
ACCESS TO INFORMATION PROCEDURE RULES

The Council considers that Local Government derives an important part of its authority and influence from the trust and confidence of the individuals and communities it serves. Access to Information in respect of decision making is a necessary prerequisite for generating that trust and confidence. Informed members of the local community are better able to contribute to, and take part in, the work of Local Authorities. Access to information is central to this process and requires Local Authorities to establish the appropriate balance between:

- making information readily and openly available to the public; and
- ensuring that certain areas of personal/public life remain the legitimate object of confidentiality.

1. SCOPE

Rules 1 to 11 outline the rights of members of the public and apply to all meetings of the Council, the Overview and Scrutiny Committees, Cabinet, Audit Committee, Human Resources and Council Tax Committee, Licensing and Registration Committee (and its sub-committees), Planning Policy & Local Plan Committee, Planning Committee, Standards Committee and the Town and Parish Council Standards Sub-Committee, collectively called meetings.

Rule 12 relates to recording of Decisions by Officers.

Rule 13 deals specifically with Cabinet's schedule of key decisions by which future major decisions of the Council are publicised.

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any, more specific, rights to information contained elsewhere in this Constitution or the law for example the Data Protection Act 1998 and the Freedom of Information Act 2000.

3. RIGHTS TO ATTEND MEETINGS

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

Any person is permitted to film or record any meeting of the Council, a Committee, Sub-Committee or the Cabinet, save where the public have been excluded for consideration of exempt or confidential business. The rules, as prescribed by legislation, will allow for the reporting of meetings via social media of any kind. The Council will provide reasonable facilities to facilitate reporting.

Any person exercising such rights must not disrupt the proceedings. Examples of what will be regarded as disruptive include, but are not limited to, moving outside the area designated for the public, making excessive noise, intrusive lighting/flash or asking a Councillor to repeat a

statement. In addition, members of the public or the public gallery should not be filmed as this could infringe on an individual's right to privacy, if their prior permission has not been obtained. Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairman and may be asked to leave the meeting.

4. NOTICES OF MEETING

The Council will give at least five clear working days' notice of any meeting, except where an urgent meeting is convened, by making the agenda and reports publicly available at the Town Hall, Station Road, Clacton-on-Sea, CO15 1SE (the "designated office") and on the Council's website.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda, accompanying reports and background papers that are open to the public available for inspection at the designated office and on the website at least five clear working days before the meeting. If an item is added to the agenda after publication the revised agenda will be open to inspection from the time the item was added to the agenda.

Copies of the agenda and accompanying reports will be sent to the Councillors who serve on the decision-making body in question.

6. SUPPLY OF COPIES

Agendas, reports and background papers listed within Cabinet reports are available to view on the Council's website. The Council will on request, and for such reasonable charge as is from time to time agreed, supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any background papers listed within the reports; and
- (c) copies of any other documents supplied to Councillors in connection with an item to any person, on payment of a charge for postage and other costs, if the Proper Officer (Monitoring Officer) thinks fit.

7. ACCESS TO MINUTES ETC AFTER THE MEETING

In addition to publishing information on the Council's website, the Council will make available, upon request copies of the following for six years after a meeting:

- (a) the minutes of the meeting which will include a record of decisions taken, together with reasons. However where the meetings discussed exempt or confidential information the minutes open to the public will only include a record of the proceedings and the decision. The Council aims to publish minutes of meetings within 5 working days following the meeting;

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- (b) records of executive decisions taken by individual Cabinet Members or Officers, including the reasons for the decision and any alternative options considered and rejected. They will be published and made available as soon as reasonably practicable after they have been taken;
 - (c) the agenda for the meeting; and
 - (d) reports relating to items when the meeting was open to the public.

8. BACKGROUND PAPERS

8.1 List of Background Papers

In every report a list will be included of those documents (called background papers) relating to the subject matter of the report which in the report author's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but do not include published works or those which disclose exempt or confidential information as defined in Rule 10.

