functions of the Monitoring Officer are set out at Article 2.10.03 of this Constitution ("Functions of the Monitoring Officer"). More particularly, those functions shall include:

(a) to report to the Council in any case where he/she is of the opinion that any decision or proposal of the authority in respect of any 'reportable incident' (being any matter which, in his/her opinion, has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code under sections 5 of the Local Government and Housing Act 1989);

(b) to investigate any matter which he/she has reason to believe may constitute, or where he/she has received an allegation that a matter may

constitute, a reportable incident or a failure to observe the authority's Code of Conduct for Members;

(c) to act as the principal adviser to the authority's Standards Committee;

(d) to maintain the Register of Members' Interests;

(e) to act as the proper officer for the preparation, publication and retention of records of decisions taken by or on behalf of the Council;

(f) responsibility for Complaints, Local Commissioner and whistle-blowing functions of the authority;

(g) appointment as Proper Officer for the Data Protection Act 1998 and the Freedom of Information Act 2000;

(h) to consult regularly with the Managing Director, the Chief Finance Officer and the Chief Internal Auditor to identify areas where the probity of the authority can be improved or better protected, and to take appropriate actions;

(i) a power to investigate any application for a dispensation and to report and recommend to the Standards Committee;

(j) to secure that members and officers of the authority are fully aware of their obligations in relation to probity;

(k) to report to the authority on the resources which he/she requires for the discharge of his functions;

(l) to report regularly to the Standards Committee on the performance of his/her functions and to make any recommendations which would better enable those functions to be performed;

(m) to undertake all statutory Monitoring Officer functions in respect of parish and town councils within the area of the authority and to provide support and advice to such parish and town councils in maintaining probity, including:

(i) advice on the requirement for them to adopt a Code of Conduct;

(ii) advice on the requirement upon members to sign an undertaking to observe their authority's Code within 28 days of adoption by their authority or within 28 days of election to the council;

(iii) advice on the requirement for members to notify the Monitoring Officer of any disclosable pecuniary interests and of any changes in such interests, that such declarations will form part of a public register, means of gaining access to that register, and of any arrangements to ensure that parish and town council clerks are kept informed of any such declarations;

(iv) advice on the need to apply for any dispensation and of the arrangements for receiving and determining any such applications, and for maintaining a register of such dispensations and advising the applicant and the council of any dispensations which are granted;

(v) advice on any provisions under which individual complaints of misconduct by members may be referred or delegated to the Monitoring Officer and the Standards Committee for investigation and determination, and any arrangements agreed by the Monitoring Officer and the Standards Committee for dealing with such complaints; and

(vi) advice to individual members on enquiries as to their obligations to declare or notify particular interests, on the need to apply for a dispensation, and on any consequent restrictions on the member's participation in consideration of the matter

5.5.3 Resources

For the purpose of carrying out these functions, the Monitoring Officer shall be provided with the following resources:

(a) the right of access to all documents and information held by or on behalf of the authority, including documents and information held by any officer or member of the authority. For the purpose of clarification, this right does not extend to documents and information held by or on behalf of any political party represented on the council;

(b) the right of access to any meetings of officers or members (or both) of the authority, whether or not such meetings include any other persons. For the purpose of clarification, this right does not extend to any meetings held by or on behalf of any political party represented on the council;

(c) the right to require any officer or member of the authority, or any contractor of the authority, to provide an explanation of any matter under investigation;

(d) a right to report to the Council, to the Standards Committee, and to all other committees of the council, including a right to present a written report and to attend and advise verbally;

(e) the right to require the assistance of any officer of the authority in carrying out an investigation and to delegate to that officer any of the powers of the post of Monitoring Officer;

(f) a power to agree a local resolution to any complaint of maladministration or of breach of the authority's Code, in consultation with the Managing Director and the Chief Finance Officer, including power to agree a compensation payment of up to £1,000 in any one case, and subject to subsequent report to the Standards Committee;

(g) the right of access to the Head of Paid Service and to the Chief Finance Officer;

(h) the consent of the authority to disclosure of information and documents to the internal or external auditors, even where such disclosure would otherwise be in breach of the Monitoring Officer's duty of confidentiality to the authority;

(i) the right, after consultation with the Head of Paid Service and the Chief Finance Officer, to notify the police and other regulatory agencies of his/her concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions;

(j) the right to obtain at the authority's expense legal advice, either internally or from an independent external solicitor or barrister, on any matter which he/she believes may be a reportable incident, and sufficient financial resource to enable him/her to do so.

5.5.4 Discharge of functions

(a) It is recognised that the Monitoring Officer will be most effective if he/she is able to advise on any issue at an early stage of policy formulation or implementation. Accordingly, officers and members of the authority should routinely inform and consult the Monitoring Officer in respect of new policy proposals and action programmes.

(b) Members and officers should, in particular, advise the Monitoring Officer of any issue(s) that may become of concern to the council, including, especially issues around legal powers to do something or not, ethical standards, probity, policy, procedural or other constitutional issues that are likely to (or do) arise.

(c) The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality, etc, or by identifying alternative and legitimate means of achieving the objective of the proposal. Accordingly, officers and members of the authority may consult the Monitoring Officer in confidence in respect of any proposal, and the Monitoring Officer will only need to make a public report on the matter if the proposal were to be a potential reportable incident and the officer or member subsequently took any action to progress that proposal despite being advised to the contrary by the Monitoring Officer;

(d) Where the Monitoring Officer receives a complaint of a potential reportable incident, he/she shall in appropriate cases seek to resolve the matter amicably, by securing that any illegality, failure of process or breach of code is rectified, that the complainant is informed of the rectification, with or without a compensation payment and/or apology. However, it is recognised that the Monitoring Officer may determine that the matter is of such import that a statutory report is the only appropriate response;

(e) In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potential reportable incident and to ensure the satisfactory resolution of the issue;

(f) In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer shall be entitled to add his/her written advice to the report of any other officer of the authority;

(g) Notwithstanding the above, the Monitoring Officer retains the right to make a statutory report where, after consultation with the Managing Director and the Chief Finance Officer, he/she is of the opinion that such is necessary in order to respond properly to a reportable incident;

(h) Where the Monitoring Officer becomes aware of facts which, if substantiated, would indicate a failure by one or more members of the authority to observe the Code of Conduct for Members, the Monitoring Officer shall conduct, or arrange for the conduct of, an investigation

5.5.5 Conflicts

(a) Where the Monitoring Officer is in receipt of a complaint or is aware of a potential reportable event relating to a matter upon which he/she has previously advised the authority, he/she shall consult the Managing Director, who may then either refer the matter to a Deputy Monitoring Officer for investigation and report back to the Managing Director or request a neighbouring authority to make their Monitoring Officer available to the authority to investigate the matter and report to the Managing Director and/or the authority as appropriate.

5.6 Local Protocol on Working Parties and Advisory Groups

5.6.01 Introduction

(a) A working party consists of a small group of members (but with officers in attendance at meetings to provide support and advice) with the remit to consider policies and specific matters. They may be a standing working party or time-limited with a particular role in relation to projects which need to be completed within a specified time period.

(b) A working party conducts its business on an informal basis. It does not have any delegated powers and can only make recommendations, usually to the body from which it was formed, or to other bodies, or to an officer. A working party may for example decide a course of action, which it then requests an officer to carry out, possibly with the use of his delegated authority. The exercise of that delegation is a matter for the officer to determine.

(c) The term “working parties” or “advisory group” refers to all informal bodies appointed by the council and its committees.

5.6.02 Appointment of working parties and advisory groups

(a) The Council, its committees and, by agreement, the Managing Director may establish a working party or advisory group. In establishing working parties or advisory groups, the appointing body or person will determine the terms of reference (having regard to the terms of reference of any other working parties/advisory groups), initial membership and (if appropriate) duration of the working party/advisory group.

(b) In exercising the powers under paragraph 5.6.02(a) above the appointing body or individual shall seek to ensure that members’ and officers time and the financial resources of the council are used in such way as he/she/it considers to be is in the best interest of the council and local people.

(c) All working parties/advisory groups will be appointed in accordance with the principles of political balance so far as possible.

(d) Working parties and advisory groups are expected to operate by consensus. In the absence of consensus, the matters in hand should be referred to a committee for determination.

5.6.03 Agendas, reports and minutes, and methods of working

(a) Sometimes working parties/advisory groups will act in the manner of "consultative panels" receiving reports from officers on potentially sensitive or controversial matters on which they will be expected to provide guidance to the decision-maker. On other occasions they will be tasked with investigating complex policy issues and will be expected to formulate recommendations for Council and committees.

(b) Working parties/advisory groups investigating complex policy issues or overview issues will undertake their work in accordance with the principles of overview and scrutiny. Scrutiny procedure rules will apply in these instances. The working party/advisory group will be expected to conduct its business in accordance with a project plan, prepared and agreed by the working party, in order to ensure that business is concluded in an efficient and effective manner. In these instances the recommendations of the working party will be considered by a scrutiny committee or the appointing committee before they are forwarded to the appropriate decision-making body.

(c) Access to Information time-limits and constraints do not apply, but as a matter of good practice, an agenda for a working party/advisory group meeting will normally be sent out 5 days prior to a meeting, setting out its business.

(d) Where a working party/advisory group is undertaking consultative work, the relevant officer (or his/her nominated representative) will provide the principal support to the working party/advisory group (in the form of advice on the subject concerned) and will be responsible for arranging for notes of working party meetings to be produced and circulated to members of the working party/advisory group. He/she will also be responsible for drafting reports on behalf of the working party/advisory group.

(e) A working party/advisory group may consider appointing external representatives e.g. stakeholders or business representatives and members of public to assist with its work. The role of such representatives would be to act as advisers to the working party/advisory group using their particular expertise/experience. External representatives attending do so in a voluntary capacity and will not normally receive any remuneration.

(f) Any working party/advisory group may, at any time, review its decision to invite external representatives to assist with its work and may add or remove external representatives as appropriate.

5.6.04 Access to information

(a) Agendas will be circulated to all members. Meetings and agenda papers will be regarded as confidential within the council. However, information may have to be disclosed under Freedom of Information.

5.6.05 Interests of members and officers

(a) Members are acting in an "official capacity" when attending meetings of working parties/advisory groups so the Code of Conduct applies, but they are not required to declare personal/prejudicial interests at such meetings.

5.6.06 Procedures at meetings of working parties/advisory groups

(a) **Quorum**

i. A working party/advisory group must have a quorum of at least three elected members.

(b) **Election of chairman**

i. In the case of the chairman being absent a chairman shall be elected for that meeting. The chairman will normally be an elected member, but it may be appropriate to elect an external representative as a working party/advisory group's chairman depending on the type of work.