8.2 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.

Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection. Arrangements for inspection should be made through the Council's Committee Services at the Town Hall and on the Council's website.

In the case of reports to Cabinet, the background papers will be published on the Council's website, subject to Rule 10 below.

The Council may now charge "a reasonable fee" for access to background papers to be inspected at the Council's offices.

9. SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept and be available to the public at the Town Hall, Station Road, Clacton-on-Sea.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential Information – Requirement to Exclude Public

The public will 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.

10.2 Meaning of Confidential Information

Confidential information means 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.

10.3 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 which falls into one of the seven definitions of information that is exempt from disclosure to the public and press.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Meaning of Exempt Information

Exempt information means any information falling within the following seven categories (subject to any condition) as defined in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended):

Category	Condition
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).	Information is not exempt information 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;

<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p> <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>6. Information which reveals that the authority proposes:-</p> <p>(a) To give under any enactment or notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) To make an order or direction under any enactment.</p> <p>7. Information relating to any action or any action proposed to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>(e) The Building Societies Act 1986; or</p> <p>(f) The Charities Act 1993.</p> <p>“Financial and business affairs” includes contemplated, as well as past or current activities.</p> <p>Employee means a person employed under a contract of service. “Labour relations matters” means any matters specified in section 218(1)(a) to (g) of the Trade Union and Labour Relations (Consolidation) Act 1992. These matters also apply to office holders as to employees.</p>
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Notes:

- (a) Information falling within any of categories 1-7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.
- (b) Information which:-
 - (a) falls within any of categories 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of the condition is 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.
 - (c) Where the meeting will determine any person's civil rights or obligations, 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 that Article.

10.5 Hearings under Regulations made pursuant to the Licensing Act 2003

Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 presumes that hearings shall take place in public. However, the licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public. For that purpose, a party and any person assisting or representing a party may be treated as a member of the public.

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the Proper Officer (Monitoring Officer) thinks fit, the Council may exclude access by the public to reports which, in their opinion, relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with category of information likely to be concerned. The report will also include a Review Date at which time the contents of the report will be re-assessed in order to determine whether the report can now be placed into the public domain.

12. RECORDING OF DECISIONS BY OFFICERS

12.1 Written Record

A written record must be produced, as soon as reasonably practicable, after a decision has been made, which was delegated to an Officer by Council, a Committee or Sub-Committee either:

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- (a) under an express authorisation; or
 - (b) a general authority to take decisions which grant a permission or licence, affect an individual's rights or award a contract or incur expenditure, which in either case, materially affects the Council's finances.

12.2 Prescribed Format

The written record must be in the prescribed format approved by the Monitoring Officer and Committee Services Manager and contain the following information:

- (a) the date the decision was made;
- (b) a record of the decision taken along with the reasons for the decision;
- (c) details of alternative options, if any, considered and rejected; and
- (d) where relevant, any conflicts of interest declared.

12.3 Public Inspection of Decision and Background Papers

The Officer making the decision must ensure that the written record and background papers are made available for inspection by the public and published on the Council's website.

APPLICATION OF RULES TO THE CABINET

Rules 13 to 21 apply to the Cabinet, any decisions taken by the Leader, Cabinet Members or Officers under the Scheme of Delegation. If any of these decision makers intend to take a key decision then it must also comply with Rule 13 unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A "key decision" is defined in Article 13.03 of this Constitution.

13. PROCEDURE BEFORE TAKING KEY DECISIONS OR DECISIONS THAT WOULD INVOLVE THE DISCLOSURE OF CONFIDENTIAL OR EXEMPT INFORMATION

- 13.1** Subject to Rules 14 and 15 below, a key decision or a decision that would involve the disclosure or likely disclosure of confidential information must not be made until a notice has been published on the Council's website (under Forthcoming Decisions) for at least 28 clear days, containing the following details:
- (a) that a key decision is to be made, and details of the matter excluding (if applicable) any details that would reveal confidential or exempt information; or
 - (b) that a decision that would involve the disclosure or likely disclosure of confidential information is to be made and details of the matter excluding any details that would reveal such confidential or exempt information;

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- (c) the decision-maker's name and title, if an individual, or if it is a body, its name and full membership;
 - (d) the date on which, or period during which, the decision is to be made;
 - (e) a list of the documents already submitted to the decision-maker for consideration in relation to the matter and details of how to obtain copies; and
 - (f) a statement that documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.