5.6.07 Participation by the public

(a) Members of the public may be invited to make a contribution at a meeting of a working party/advisory group if permitted to attend. The chairman has the discretion to determine whether he/she allows a member of the public or the press to speak at a meeting of a working party/advisory group.

5.6.08 Formulation of recommendations

(a) A recommendation arising from the deliberations of a working party/advisory group will normally be reached by a consensus. It may, however, be appropriate to determine a way forward by taking a vote on a proposal. In such circumstances, the recommendations before the working party/advisory group shall be determined in the normal way, by a simple majority of those members present in the room at the time the proposal was put. The chairman will have a second or casting vote.

5.7 Local Code of Corporate Governance (Framework)

(Adopted October 2008)

5.7.01 Introduction

(a) Governance is about how local government bodies ensure that they are doing the right things, in the right way, for the right people, in a timely, inclusive, open, and honest and accountable manner. It comprises the systems and processes, and cultures and values, by which local government bodies are directed and controlled and through which they account to, engage with and, where appropriate, lead their communities.

(b) Good governance enables us to pursue our vision and corporate objectives effectively as well as underpinning these with mechanisms for the control and management of risk. We aim to meet the standards of the best and ensure that our governance arrangements are sound and also seen to be sound by our citizens.

(c) It must permeate every level of the organisation. Governance must be owned by all stakeholders, including senior management and members, thus forming the intrinsic core of the council. It should remain embedded in the culture of the council and applied within a transparent framework of legislative requirements, governance principles and management processes.

(d) Good governance leads to:

i. good management,

ii. good performance,

iii. good stewardship of public money,

iv. good public engagement and,

v. ultimately, good outcomes for our citizens and service users.

(e) Each local council operates through a governance framework. It is an interrelated system that brings together an underlying set of legislative requirements, governance principles and management processes.

(f) The Chartered Institute of Public Finance and Accountancy (CIPFA) and the Society of Local Authority Chief Executives (SOLACE) framework 'Delivering Good Governance in Local Government' (2007) ("the framework") sets out best practice for developing and maintaining a local code of governance, and for discharging accountability for the proper

conduct of public business through the publication of an annual governance statement that will make the adopted practice open and explicit.

(g) This Code of Corporate Governance takes into account the guidance issued by CIPFA/SOLACE and provides the structure and outline of the council's approach to corporate governance.

5.7.02 Delivering the principles of good governance

(a) The framework identifies *four* key areas of local council work, which provide a focus for corporate governance.

i. ***To provide leadership for and with the community and to engage in effective partnerships.***

Local authorities are able to provide leadership to their communities through their ability to act in an advocacy role and to promote the economic, social and environmental well-being of their area. Partnerships are a key component of the pattern of public service provision and local authorities have a key role to play in making partnerships work effectively in their areas.

ii. ***To ensure the delivery of high quality local services whether directly or in partnership or by commissioning.***

Local authorities are responsible for ensuring the delivery of high quality services to their communities. Some local authorities provide most of their services on an in-house basis. Others provide some services in-house and employ private sector contractors to provide others. They also enter into contracts with voluntary bodies and enter into shared or agency arrangements with other local authorities.

iii. ***To perform a stewardship role which protects the interests of local people and makes best use of resources.***

Each local council is accountable to tax payers for its stewardship and use of resources. It should provide excellent value for money and make the best use of resources available to it as well as protecting the interests of local people.

iv. ***To develop local democracy and citizenship.***

Local council members are democratically accountable to their local area and therefore have a key role to play in working with others to build a strong sense of community and in encouraging individual citizens to play a full and constructive part in the lives and development of their communities.

(b) The framework goes on to identify six core principles to consider in order to ensure that a council's work is carried out within a robust corporate governance framework.

i. Focusing on the purpose of the council and on outcomes for the community including citizens and service users and creating and implementing a vision for the local area.

ii. Members and officers working together to achieve a common purpose with clearly defined functions and roles.

iii. Promoting the values of the council and demonstrating the values of good governance through upholding high standards of conduct and behaviour.

iv. Taking informed and transparent decisions which are subject to effective scrutiny and managing risk.

v. Developing the capacity and capability of members and officers to be effective.

vi. Engaging with local people and other stakeholders to ensure robust local public accountability.

(c) The framework lists *supporting principles and guidance* on how a local code of corporate governance can demonstrate that it is applying the principles to its work.

5.7.03 Corporate Governance Framework

Key Area of Work

- To provide leadership for and with the community and to engage in effective partnerships
- To ensure the delivery of high quality local services whether directly or in partnership or by commissioning
- To perform a stewardship role which protects the interests of local people and makes best use of resources
- To develop local democracy and citizenship

This work is carried out within the framework by:

- Focusing on the purpose of the council and on outcomes for the community including citizens and service users and creating and implementing a vision for the local area
- Members and officers working together to achieve a common purpose with clearly defined functions and roles
- Promoting the values of the council and demonstrating the values of good governance through upholding high standards of conduct and behaviour
- Taking informed and transparent decisions which are subject to effective scrutiny and managing risk
- Developing the capacity and capability of members and officers to be effective
- Engaging with local people and other stakeholders to ensure robust local public accountability

We demonstrate this through the Local Code of Corporate Governance

5.7.04 The Council's Local Code of Corporate Governance

(a) The council is committed to the principles of good corporate governance and wishes to confirm its ongoing commitment and intentions through the development, adoption and continued maintenance of a Local Code of Corporate Governance. This document therefore sets out and describes the council's commitment to corporate governance. It identifies the arrangements that have been made and will continue to be made, to ensure its effective implementation and application in all aspects of the council's work.

(b) For the purpose of this Local Code, the council has accepted the definition of corporate governance as follows:

"Ensuring we are doing the right things in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner"[6]

(c) The council recognises that effective local government relies upon the public having a level of confidence in both elected members and officers of their local council.

(d) Setting high standards of self-governance provides a clear and demonstrable lead to both our existing and potential partners.

(e) Each year we formally self-evaluate our current governance arrangements and produce our Annual Governance Statement which includes our improvement plan. In order to in order to review our current arrangements, we will:

i. Consider the extent to which we comply with the principles and requirements of good governance set out in this local code;

ii. Identify systems, processes and documentation that provide evidence of compliance;

iii. Identify the individuals and committees responsible for monitoring and reviewing the systems, processes and documentation identified;

iv. Ensure management and reporting arrangements are in place to monitor governance effectiveness;

v. Identify the issues that have not been addressed adequately and consider how they should be addressed;

vi. Identify the individuals who will be responsible for undertaking the actions required and plan accordingly;

vii. Ensure risk management arrangements are in place and are operating effectively; and

viii. Ensure systems of control are working effectively.

[6] Definition contained in *Delivering Good Governance In Local Government: Framework*, CIPFA/SOLACE, 2007

(f) This statement will be signed by the Leader of the Council, the chairman of the Audit Committee and the Managing Director, and will be published in the council's Statement of Accounts and its Corporate Business Plan.

(g) Our assurance framework ensures we have continuous governance arrangements in place. Assurance is obtained from a number of sources, for example, independent external inspection agencies, internal review functions and effective business management systems like performance and risk management. Maintenance and development of our assurance framework is overseen by the Audit Committee.

(h) This new Code takes each of the dimensions identified in the framework in turn and draws on the guidance to the framework issued by CIPFA/SOLACE on how the principles of corporate governance should be reflected in a Local Code. It then sets out what the council commits itself to do by this Code and how it will do it. We will use the Code to have good corporate governance.

(i) Plans for improvement will be monitored and reported to the Audit Committee. The local governance code will be updated each year to reflect changed circumstances.

5.8 MEMBERS' PLANNING CODE

1. Background

1.1. This Code follows the Model Members' Planning Code of Good Practice. The Model Code was originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the members' conduct or conflicts of interests. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

1.2. The drafting of the model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors now Lawyers in Local Government (LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

1.3. This second version, published 2014, takes into account the update to the Seven Principles of Public Life (the 'Nolan principles') and commentary from the Committee on standards in public life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government 2013.

1.4. For further reading please refer to 'Probity in Planning' issued by the Local Government Association.

2. Introduction

2.1. **The aim of this Code**: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

2.2. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.

2.3. **When the Code applies**: this code applies to members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the council in exercising the functions of the planning authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

2.4. If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place**.**

3. Relationship to the Members' Code of Conduct

- Do apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on interest, Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- Do then apply the rules in this Members' Planning Code, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:
  - the council at risk of proceedings on the legality of the related decision or maladministration; and
  - yourself at risk of being named in a report made to the council or, if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

4. Development proposals and personal interests

- **Do** disclose the existence and nature of your interest as required by your authority's Member Code of Conduct.
- **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that

  "*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends.* ***They must declare and resolve any interests and relationships***".
- It is therefore advisable that you:
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
  - **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
  - **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest and note that:
    - you should send the notification no later than submission of that application where you can;
    - the proposal will always be reported to the committee as a main item and not dealt with by officers under delegated powers;
    - you must not get involved in the processing of the application; and
    - it is advisable that you employ an agent to act on your behalf in respect of

the proposal when dealing with officers and in public speaking at committee.

5. Fettering discretion in the planning process
(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind that, when you come to make the decision, you
  - are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a member, in giving fair consideration to points raised;
  - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:
  - the proposal does not substantially effect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the committee and you hear all of the relevant information; and
  - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the committee.
- **Do** explain that you do not intend to speak and vote as a member of the committee because you will be perceived as having judged (or you reserve the right to judge)

the matter elsewhere, so that this may be recorded in the minutes. (*Use the disclosure form provided for disclosing interests.)*

- **Do** take the opportunity to exercise your separate speaking rights as a ward**/l**ocal member **(*where* *this is granted by the authority's standing orders or by the consent from the chairman and committee*)** where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or chairman that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the seating area for members of the committee for the duration of that item; and
  - ensure that your actions are recorded.

6. Contact with applicants, developers and objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the principal planning officer to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the committee.
- **Do** otherwise:
  - follow the authority's rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the principal planning officer any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file; a proforma can be supplied to you for this purpose.

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other members would intend to vote at a committee.

7. Lobbying of councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the committee's decision making, to make any sort of promise to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the principal planning officer at the earliest opportunity.
- **Do** promptly refer to the principal planning officer any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion of others in your role as a ward member.

8. Lobbying by councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the committee when it comes to make its decision.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken

- **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political group meetings should never dictate how members should vote on a planning issue.

9. Site visits/inspections

- **Do** comply with the council's rules of procedure for the Site Viewing Group.
- **Do** try to attend site visits organised by the council where possible.
- **Don't** request a site visit unless you can justify the value of a viewing with reference to material planning considerations, such as where:
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the committee any information gained from the site visit that you feel would benefit all members of the committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the ward member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit**,** even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the principal planning officer about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

10. Public speaking at meetings

- **Don't** allow members of the public to communicate with you during the committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the chairman, as this may give the appearance of bias.
- **Do** ensure that you comply with the council's procedures in respect of public speaking.

11. Officers

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

12. Decision making

- **Do** ensure that, if you request a proposal to go before the committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for committee's decision to defer any proposal and that this is in accordance with the council's protocol on deferrals.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the **planning reasons** leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

13. Training

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

referred to above and thus assist you in carrying out your role properly and effectively.

- **Do** participate in the annual review of a sample of planning decisions to ensure that members` judgements have been based on proper planning considerations.

5.9 MEMBERS' LICENSING CODE OF GOOD PRACTICE

1. BACKGROUND

Changes in legislation with the enactment of the Licensing Act 2003 and Gambling Act 2005 have transferred substantial additional responsibilities for licensing to local government and established the council as the licensing authority for the regulation of various forms of licensable activities. Those particular responsibilities are undertaken by the statutory Licensing Committee (Licensing Act 2003) and its sub-committees, whilst the council's other licensing and related regulatory responsibilities are undertaken by the Licensing Committee (Regulatory Matters) and its sub-committees. Whichever the forum, members are acting in a quasi-judicial capacity in carrying out the council's licensing functions.

This Code of Good Practice is designed to apply the principles contained in the council's adopted Standards regime and to support and maintain high ethical standards in local government. It applies to the actions of the council both in its statutory capacity as the licensing authority and its non-executive functions that are the responsibility of the Licensing Committees. For the purposes of this Code, the council is collectively described as the licensing authority.

This Code has regard to both the Members Planning Code of Good Practice previously adopted by the council and LACORS' guidance on the role of elected members in relation to Licensing Committee hearings under the Licensing Act 2003.

2. INTRODUCTION

The aim of the Code is to ensure that in the operation of the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of licensing is to regulate certain activities in the public interest and to promote the licensing objectives defined in the legislation. In addition, the authority must have regard to statutory guidance issued by the Secretary of State and the Gambling Commission.

Your role as a member of the licensing authority is to make decisions openly, impartially, with sound judgement and for justifiable reasons.

This Code of Good Practice also applies to members at all times when involving themselves in the licensing process. It applies equally to licensing enforcement and licensing policy issues as it does to licensing applications. This includes taking part in decision-making meetings of the licensing authority and when involved in less formal occasions, such as meetings with officers or the public and consultative meetings.

References to officers in this Code of Good Practice relate to employees of the Council.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his/her staff, preferably well before any meeting takes place.

3. Relationship to the Members' Code of Conduct

Do apply the rules in the Members' Code of Conduct first: these must always be complied with.

Do then apply the rules in this Licensing Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct (as amended) for the purposes of dealing with all licensing matters. If you do not abide by this Code of Good Practice, you may put:

i. the licensing authority at risk of proceedings as to the legality or maladministration of the related decision; and

ii. yourself at risk of either being named in an Ombudsman's report made to the Corporate Governance Panel or Council or,

iii. if the failure is also likely to be a breach of the Code of Conduct, a complaint to the Standards Committee.

4. Licensing proposals and interests under the Members' Code

- **Personal interests**

The first step in considering whether or not you have a relevant interest in a matter is to consider 'personal interests'. There are two types of personal interest:

1. an interest that you must register; and

2. an interest that is not on your register but where the well-being or financial position of you, members of your family or people with whom you have a close association is likely to be affected by the business of your authority more than it would affect the majority of inhabitants of the word or electoral division affected by the decision.

Your obligation to disclose a personal interest only applies when you are aware or ought to be aware of its existence.

Your interest in a licensing matter may take a variety of forms. You may be a member of an organisation or body that is applying for a licence or is carrying out a licensable activity. You may be an employee of a responsible authority defined in the legislation, or you may be an interested party because you live or have business premises in the vicinity of an application site or licensed premises.

You may be a member of a lobby group or campaign. You may be the applicant for a licence or the provider of a licensable activity yourself or a member of a registered club that is doing so. You may be a supplier of goods to an applicant or an existing licensee or club or you may act in some capacity on their behalf. You may also be an existing licensee or a member of a club whose business may be affected if a licence or club premises certificate is granted for a similar activity elsewhere.

- **Exemptions**

A personal interest does not need to be declared if it arises solely from membership of or a position of control or management in:

1. Any other body to which you were appointed or nominated by the authority; or

2. Any other body exercising functions of a public nature (e.g. another local authority).

However, you must exercise your discretion in deciding whether or not a personal interest exists and where:

i. you have been **significantly** involved in the preparation, submission or advocacy of a licensing proposal or in an activity that has been licensed on behalf of such a body; or

ii. you are a trustee or company director of the body submitting the proposal and were appointed by the Council

It is considered that a personal and prejudicial interest may exist and should be declared as such.

- **Prejudicial interests**

A personal interest will also be a prejudicial interest if **all** of the following conditions are met:

1. the matter affects your financial interest or relates to a licensing or regulatory matter; and

2. a member of the public who knows the relevant facts would reasonably think that your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

    - This means that your interest could be perceived as likely to harm or impair your ability to judge public interest

    - The mere existence of local knowledge or connections within the local community will not normally be significant

    - The nature of the matter is important including whether a large number of people are equally affected or you or a smaller group are particularly affected.

Where a prejudicial interest exists, the Code of Conduct does not provide you with a general right to speak at a meeting unless members of the public are allowed to make representations, give evidence or answer questions about the matter.

- The Code of Conduct aims to provide members with the same rights as ordinary members of the public despite having a prejudicial interest; however

- Your rights are limited in that you must leave immediately after you have made your representations, given evidence or answered questions and before any debate starts; and

- Even if members of the public are allowed to remain and observe and/or vote on a matter you are not allowed to do so; and

- If the meeting decides that you should finish speaking even if you haven't you must comply.

Any failure to comply with the specified obligations may be viewed as an attempt to improperly influence the meeting.

- **Whatever your interest:**

Do consider whether your interest falls within the exemptions.

Do attend meetings and vote on matters without making a declaration of interest if it falls within the exemption.

Do disclose the existence and nature of a non-exempt personal interest before the matter is discussed or as soon as it becomes apparent to you. **Do** then act accordingly.

Do declare an exempt personal interest if you wish to speak on the subject matter of the hearing.

Do not fail to disclose an interest on the basis that it is registered. The duty to disclose applies regardless.

Do remain in the meeting, speak and/or vote on the matter as appropriate where you have a personal interest but not a prejudicial interest.

- **Where your interest is personal and prejudicial:**

Do disclose the interest at the earliest opportunity i.e. the outset of the meeting or as soon as you become aware of it thereafter.

Where ordinary members of the public have no right to speak at the meeting:

Do withdraw immediately from the room or chamber where a meeting is being held for the duration of any discussion and/or voting in the matter.

Don't participate or give the appearance of trying to participate in the making of any decision on the matter by the Licensing Authority.

Don't represent an applicant or responsible authority at a licensing sub-committee hearing or applications sub-group meeting.

Don't try to represent an interested party if you have played an active role in supporting or opposing an application for a licence. Ask another member to do so in your place.

Don't get involved in the processing of the application or the review of a licence or certificate that has already been issued.

Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

Do notify the Monitoring Officer in writing of your own interest and note that:

i. notification to the Monitoring Officer should be made no later than submission of the application; and

ii. it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers.

Do make written representations in your private capacity but ensure that the existence and nature of the personal interest is disclosed. Any such representations should be addressed to Officers rather than members of the authority.

Do arrange for another member of your authority to represent the views of your constituents.

Where ordinary members of the public have a right to speak at the meeting:

Do attend the meeting and make representations, give evidence or answer questions about a matter.

Do immediately withdraw from the room or Chamber immediately after you have finished.

Don't attempt to continue speaking or remain in the room or Chamber when the meeting decides that you have finished (if that is earlier than you consider)

Do not vote on the matter.

Do not remain in the public gallery to observe the vote on the matter.

Do not seek to improperly influence the decision.

5. Fettering discretion in the licensing process

Don't fetter your discretion and therefore your ability to participate in licensing decision-making by making up your mind, or clearly appearing to have made up your mind as to how you will vote on any licensing matter prior to its formal consideration at a hearing or meeting of the licensing authority and hearing the representations and evidence on both sides. Fettering your discretion in this way and then taking part in the decision will put the licensing authority at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for a proposal. (This is more than a matter of membership of both the proposing and licensing determination bodies, but because through your significant personal involvement in preparing or advocating the proposal you will be, or could be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)

Don't fetter your discretion by failing to declare a personal and/or prejudicial interest.

Don't sit as a member of a licensing sub-committee or applications sub-group, if the applicant lives within or the premises are situated in the ward that you represent, or if an application is being made to review a licence or certificate held by a resident or premises in your ward.

Don't sit as a member of a licensing sub-committee or applications sub group where you have fettered your discretion. Because of the limited size of licensing subcommittees and applications sub-groups, you should advise officers as soon as it becomes apparent to you that you have fettered your discretion and certainly before the meeting commences to enable an alternative sub committee to be convened. You do not have to

withdraw from the room where the meeting is taking place, but it would be preferable for you to do so.

Do take the opportunity (if you are not sitting on the licensing subcommittee or applications sub group) to exercise your rights as a member to speak on behalf of an applicant or interested person even if you have represented your views or those of others before the meeting and fettered your discretion.

6. Contact with applicants and objectors

Do refer those who approach you for licensing, procedural or technical advice to officers.

Don't attend any meeting with applicants or interested parties if you are a member of a sub-committee or sub-group. Pre-application discussions, if held for clarification purpose will involve officers only who will ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the sub-committee or application sub-group.

Do otherwise meet with an applicant or interested party if you are considering representing their interests or speaking on their behalf at a hearing of a sub-committee or meeting of an applications sub-group of which you are not a member.

7. Lobbying of councillors

Do explain, if you are a member of a sub-committee or sub-group, to those who may be attempting to lobby you that whilst you can listen to what is said, you cannot form or express a definitive opinion without first considering all of the relevant facts. Section 25 of the Localism Act 2011 clarifies that members will not be considered as being predisposed in respect of a decision they have taken or voted on just because they have indicated a preliminary view. Members must not however form or express a view which is or could be perceived as indicative of them having already made their mind up.

Do remember that, as a member of the Licensing Committee, you will probably be unaware whether an application will be determined by a sub-committee or sub-group or whether you will be a member of that determining body until you have been notified by officers. If you have been lobbied by an applicant or interested party, you should notify officers as soon as it comes to your attention that you have been invited to sit on a relevant sub-committee or sub-group. In such circumstances, you should consider whether it is still appropriate to take part in the hearing having regard to Section 25 of the Localism Act 2011.

Don't feel constrained, if you are not a member of a sub-committee or sub-group, to receive an approach from an applicant or interested party and, having considered the information that they have supplied, to agree to speak or make representations on their behalf at a meeting of a sub-committee or sub-group.

Do remember, if you are a member of a sub-committee or sub group, that your overriding duty is to the whole community and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Don't accept gifts or hospitality from any person involved in or affected by a licensing application or who may be providing a licensable activity. If a degree of hospitality is

entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Monitoring Officer where its value is over £25 in accordance with the Members' Code of Conduct. **Do** treat any such gift as creating a personal interest and consider whether it could also amount to a prejudicial interest.

Do copy or pass on any lobbying correspondence you receive if you are a member of a sub-committee or sub-group to the Principal Environmental Health Manager at the earliest opportunity in order that it can be placed on the appropriate licensing file and is open for inspection before a decision is made.

Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

Do note that, unless you are a member of a sub-committee or subgroup or you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Licensing Code of Good Practice through:

i. listening or receiving viewpoints from residents or other interested parties as long as you make yourself equally available to those of differing viewpoints if requested to do so;

ii. making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;

iii. seeking information through appropriate channels; or

iiii. being a vehicle for the expression of opinion or speaking at the meeting in support of an application or in expressing representations on behalf of an interested party. If such action is required discuss with the monitoring officer.

8. Lobbying by councillors

Do consider whether your membership or representation on behalf of an organisation whose primary purpose is to lobby to promote, or oppose the business of the committee or sub-committee, is sufficient to prohibit your involvement in the decision making process.

Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals, such as a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the licensing authority that you have reserved judgement and the independence to make up your own mind on each separate proposal.

Don't excessively lobby fellow members regarding your concerns or views nor attempt to persuade them how they should vote in advance of the meeting at which any licensing decision is to be taken.

Don't decide or discuss how to vote on any licensing application or policy matter at any sort of political group meeting, or lobby any other member to do so. Political group meetings should never dictate how members should vote on any licensing issue.

9. Site visits

Do try to attend site visits organised by the licensing authority if you are a member of the licensing sub-committee or applications subgroup. If you are unable to take part in a site visit, you will be unable to take part in the sub-committee hearing or sub-group meeting. You should therefore notify officers of the Democratic Services Section as soon as it comes to your attention that you are unable to attend a site visit that has been organised. Where a site visit takes place, Members will be accompanied by officers of the authority.

Do ensure that you treat the site visit only as an opportunity to observe the site.

Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

Don't hear representations from the applicant or an interested party at the site visit. Where you are approached by the applicant or an interested party, direct them to or inform the officer present.

Don't express opinions or views to anyone.

Do exercise your discretion, if you are not a member of the subcommittee or subgroup, as to whether to accept an invitation to visit a site which is the subject of an application or provides a licensable activity. Where you do accept an invitation, do exercise caution and ensure you comply with these good practice rules.

10. Public speaking at meetings

Don't allow members of the public to communicate with you in isolation if you are a member of a sub committee or sub-group during the hearing or meeting proceedings (orally or in writing) as this may give the appearance of bias.

11. Officers

Don't put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Principal Environmental Health Manager, but hearing or meeting reports will contain only representations that have been submitted in the manner prescribed by the legislation. Your attention is drawn to the danger of fettering your discretion on a matter which is covered in Section 3 of this Code.)

Do recognise that officers are part of a management structure and discuss a proposal, outside of any arranged meeting, only with the Principal Environmental Health Manager or those officers who are authorised by them to deal with the proposal at a member level.

Do recognise and respect that officers involved in the processing and determination of licensing matters must act in accordance with the Council's Code of Conduct for Employees and the requirements of the licensing legislation. As a result, licensing officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence and the promotion of licensing objectives, which may on occasion be at odds with the views or opinions of members.

12. Decision-making

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do comply with the licensing legislation and make decisions in accordance with statutory licensing objectives, having regard to guidance that has been issued under the relevant legislation and the authority's statement of licensing policy.

Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information and, if necessary, adjourn the hearing or meeting until the information has been provided and you have had an opportunity to consider it.

Don't vote or take part in the hearing or meeting on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

Do make sure that if you are proposing, seconding or supporting a decision contrary to the licensing objectives or the statutory guidance issued by the Secretary of State or Gambling Committee or the authority's statement of licensing objectives, that you clearly identify and understand the reasons leading to this conclusion/decision. These reasons must be given prior to the vote being taken and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

13. Training

Don't participate in decision making at hearings and meetings dealing with licensing matters unless you have attended specified licensing training.

Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures statutory guidance and licensing policy beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

5.10 THE GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES - CODE OF PRACTICE

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5.11 The Governance of Council Interests in Companies - Code of Practice

1. Introduction

1.1 The purpose of this Code of Practice is to provide a reference point to the council and interested parties (councillors, officers, company representatives and contractors) in understanding the requirements of the council in setting up a local authority company, and in particular a local authority trading company (LATCo), and how the governance arrangements for that company will work once set up.

1.2 The OECD/G20 helps define corporate governance by saying that it:

- "*involves a set of relationships between a company's management, its board, its shareholders and other stakeholders;* and
- *"provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined*".[7]

1.3 This Code of Practice therefore sets out how the council will normally go about managing those relationships and ensuring that a company will go on to deliver the objectives established for it by the council. It also briefly explains and makes reference to the law and basic requirements placed upon a local authority in establishing or owning companies.

1.4 The Code of Practice is set out as:

- an explanatory background;
- a set of guiding principles; and then
- a set of working expectations.

1.5 Attached, as appendices, are also key documents used in this process.

2 Background

(a) Local authority trading and the local authority trading company [8]

2.1 There are long-established powers for councils to trade. Among the most important is the Local Authorities (Goods and Services) Act 1970, which authorises councils to enter into agreements with other local authorities and other designated public bodies, for the provision of goods, materials and administrative, professional and technical services, for the use of vehicles, plant and apparatus and associated staff, and for the carrying out of maintenance. Payment terms are set out in an agreement. These are not limited to cost recovery. The 1970 Act is the bedrock of trading within the public sector and there is substantial experience of its operation. But the Act is limited in scope. For example, it does not allow trading with the private sector or the public at large. Other established trading

[7] "*G20/OECD Principles of Corporate Governance - OECD Report to G20 Finance Ministers and Central Bank Governors"* - September 2015

[8] Source: Local Government Association Briefing

powers are specific in nature, such as the Local Government (Miscellaneous Provisions) Act 1976, which enables councils to enter into agreements with anyone for the use of spare computer capacity.

2.2 The Local Government Act 2003 added new possibilities to charge for services, to both provide extra services at cost and to trade with the private sector. Under the 2003 Act, the government authorizes trading by means of a trading order. The Trading Order currently in force was made in 2009[9], which permits all councils in England to trade or "to do for a commercial purpose", anything which they are authorised to do for the purpose of carrying on their ordinary functions, which includes use of the granted general power of competence.

2.3 Under that 2003 Act and Trading Order, as augmented by the Localism Act 2011, for a local authority to exercise the power to do things for a commercial purpose (which the authority couldn't otherwise do), then it must be done through a company. Councils are thus enabled to establish a company by which they can trade with the private sector for a profit - that is to enter into commercial contracts. The profits may then go back to the council through dividends or service charges.

2.4 The reason given for this legislative requirement was that:

> "*local authorities and their trading arms have to be on a level playing field with the private and commercial sector in both a positive and negative way. They should not be at a disadvantage, but they should not have an outstanding advantage. Taxation is a particular issue. It is right to carry forward the requirement that such bodies should be companies and trading as such*."

2.5 To exercise the power to establish a company and trade, a local authority must first approve a business case ('a comprehensive statement') covering:

- the objectives of the business;
- the investment and other resources required to achieve those objectives;
- any risks the business might face and how significant these risks are; and
- the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.

2.6 That business case is then implemented and refreshed by way of a business plan, which should be updated and submitted for approval each year, to guide the company in carrying out its continuing activities.

2.7 The local authority must also recover the costs of any accommodation, goods, services, staff and anything else they supply to the company under any agreement or arrangement. This is an absolute requirement and distinct from the various rules on procurement or providing state aid.

2.8 Other important legal, commercial and financial considerations for councils or fire and rescue authorities setting up a trading company include company law issues, the cost of bidding for contracts, tax liability (corporation tax and VAT), EU procurement law and state aid rules and employment law (TUPE and pensions).

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[9] *The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009*

(b) The Local Authority Company

2.9 The kind of company that must be utilized to enable the council to trade in this way is defined in Part V of the Local Government and Housing Act 1989 ('LGHA 89'). That lists:

- a company limited by shares;
- a company limited by guarantee and not having a share capital;
- a company limited by guarantee and having a share capital;
- an unlimited company;
- a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965.

2.10 The LGHA 89, and the current Order[10] made under it, places local authority companies into one of three categories, being controlled or influenced by the local authority (a regulated company) or a company in which the local authority has a minority interest. It then goes on to set out a number of additional restrictions and requirements to which the local authority and the regulated company (or society) and any subsidiaries must adhere.

2.11 The reasons for these extra requirements were described by the government of the day, when setting out the reasons for the LGHA 89, as being that:

> "*when a company is effectively under the control of a local authority… the most significant controls that Parliament has laid down for the conduct of local authorities should apply to that company*."

2.12 These requirements cover issues of audit, payments, delivery of information to the authority's members and identification. For example, a regulated company is required to mention that it is a company controlled, or as the case may be influenced, by a local authority, naming the relevant authority or authorities, on all relevant documents, which are defined by reference to the companies legislation and are the same documents on which a company is required to disclose its registered name[11], such as business letters, its order forms and its websites.

(c) Other Local Authority Entities

2.13 If it isn't needed as a means by which it can trade, a local authority is free to involve itself in any one of a number of different forms of sole and joint ventures to best assist it in achieving its goals and aims, which may or may not involve establishing an entity that has a separate legal personality. These may also be as above, companies as defined by the Companies Act and which can include an industrial or provident society or a community interest company. They may alternatively be established as a distinct trust, with the council or appointees as trustee. They may be embodied as limited liability partnerships. They may also exist simply as unincorporated partnerships, with other public bodies or private persons (that can often act as if they were a distinct entity), such as the Local Economic Partnership.

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[10] *The Local Authorities (Companies) Order 1995*

[11] *"…being of any kind mentioned in paragraphs (a) to (d) of section 349(1) of the 1985 Act" - now Regulation 24 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 made under the replacement section 82 of the 2006 Act.*

2.14 There are certain rules yet to be brought into force, and the Secretary of State holds reserve powers, that may require, prohibit or regulate the taking of specified actions by entities connected with a local authority and those appointed to or representing the local authority at them[12]. In this respect:

- "entity" means any entity, whether or not a legal person, and
- an entity is stated to be "connected with" a local authority if financial information about that entity must be included in the local authority's statement of accounts.

2.15 Whilst this Code of Practice will apply to all companies in which the Council has an interest, it may not be as appropriate for the governance of the Council's relationship with other entities which it is connected to, is a member of or has an interest in. In these instances, regard will be had to this Code but its application will be determined on a case by case basis.

Limited Liability Partnerships

2.16 Particular amongst these is the limited liability partnership (LLP), which are an increasingly common entity of which local authorities are a member. A limited liability partnership is a body corporate (with legal personality separate from that of its members) and is formed of 'two or more persons associated for carrying on a lawful business with a view to profit'[13]. An LLP will also file annual accounts and be registered with Companies House.

2.17 LLP's have a number of advantages for local authorities, including significant tax advantages and that it lies outside of the regulation applicable to local authority trading companies. Unlike a company, however, an LLP is not a vehicle by which the council can undertake commercial activities via the general power of competence under the Localism Act 2011 or the charging and trading powers under the Local Government Act 2003, so a key disadvantage is that it must rely on specific local government powers and the vires of the functions included must be carefully considered. An LLP is also not suitable for later conversion to a company or to be formed as a charitable body. An LLP is, therefore, very well suited to forming joint ventures to deliver local government functions such as land and property development[14].

2.18 The cross-application of this Code will therefore particularly apply to limited liability partnerships (LLP), where the management agreement will reflect many of the elements of the articles or shareholder agreement referred to below. This will include, for example, the same reserved decision making in respect of appointment of representatives to the partnership management board, receipt of financial and other information by the council and that the venture is limited to only undertaking its business in accordance with the approved business plan.

3. Guidance

[12] *Section 212 Local Government and Public Involvement in Health Act 2007*
[13] *Limited Liability Partnership Act 2000*
[14] "*Structures for Collaboration and Shared Services: Technical Notes" (DCLG)*

3.1 In exercising the power to establish a local authority trading company (LATCo), local authorities were obliged under the 2003 Act to have regard to Statutory Guidance. The "*General Power for Local Authorities to Trade in Function Related Activities Through a Company*"[15] was issued and it is to this document that this and other councils in establishing the companies have had regard to.

3.2 That Statutory Guidance is now out of date, however, and was withdrawn as of 17th June 2014. Whilst new guidance is awaited, the withdrawn guidance nevertheless remains useful and largely very relevant. Where it is still relevant, this Code has had regard to it and, where associated with the principles of this Code, accompanying direct quotes from the Government Guidance are included throughout.

3.3 All listed companies are subject to the *UK Corporate Governance Code*[16]. The Council will expect all of its companies and their subsidiaries, and indeed any company with which it is associated, to adopt the "comply or explain" approach of the UK Corporate Governance Code as a demonstration of best practice in corporate governance.

3.4 The *Corporate Governance Guidance and Principles for Unlisted Companies in the UK*[17] and also the *Corporate Governance Handbook*[18] have additionally been utilised in the compiling of this Code of Practice.

3.5 The council itself has adopted a Council Code of Corporate Governance and the approach of this Code of Practice will fall to be associated with the provisions of that Code.

4. Principles of Governance of Council Companies

4.1 In setting out the governance relationship between the council and its companies, group of companies and organisations it has invested in, this Code has three key underpinning principles. These are as follows, preceded by a relevant quote on the subject from the Government Guidance.

I. Controls and Freedoms

The Guidance:

4.2 *"A successful company will be one that works alongside the authority in delivering joint objectives. The authority will have to consider how to balance the need to assist the company to achieve its trading objectives with the principles of transparency, accountability and probity."*

The Principles

[15] *First published: 29 July 2004: UK Govt Archive*
[16] *September 2014: Financial Reporting Council*
[17] *First edition: November 2010: Institute of Directors (IoD) and European Confederation of Directors' Associations (ecoDa)*
[18] *Third edition 2013: Institute of Chartered Secretaries and Administrators (ICSA)*

4.3 It is recognised that, whilst appreciating this should not be unfettered, a trading company needs to be given commercial freedoms to enable it to succeed.

4.4 Accordingly, governance arrangements will seek to ensure that:

- the company will be provided with sufficient freedoms to achieve its objectives; and
- the council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the council.

II. Relationship, Integrity and Accountability

The Guidance:

4.5 *"It is important that trading companies can operate on an equal footing with their competitors, but it is equally important that they are not used as a device for inhibiting legitimate public access to information about local government and local government services."*

The Principles

4.6 It is recognised that, whilst appreciating its procedures operate in a way that protects the company's commercial interests, those procedures should ensure that the council can carry out its functions as an investor, as a trustee of public funds and a local authority committed to both due responsibility for the exercise of its functions and for providing a vision for the City.

4.7 Accordingly, governance arrangements will seek to ensure that:

- the council can make investment decisions based upon complete and accurate consideration of business cases and business plans;
- the council can evaluate social and financial benefits and returns on investment; and
- the council's overview and scrutiny functions are able to exercise their powers in relation to the council's decision making

in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.

III. Understanding of role

The Guidance:

4.8 *"A trading company will be a separate legal entity from a local authority. It will derive its legal authority from its Memorandum of Association and the Companies Acts. Its directors and officers will derive their authority from the articles of*

association and the law relating to companies.

…

"Those *"who are appointed directors will participate directly in the activities of the company, and are answerable to the company and have the powers and duties of company directors whilst they do so.*

…

"Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies."

The Principles

4.9 It is recognised that, as company ventures have a separate legal personality to the local authority, the success and good governance of the company venture depends upon those involved understanding their role and responsibilities collectively and individually.

4.10 Accordingly, governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:

- their legal duties;
- stewardship of assets;
- the provisions of the governing documents;
- the external environment; and
- the total structure of the organizations and the venture

are appropriately understood by members of the council in their role as part of the council or of overview and scrutiny, by officers of the council associated with these duties and by the directors of the companies.

5. Ownership and control of the company

5.1 The Borough Council of Wellingborough, the local authority as a corporate body, will be a member of the company. That membership will be as guarantor if a company limited by guarantee or, as will be the norm if a LATCo, the holder of shares (perhaps the only share) in a company limited by shares.

5.2 The rights and duties as a member of the company will, however, almost always fall to be exercised as a corporate responsibility. This means that decisions to be taken by the council as a member of the company (as shareholder) fall to be decided on in the normal way. That is, that these functions may be delegated by the council to a committee, sub-committee or an officer and will be subject to access to information rules and review by the council or appropriate overseeing committee.

5.3 The authority of the shareholder is exercised where decisions of the company are reserved for approval of the council before they can be implemented, but also directly in the form of a shareholder's written resolution or at the company's general meetings.

5.4 At the company general meetings the council will be present and voting as a member of the company, where this presence and voting will be in the form of a single person known as the 'shareholder representative'.

5.5 Decisions to be made by the council, rather than left to the company itself, are known as 'reserved matters'. Reserved matters cover such things as the approval of the company's annual business plan or mid-year amendments to it, the appointment of directors, certain key financing decisions and so forth. These are established either through agreement with the company, known as a shareholders' agreement, or as set out in the company's governing articles of association.

5.6 The relationship between the local authority (and the companies it is a member of) is governed by these and other key documents that are required to establish a local authority company, and a trading company in particular. In establishing the local authority's company and then in governing the relationship with what is now a separate legal personality, the Council will need to put in place the following documents:

a) The **business case** which assesses the risk involved in the proposed trading enterprise and decides whether or not it should be established and proceed to trade; the 'comprehensive statement' referred to in 2009 Order. It starts the process of business planning.

b) The **articles of association**, or the memorandum and articles of association as it used to be called, which is the constitution of the company. This is the legal documents required to set up a limited company and give details of its name, aims and authorised share capital, conduct of meetings, appointment of directors and registered office.

c) The **shareholders agreement**, or management agreement, which sets out the rights of the council as the sole or co-shareholder and how it can exercise those rights. It details the powers of the board of the company and how and when the shareholder might influence those powers. It is important to note that the shareholder agreement is capable of being developed and added to as the company develops.

d) The **financial agreements** which are the commercial agreements that set out what assistance is to be provided and on what terms. This may be purely financial, such as a direct loan or a facility such as a parental guarantee, and made on commercial terms. It may also be in the form of goods, services or staff to be provided and set out in a resourcing agreement or a service level agreement, which is likely to be on a service charge or cost recovery basis. The agreements may require regular and detailed access to information and financial reporting to the council and/or holding company.

e) The **business plan** which sets out the objectives of the business, how they are to be achieved and standards met adjusted in the light of experience and changing circumstances. It is a comprehensive analysis of the business situation at a particular point in time. It is often referred to as the annual business plan because it is expected to be submitted for shareholder approval annually.

5.7 An example of an outline of the content for a shareholder agreement for use with

the holding company, setting out the principal decisions reserved for the Council's approval, including subsidiaries of the company as a group, is included at appendix 2.

6. The Council's Shareholder Board

6.1 The structure described above creates a governance process whereby, so far as appropriate under this Code's principles, the company is left to get on with its business. Following the UK Corporate Governance Code, the companies will utilise a unified board, with appropriate non-council directors providing outside expert help and with board committees (such as an audit committee) to provide oversight and ensure delivery.

6.2 The council, in turn, will seek to inform its decisions and to hold the company to account by utilising a Shareholder Board. The Shareholder Board will provide the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the council as the shareholder has established for the company are being adhered to.

6.3 Decisions to be made as shareholder representative will be delegated to the Managing Director (Head of Paid Service) of the council. Decisions taken within this role, however, will be in the presence of the Shareholder Board and in consultation with that Shareholder Board.

6.4 As well as the Managing Director (and advising officers) members of the Shareholder Board will consist of the Leader and the Leader of the Opposition Group on the Council (or their nominees). The Board may also include independent advisors, appointed from time to time as may be required, brought in to provide their expertise in the commercial sector and the business of the trading company or companies concerned

6.5 Within the context of this arrangement, the Managing Director (Head of Paid Service), or his or her appointee, will remain the sole decision maker, but the Board will act as advisors in the making of those decisions and the meetings will be in private. As described above, the role of the shareholder representative is to:

(a) exercise the council's vote at general meetings of the company;

(b) determine those matters that are reserved to the shareholder to decide upon; and

(c) hold the companies to account on a day to day basis for:
- performance against their agreed business plan;
- contractual matters between the council and the company;
- the company's state of financial health; and
- the social and financial return the company provides on the council's investment.

6.6 Where the Managing Director or wider Shareholder Board consider that decisions before the Managing Director as shareholder representative are of strategic or major importance, however, these will be referred up to the Resources Committee or full Council as may be felt required.

6.7 Such a Shareholder Board is considered to be an effective means of governance of the companies. This is because it allows for decision making and discussion in an informed atmosphere, which also provides the council with a mechanism to communicate the shareholders' views to the company and a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives.

6.8 Importantly, this method of governance arrangement allows for a bridge between the roles of:

- a committee or Council meeting, which as a public body will undertake decisions in the public eye and as part of a due process; and
- a trading company, which as a commercial entity will undertake decisions in a commercially sensitive manner and as part of operating in a fast-moving competitive marketplace.

It also clarifies the roles in terms of the conflicts of interest that will arise between those acting for the council and those for the company which, albeit owned by the council, is required to act in its own best interests.

6.9 The full Terms of Reference for the Shareholder Board are set out at appendix 1.

7. Relationships

7.1 The Resources or other committees of the council are responsible for approving the business case to establish a company, of setting the right balance between the economic, social and environmental objects of a company when it is established and of subsequently overseeing and scrutinising the exercise the council's powers as shareholder

7.2 It is the Managing Director, advised within the Shareholder Board, who will ensure that the company is able, and the council has properly required the company, to make sufficient returns for the investment to be worthwhile and, indeed, ensure that the social objects set for it are not lost in the drive towards the overriding and essential requirement for the company to be economically successful.

7.3 Once established, the company must then get on with the business of delivering the objectives with which it has been tasked, within the parameters set for it. It must be otherwise free, however, to operate in its own best interests and to compete on an even basis with its competitors in the marketplace.

7.6 This creates a flow of information and accountability, in which

- the company needs to get on with the business of delivery;
- the council needs to make the company decisions reserved to it and to hold the company to account for performing against them; and
- members as part of their overview role within committee need to advise on or scrutinise the decisions made on the council's behalf.

This needs to be done in a trading environment that requires them all to make speedy and reactive commercial decisions and to handle often highly valuable and commercially sensitive information.

7.7 Members, to fulfil their role within committee and Council, require a means of access to the sensitive information and debate that inform the Managing Director's decision making, without either oppressing that process or endangering its own strictly non-council role.

7.8 It is for this reason that it is considered both the Leader of the Council and the Leader of the Opposition Group (or their nominees) are best placed to be involved, use their knowledge of the Resources Committee and its remit to sift the information and be alert to those matters that need to be bought to the committees' attention and be investigated further.

7.9 It is worth noting that the legal framework for local authority companies includes an express requirement concerning the provision of information to members of the council, which reflects the similar provision in relation to local authorities generally. This states that a local authority regulated company "*shall provide to a member of the council such information about the affairs of the company as the member reasonably requires for the proper discharge of his duties.*"[19]

7.10 The exception here is that the company cannot be required to provide information in breach of any enactment, or of an obligation owed to any person.

7.13 It is also worth noting that, where a member or an officer has become a member or director of a local authority company, the local authority must make arrangements for them to be open to questioning about the company's activities by members of the council at a meeting of the authority or a committee or sub-committee. In the course of proceedings of the committee, the member or officer is not required to disclose confidential information about the company.

8. Investment and Finance

8.1 The balance of how each company venture may be financed will be assessed and set out in the business case, required at the very beginning of the venture and the incorporation of the company as described above, and in business plans as made or amended and agreed by the council. Each decision will take into account state aid implications and such matters as where legislative and regulatory requirements demand full cost recovery or standard commercial terms to be applied.

8.2 Where the purpose of a company is to better utilise assets owned by the council, for example, the principal investment in the company is likely to be those assets. The assets may then be made use of by the company through their being transferred in their entirety from the council to the company or by being provided to the company by the council under a lease, loan or use agreement.

8.3 Investment at the initial stage of a trading company will normally be by way of purchase of share capital, either directly in the company or potentially via a group holding company, often together with a loan or loan facility on commercial terms. This is to fund those costs which arise at the start of the company or company joint venture, including the holding company and its subsidiaries, to cover initial

[19] *Article 7, Local Authorities (Companies) Order 1995*

set up costs, working capital costs and collateral costs. For purchased company interests, share value should reflect the fair value of the going concern.

8.4 Direct investment may well also be by various other forms of agreement. This may be for the supply of monies, directly as a loan or under a parental guarantee, credit agreement, facility and so forth, which should be on standard commercial terms. It may also be for the supply of goods, property or staff, as described above and at section 12 below.

9. Companies Structure

9.1 The council will normally own and hold interests in its trading and other forms of company directly or through a single company acting as a holding company. Wherever the latter is practically feasible and advantageous to the authority, each of the individual company ventures may then be a subsidiary of the single company and they will operate together as part of the a group of companies.

9.2 The primary objective of a group structure is that the company, as a holding company, is able to provide a single point of focus for leadership of the authority's commercial activity, communication with the authority, utilisation of shared resources and as a forum for strategic decision-making across the group. Its board of directors will set the overall strategy in relation to the activities of its subsidiaries.

9.3 In doing so, the board of the holding company may be empowered to also sign off all business plans and hold its subsidiaries to account. The council, supported by the Shareholder Board, will approve any decisions that would have an effect on the shareholder's rights and hold the group of companies to account as a whole.

9.4 Any subsidiary companies under a group which may be created will then be expected to adopt a common 'group' approach, with the managing director and the company's board holding a clear leadership role on behalf of the authority. This will, for example, involve the group of companies:

(a) using existing council policies and strategies where appropriate and the company and its subsidiaries, wherever practicable;

(b) adopting a common approach across the group on branding and its finance, ethics and procurement policies and practices;

(c) being required by the authority to have the holding company approve the procurement and authorisation of spend levels set by each company for its directors and staff; and

(d) also having more detailed matters to be set as a common approach by the company for itself and its subsidiaries by the holding company, where it considers that that will increase effectiveness, efficiency and engender common understanding, which is likely to include such things as group financial procedure rules, fraud and whistle-blowing policies, decision making levels and procedures, capability and disciplinary procedures, health and safety practices and so forth.

9.5 Any holding company will similarly provide a natural home and conduit for support and control roles that will be common across the group, such as company secretarial services, procurement, finance and human resources. These fall into two groups. The first is those services that would be better employed directly by

the holding company, such as financial and payroll systems for example. The other are those provided as managed services to the companies by the council, under a resourcing agreement (or service level agreement), because this is more cost effective, appropriate or is a demand of the shareholder, such as HR or company secretarial and legal services. (This is described further at section 12 below).

9.6 The secondary purpose is financial, in that group companies can share VAT registration where appropriate and can be treated as holding group accounts. The latter means that reporting is as one set of accounts and that profit and loss can be distributed across the group, setting one off against another, as might be desired to meet the aims and values set for the group.

9.7 The council will approve the appointment of auditors for the group and its accounts will appear as part of the council's financial statements.

10. The Company's Board

10.1 The government guidance advised that a local authority company will be run by its board of directors answerable to the shareholders, in accordance with the articles of association, and goes on to suggest that a board of between 3 and 8 directors is most likely to be practical (although this will be dependent on the circumstances of each company). The participating local authority should be represented on the board of its company.

10.2 The representatives who are appointed directors by the council will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, the government guidance goes on to suggest that this requirement in a trading company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.

10.3 Whilst it will therefore be the norm that officers, not members, will be appointed as directors, this should not prevent the council from appointing members as directors where that is considered to be in the best interests of the company and the council. If members of the council are appointed as directors of a company, the following paragraphs should be borne in mind and, in particular, that the member notes that:

- Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the council: the council member / company director will always have a conflict of interest when it comes to their role as a councillor that must be resolved and resolved in the favour of the company. A member as director, therefore, must not be a party to making a decision of the council affecting the company, but may proffer evidence or advice to the council on the company's behalf when invited to do so.
- Liaison should be through the key member and/or officer concerning the company and the council's activities
- The Member's Code of Conduct applies to a member's activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict notified to the company

secretary and to the council's Monitoring Officer.

- The only monies or other remuneration to be received by the member in connection with the directorship will be as a special responsibility allowance (SRA) given by the council to the amount of the corresponding SRA in the Members' Allowances Scheme.

10.4 A starting point for consideration in establishing a board of directors for a company may be that it will be formed of:

- Council directors, being:
  - the managing director;
- Non-Council directors, being:
  - a chief officer of the council (Chair of the Board);
  - independent person(s) appointed to bring oversight, experience and skills that would be advantageous and appropriate for the companies;
  - other senior officers of the council as appropriate; and
  - Members of the council if considered advantageous and appropriate.

10.5 The chair of the board of directors, as council appointee, may well have a deciding say to be exercised through means of a 'golden vote' procedure on the board. This approach is to ensure that the council's officers will always be able to out-vote the directly appointed directors on the holding company. Such matters as the quorum requirement for board meetings of the company and the like will be expected to reflect that objective.

10.6 A larger company, or any holding company, will have two standing committees, which will be as follows:

- The Remuneration Committee, which will conduct appointments and remuneration decisions and recommendations to the council (where an appointment is not wholly reserved to the council).
- The Audit Committee, which will fulfil the same role and function as the Council's Audit Committee, the outputs of which will feed into the holding company board, the company business plans and the council's own statement of accounts and Annual Governance Statement.

10.7 In respect of the individual wholly owned trading companies, non-trading (Teckal) companies and joint ventures, the appointment of directors of the company will be as are considered best to meet the requirements of the subsidiary or venture concerned.

10.8 Where an officer or member is placed on a company board, he or she will be provided with an indemnity for their actions in that role. This is provided for under the Local Authorities (Indemnities for Members and Officers) Order 2004. It should be noted, however, that any such indemnity only covers actions taken honestly and in good faith.

10.9 Appointments of an officer as a company director will be of the relevant post or office of the council, not as an individual. This will be reflected within each of the companies' articles in that if any one of the council appointed directors ceases to be an employee, office holder or member of the council, as applicable, then they

automatically also cease to be a director of the company.

10.10 The remuneration of officers of the council appointed directors to a company controlled or influenced by the council, other than permitted expenses, will be met by the council and not the company. This is because, whilst that director's overriding duty is to the company, that person's role as director on the company board is only because of, and in fulfilment of, their employment as an officer of the council, for which they are remunerated by the council under that contract of employment. The position on the company is an inherent part of their job, for which payment is not to be made twice, directly or by different persons, for the same work.

10.11 That is not to say that the council would fail to recognise that the position of an officer appointed as a company director or company officer will include distinct and potentially onerous additional responsibilities. Rather, it is that it is the council that needs to recognise the value of those responsibilities, through a job evaluation process or other means by which the council sets salaries, in considering any review of an officer's remuneration. To do otherwise risks a future action against the officer or the council and, if a payment were made to a council officer by the company that was considered to be a fee or reward accepted under the colour of his or her office or employment other than his proper remuneration, that officer may also have committed a criminal offence[20].

10.12 The law requires that, where a member of the council is a director of a regulated company, the member may only receive payment for that directorship up to the amount payable for that role under the authority's Special Responsibility Allowance (SRA)[21], set as a result of the recommendation of the Independent Remuneration Panel[22]. These payments may be made by the company directly or, more normally and as would be the case here, by the council for reasons of simplicity, accounting and accountability.

10.13 The view behind this is that the regulated company is, in fact, simply a part of the council. In the same way that there is a bar on members of the council being employees, the philosophy runs akin to that for officers in that the council may not pay a councillor for any other activities they may carry out as a member of the council other than through their SRA.

11. Conflicts of interest

11.1 The government guidance states that "*Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies*."

11.2 There will always arise a point where, in matters of reporting, contractual discussion, investment requests or resourcing agreements, there is potential for the same person to be a decision maker or advisor both for the council and the company.

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[20] *s117(2) of the Local Government Act 1972*

[21] *Article 5 of the Local Authorities (Companies) Order 1995*

[22] *Reg 21 of the Local Authorities (Members' Allowances) (England) Regulations 2003.*

11.3 This is a reflection of the position of each company as a separate legal entity and that the directors of each company are subject to. As the Corporate Governance Guidance and Principles puts it:

> '*An important principle of Company Law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/ or stakeholders*'.

11.4 Appendix 3 sets out a briefing for directors' duties.

11.5 An essential element of this in terms of this Code is that, whilst changes to the Companies Act and current articles of association allow for appropriate provisions dealing with conflicts of interest and the ability of company directors to authorise them, an officer of the council or a member can never waive their duty to act in the public interest in exercising their responsibility for functions of the authority. This will, on occasion therefore, create an inescapable conflict of interest between someone's role as a member or, more likely, as an officer of the council and as a director of a company, of which those involved need to be aware.

11.6 There are also natural points where it is expected that the council and one of its trading companies will take a different approach. In this respect, the government guidance states that:

> *"The local authority should consider appointing a 'contract officer' and/or 'contract member' with primary responsibility for liaison between the company and the authority, and for access to information about it. It might wish to place limitations on these individuals to ensure that they are fully accountable to the authority as a whole and to ensure that the Section 151 Officer/Monitoring Officer countersigns major decisions about the company's operations."*

11.7 This is the role of the Shareholder Board. In support of that function, the council will appoint a lead authority and client-side officer to lead on managing contractual arrangements with the companies and in holding of the companies to account.

11.8 A certain form of wholly owned local authority also exists to provide services directly to or for the council (known as a 'Teckal' company). The relationship between the authority and the company are set out in a contract for services. In this scenario, clear separation is required between commissioner and provider and there will be a requirement for further support to be provided, beyond the position of lead authority and client officer.

11.9 Officers placed into any of these roles are, at some point, likely to find themselves in a position where they are, or are negatively seen to be, acting against the interest of their own authority and also challenging the council as their employers or senior managers to whom they might normally answer to. As a result of such activities, their performance in the company or actions they feel are required of them by the company, some of those officers may even find themselves in a position where it is no longer felt tenable that they can be appointed by the authority as a director of a company. The council as an employer, from the viewpoint of both the council and overview and scrutiny, wholly recognises these

unusual positions that such officers may find themselves. The council therefore undertakes that no officer will suffer any ill affect to his or her employment or career with the authority for fulfilling these activities to the best of their ability or in undertaking these actions asked of them.

12. Managed Services, Support Arrangements and Employees

12.1 The authority is required under the 2009 regulations to recover the costs of any accommodation, goods, services, staff or any other thing it supplies to a company in pursuance of any agreement, or arrangement in place. It cannot subsidise the operation of the company in this way.

12.2 The government guidance in addition clarifies that

> "*Because the power to trade is subject to a restriction requiring it to be exercised through a company, it follows that the authority has the requisite power to enter into arrangements with a company in order for the trading power … to be exercised. It is not necessary therefore, for the company to be expressly designated as a public body under the Local Authorities (Goods and Services) Act 1970, in order for the authority to be able to provide it with staff, goods etc, for the purpose of exercising the power to trade*."

12.3 This means that the authority may enter into an agreement with the companies to provide services at cost or as a surplus service charge and that staff time and resources utilized for company purposes should be carefully accounted for. Where this is done at cost, which shall be the norm, it is helpfully stated in the guidance that the approach should be in accordance with the CIPFA definition of 'whole cost'.

12.4 Referred to above as the 'managed services', those areas of the authority's resources so utilized might include project management, initial set-up staff, human resources, audit, business continuity, communications, procurement, legal or finance and so on. Equally, it may be that the main source of staffing for the company's trading activities comes from council staff seconded for that purpose, be that whole time or on a client by client, job by job basis. It is for the company and the council to agree what level of authority led resource is appropriate, should or could be delivered to the company in each case. The parameters of those services can be agreed through a Resourcing Agreement or what is known as a Service Level Agreement (SLA).

12.5 The authority as shareholder, however, does need to be assured that there are effective and robust support services in place in certain areas. This is to satisfy itself that sufficient standards of operational governance, legal and company secretarial compliance and effective financial management within the company are adhered to. The authority will reserve to itself the ability under the Shareholder Agreement to insist on supplying these services to a controlled company, at cost, if it feels that these standards are not otherwise being met or are not in its opinion likely to be met.

12.6 In particular, the Company Secretary role should have a consistent approach across all of the companies or group of companies. This is to ensure consistent interpretation of the compliance standards across the companies and of the

governance relationship between the companies and between the companies and the council. In addition, it ensures that appropriate and proper intelligence is shared across the companies and the authority. In relation to all authority controlled companies and their subsidiaries, therefore, the position of company secretary as an officer (not a director) of each company in the group is to be fulfilled by the council's Monitoring Officer, being the equivalent corporate governance, assurance and general counsel position for the council. All company secretarial and general counsel duties for the companies will then be carried out through that office, either directly or through the position of an assistant company secretary, with the exception of where a conflict of interest is identified and is acknowledged by that officer.

12.7 With the exception of those staff supplied by or seconded from the authority for trading purposes or for managed services as described above, it is expected that staff of the companies will be directly recruited and employed by the companies themselves. Where the business case includes that staff are transferred this will be subject to full reporting and then consultation and requirements under TUPE legislation and guidance.

Adopted in accordance with the Cabinet decision of DDD

[To be] Presented to the NNN Council Audit Committee of DDD.

APPENDIX 1

BOROUGH COUNCIL OF WELLINGBOROUGH
SHAREHOLDER BOARD - TERMS OF REFERENCE

Overview

The purpose of the Shareholder Board is to advise the Mayor/Leader in the exercise of his/her responsibility for the council's functions as corporate shareholder of a company or group of companies and in their role to represent the interests of the council as Shareholder Representative at meetings of a company.

Decision making

The Manging Director (Head of Paid Service), or their appointed nominee, may make decisions concerning companies in which the council is or is proposed to become a shareholder in the presence of the Shareholder Board.

Membership and Arrangements

The Shareholder Board shall consist of the Managing Director (Head of Paid Service) in the presence of:

(a) the Leader of the Council or his/her nominee from amongst members of the Resources Committee;

(b) the Leader of the Opposition Group on the council or his/her nominees from amongst an opposition group;

(c) relevant senior officers of the council as are appointed by appropriate service director (or their deputies); together with

(d) any co-opted members considered appropriate, who will be independent persons providing relevant expertise and appointed on merit (but which process may be carried out in association with the Audit Committee's arrangements for co-opted appointments); and.

The s151 Officer and the Monitoring Officer, or their deputies, will be advisors to the Board to provide open and strong advice.

Other members of the Resources Committee (who are not directors of any of the companies concerned) may attend as observers.

Meetings

The Shareholder Board shall meet on a basis agreed by itself and normally in private.

The quorum shall be the Managing Director (or other officer appointed by the Managing Director for this purpose) in the presence of a minimum of:

(a) one member; and
(b) one senior officer appointed to the Board (or their appointed deputy).

An invitation to attend must have been provided to the Leader of the Council and the Leader of the Opposition Group (or their nominated deputy) at least three clear days in advance of the meeting taking place. This notice period may be waived if the Leader of the Council and the Leader of the Opposition Group (or their nominated deputy) so agrees.

An invitation to attend must also have been provided to the Section 151 Officer and the Monitoring Officer (or their nominated deputies), which will normally be at least three clear days in advance of the meeting taking place.

The Managing Director (Head of Paid Service, or appointee) will chair the Shareholder Board.

Sub groups

To assist it in its functions the Shareholder Board:

1. may establish and consult standing sub-groups, such as might be required in respect of:
   (a) Audit and risk;
   (b) Ethical practices; or
   (c) Nominations and remuneration

2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and

3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Shareholder Board sees fit.

Functions

1. Monitor the performance of a company in relation to its business plans and, in particular, the company's performance:
   (a) in financial matters
   (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plans; and
   (c) against the values of the council.

2. Evaluate and monitor:
   (a) the financial and social returns on investment (be that shareholding, loans or direct investment); and
   (b) risks and opportunities

   including those arising from joint ventures or new opportunities.

3. Consider matters reserved to the council for shareholder approval, such as:
   (a) Varying Articles of Association
   (b) Varying ownership and structure
   (c) Variations to shares (number of, rights, etc.
   (d) Entering contracts that:
      (i) have a material effect on Council business (including other companies within the group)
      (ii) are outside of the business plan or do not relate to the business
      (iii) significant in relation to the size of the business, the business plan, etc.
   (e) Material legal proceedings outside of ordinary business
   (f) Adopting and amending business plans each year and strategic plans (3 years)
   (g) Appointment, removal and the remuneration of directors (members of the company board)
   (h) Selection of the chair of the board
   (i) Appointment of auditors
   (j) Issue of dividends

   as more particularly set out in a company's Articles of Association or Shareholder Agreement.

Relationship

The Shareholder Board as it considers appropriate in accordance with its functions described above, may:

1. report and make formal recommendations to the Resources Committee of the council, directly or to the wider Council meeting as it sees fit;
2. make reports to and consult other committees of the council or
3. make reports to and consult the council's Audit Committee, in relation to that committee's particular functions.

OUTLINE OF THE
SHAREHOLDER AND COMPANY AGREEMENT

1. DEFINITIONS AND INTERPRETATION
2. FINANCING THE COMPANY
3. BUSINESS
4. CONDUCT OF THE COMPANY'S AFFAIRS
5. COVENANTS
6. TERMINATION
7. CONFIDENTIALITY
8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
9. WAIVER
10. VARIATION
11. INVALIDITY
12. ENTIRE AGREEMENT
13. STATUS OF THIS AGREEMENT
14. CONSENTS
15. COMMUNICATIONS
16. COUNTERPARTS
17. GOVERNING LAW AND JURISDICTION
18. SHAREHOLDER CONSENT MATTERS
19. COMPANY COVENANTS

APPENDIX 3

Guidance Note to Borough Council of Wellingborough Members and Officers when acting as Directors of Council Companies

1.0 Introduction

1.1 This is a short overview of the general duties owed by a director to his or her company are set out in the Companies Act 2006.

2.0 The role

2.1 What is my role as a director?

A company acts through two bodies of people - its shareholders and its board of directors.

The board of directors are in charge of the management of the company's business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations.

Your role as an individual director is to participate in board meetings to enable the board to reach these decisions and make sure that the company's obligations are fulfilled.

The directors are effectively the agents of the company, appointed by the shareholders to manage its day to day affairs.

The basic rule is that the directors should act together as a board but typically the board may also delegate certain of its powers to individual directors or to a committee of the board.

You may also be a shareholder or employee of the company (or both) and, if so, will have additional rights and duties going beyond those purely connected with your office as a director. It is crucial that you draw a distinction between these separate roles and "wear the right hat for the job".

3.0 The general duties

3.1 What are my general duties under the Companies Act 2006?

As a director you must:

1. ***Act within powers.***

You must act in accordance with the company's constitution, and only exercise your powers for the purposes for which they were given. The company's constitution includes its articles of association and resolutions and agreements of a constitutional nature (e.g. shareholder or joint venture agreements).

2. ***Promote the success of the company.***

You must act in the way you consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. “Success” will generally mean a long-term increase in value but fundamentally it is up to each director to decide, in good faith, whether it is appropriate for the company to take a particular course of action. There is a non-exhaustive list of factors which each director should consider in this context.

3. ***Exercise independent judgment.***

You must exercise independent judgment and make your own decisions. This does not prevent you from acting in accordance with the company’s constitution or an agreement which the company has entered into.

4. ***Exercise reasonable care, skill and diligence.***

You must exercise the same care, skill and diligence that would be exercised by a reasonably diligent person with:

””

- the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as you in relation to the company; and

- the general knowledge, skill and experience that you actually possess.

The expected standard is measured against both objective and subjective yardsticks. A director’s actual understanding and abilities may not be enough if more could reasonably be expected of someone in his or her position.

5. ***Avoid conflicts of interest (a “conflict situation”).***

You must avoid a situation in which you have, or could have an interest that conflicts, or may conflict, with the interests of the company. This applies in particular to the exploitation of any property, information or opportunity, regardless of whether the company could take advantage of it.

This duty is not infringed if:

- the situation you are in cannot reasonably be regarded as likely to give rise to a conflict of interest; or

- the situation has been pre-authorised.

  Authorisation may be given in the articles of association, by specific shareholder resolution or, in certain circumstances, by the other directors who do not share the same conflict.

6. ***Not accept benefits from third parties.***

You must not accept a benefit from a third party given because you are a director or because you do (or do not do) anything as a director. This duty is not infringed if your acceptance cannot reasonably be regarded as likely to give rise to a conflict of interest.

7. ***Declare interests in proposed or existing transactions or arrangements with the company.***

If you are in any way, directly or indirectly, interested in a transaction or arrangement with the company, you must declare the nature and extent of that interest to the other directors. In the case of a proposed transaction you must do this before it is entered into. In the case of an existing transaction you must do this as soon as reasonably practicable.

This duty is not infringed if:

- your interest in the transaction cannot reasonably be regarded as likely to give rise to a conflict of interest; or

- an interest has not been declared because you are unaware you have the interest or the other directors are already (or ought reasonably to be) aware of it.

3.2 **What do I need to think about in terms of my duty to promote the success of the company?**

When considering what is most likely to promote the success of the company, the legislation states that a director must have regard to:

- the likely consequences of any decision in the long term;
- the interests of the company's employees;
- the need to foster the company's business relationships with suppliers, customers and others;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly as between members of the company.

This list is not exhaustive but is designed to highlight areas of particular importance to responsible business behaviour. Other relevant factors should also be properly considered.

3.3 **What is a conflict situation?**

There is no convenient set of rules to determine which situations will or will not give rise (or potentially give rise) to a conflict of interest. The following are examples of arrangements which may potentially give rise to a conflict situation:

”” ***Multiple directorships***

You are also on the board of a major shareholder, the pension scheme trustee company, a competitor or a customer or supplier of the company.

Personal interests

You are a major shareholder, a competitor, a customer or supplier of the company or you own property adjacent to the company's property which could be affected by the company's activities.

Advisory positions

You have another hat as an advisor (e.g. accountant or consultant) to the company or to a competitor of the company.

Other profits

You make personal use of the company's information or opportunities, want to take up an opportunity declined by the company or are in any situation where you can make a profit as a result of your directorship.

Connected persons – if any of the above situations apply to a person connected with you, e.g. spouse, partner, parent, child or other close family member.

3.4 In the event of a conflict – what should I do?

Seek approval

Potentially a conflict situation can be approved by the board. If the board does not have the power to authorise conflicts or is otherwise unable to approve the conflict situation it could refer the matter to the shareholders for approval.

Check the articles of association

The company's articles may contain provisions relating to conflicts of interest, including:

- Provisions "pre-authorising" common conflict situations – these may list a limited set of circumstances allowing you to put yourself in a situation which may otherwise give rise to a potential conflict of interest without obtaining specific approval. Typical examples include cross-directorships of group companies or positions relating to the company pension scheme.

- Conduct provisions – these may set out how you are expected to conduct yourself in relation to an authorised conflict and may also confirm that you will not be in breach of other duties to the company if you act accordingly. These typically cover:

    - protecting the confidential information of the company and the third party;
    - inclusion or exclusion from board meetings and receipt of board papers;
    - any benefit received as a result of the authorised conflict.

Regulate behaviour

Even if a potential conflict situation has been authorised or is permitted by the articles of association you should still act appropriately, remembering your obligation to promote the success of the company. You must take care to act in accordance with the articles of association and any terms and conditions attached to the authorisation.

3.5 Who do I owe my general duties to?

Your general duties are owed to the company which you are a director of and not other group companies or individual shareholders. It is the company itself which can take enforcement action against a director if there has been a breach of duty. The decision to start proceedings against a director would be made by the board or, in an insolvency situation, a liquidator. In certain circumstances and subject to certain hurdles, an individual shareholder or group of shareholders can also bring a claim against a director for breach of duty on behalf of the company (known as a derivative action).

3.6 What penalties are there if I breach my general duties?

A breach of a general duty typically gives the company a number of potential remedies including an injunction, damages or compensation. Failure to disclose an interest in an existing transaction or arrangement with the company also carries the risk of a criminal fine.

3.7 Is there any form of relief for a breach of the general duties?

If a director finds he or she has acted in a way which breaches the general duties owed to the company the following help may be available:

- the breach may be ratified by resolution of the company's shareholders;
- in certain circumstances the court may grant relief if the director acted honestly and reasonably;
- the company may have arranged insurance for the benefit of its directors;
- the company may offer to assist the director by indemnifying him or her against costs incurred in successfully
- defending a claim for breach of duties owed to the company.

4.0 Other duties and responsibilities

4.1 Do I have any other responsibilities under the Companies Act 2006?

The Companies Act 2006 imposes an array of other obligations on you as a director. Some are personal in nature and are specifically addressed to the directors. Others arise from the responsibility of the directors to ensure that the company carries out its obligations (where both the company and the directors may face liability in the event of a failure). Potential penalties depend on the specific obligation breached but typically involve a fine or rarely, for the most serious offences only, imprisonment.

Probably the most significant are the duties of the directors relating to the preparation, content, circulation and filing of the company's annual reports and accounts where many of the obligations fall directly on the directors.

You also have to comply with all other laws and regulations applicable to it (such as tax and employment laws). As the company acts through the board of directors, the directors are responsible for ensuring compliance by the company.

Some other key obligations relate to the restrictions and conditions placed on transactions between a director and his or her company and loans made by the company to a director.

4.2 What about other duties and obligations?

Obligations are also imposed on you as a director from other sources beyond the main companies legislation. Some examples are:

- A director owes a duty of confidentiality to his or her company and must use or disclose the company's confidential information only for the benefit of the company.

- Directors are responsible for ensuring that the company complies with its obligations relating to the health, safety and welfare at work of its workers, under health and safety legislation.

- Similarly, obligations arise under environmental legislation and anti-corruption legislation.

4.3 And what are my responsibilities on insolvency?

Where a company is in financial difficulties the directors should seek independent advice as soon as possible if they are to avoid potential personal liability under insolvency legislation. The potential risks for a director in this area are complex and include the risk of being disqualified from holding the position of director or being involved in the promotion or management of a company for a period of up to 15 years.

Some of the key issues for a director of a company which is insolvent or approaching insolvency are:

- Modification of the general duty to promote the success of the company. The general duty is modified where a company is (or is on the verge of being) insolvent so that you must act instead in the best interests of the company's creditors.

- Wrongful trading. A director can be ordered by the court to contribute towards the general pool of assets which are available to a company's creditors where he/she:

- knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation; and
- continues to allow the company to trade after he or she knew or ought to have concluded; and
- does not take all the steps he or she should from that time to minimise creditors' losses.

A director does not need to have been dishonest to be liable for wrongful trading and he/she cannot avoid responsibility by resigning from the company when potential difficulties are spotted. This is a particularly thorny area for directors to navigate and proper advice should always be sought.

- ***Fraudulent trading***

  This involves a degree of dishonesty on the part of the director as the offence requires an intention to defraud the company's creditors or some other fraudulent purpose. A director may be required to contribute to the company's assets available for distribution to creditors or may face criminal proceedings.

- ***Misfeasance***

  A director can be guilty of this if he or she has misapplied or retained company assets or wrongly exercised authority. It does not necessarily involve moral blame. A director in breach may be ordered by the court to repay money or contribute to the company's assets available for distribution to creditors.

5.0 Indemnities and insurance

5.1 Can the company indemnify or insure me against claims?

A company may (but is not obliged to) indemnify you in respect of certain proceedings brought against you by third parties. An indemnity can potentially cover both the cost of the claim itself and the costs involved in defending it but never the following:

- the unsuccessful defence of or fines imposed in criminal proceedings; or
- penalties imposed by regulatory bodies.

It is common for a company to take out directors' and officers' (D&O) insurance on behalf of its directors. Policy cover and terms vary from company to company and insurer to insurer but typically deal with directors' liabilities arising from claims of negligence, breach of duty or other default. Standard policy exclusions include fraud, dishonesty and criminal behaviour but the directors should ensure they understand any limitations on cover and that insurance policies are kept under regular review.