13.2 DEFINITIONS

A "Key Decision" is an executive decision that meets the description of a Key Decision set out in Article 13.03 of the Constitution.

"Confidential" and "Exempt" information are defined in, respectively, Access to Information Procedure Rules 10.2 and 10.4.

14. GENERAL EXCEPTION

Subject to Rule 15, if publication under Rule 13 above is impracticable, a key decision may only be made:

- (a) where the Proper Officer has informed the Chairman of the relevant Overview and Scrutiny Committee in writing of the matter about which the decision is to be made;
- (b) notice is given and published on the Council's website of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days' notice; and
- (c) at least five clear working days have elapsed between notice being given and the decision being taken.

Decisions taken under the General Exception procedure are still subject to call in unless an exemption has been granted or an exception applies under the provisions set out in Overview and Scrutiny Procedure Rule 18.

15. SPECIAL URGENCY

If the general exception rule is impracticable, due to the date by which a key decision must be made, the key decision can only be taken if the decision-maker has received the agreement of the Chairman of the relevant overview and scrutiny committee, or if they are unable to act, the Chairman or Vice-Chairman of the Council and has published a notice on the Council's website, stating that the making of the decision is urgent and the reasons why it cannot reasonably be deferred.

Decisions taken under the Special Urgency procedure are automatically exempted from call-in.

16. REPORTS TO COUNCIL**16.1 When an Overview and Scrutiny Committee can require a Report**

If the relevant overview and scrutiny committee thinks that a key decision has been made and was not:

- (a) published in accordance with Rule 13.1; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement under Rule 15;

the Committee, by resolution at one of its meetings, may require the Cabinet to submit a report to full Council, within such reasonable time as the Committee specifies. The report to Council must include details of the decision, the decision maker and reasons why the Cabinet are of the opinion that the decision was not a key decision. The power to require a report rests with the Committee but may also be exercised by the Proper Officer on receipt of a written request, providing valid reasons to do so, from five members of the Committee.

16.2 Reports on Special Urgency Decisions

The Leader will submit a report to the next practicable ordinary meeting of the Council on Cabinet decisions or executive decisions taken by individual Portfolio Holders or Officers where the making of the decision was agreed as urgent in accordance with Rule 15 since the last such report. The report will include the number of decisions made, the particulars of each decision made and a summary of the matters in respect of which those decisions were made.

17. RECORD OF DECISIONS

A written record must be produced, as soon as reasonably practicable, after a Cabinet (executive) decision has been made, including where Cabinet Members have made individual decisions and Officer's decisions have been made exercising executive functions in accordance with the Responsibility of Functions – Delegated Powers contained within Part 3 of this Constitution.

Each record must be in the prescribed format approved by the Monitoring Officer and Committee Services Manager and contain the following information:

- (a) the decision and the date it was made;
- (b) the reasons for the decision;
- (c) details of any alternative options considered and rejected; and
- (d) declarations of interest and details of any dispensations granted in respect of those interests.

The Record of the Executive Decision will be published on the Council's website together with any report considered at the meeting or by the individual Portfolio Holder or Officer and must be available for inspection, as soon as reasonably practicable. Any background paper must also be listed and one of each of the documents available for public inspection and published on the Council's website.

18. PROCEDURES PRIOR TO A PRIVATE MEETING

18.1 At least 28 days before a private meeting of the Cabinet:-

- (a) notice of intention to hold the meeting must be made available at the Council's offices; and include a statement of the reasons for the meeting to be held in private;
- (b) details of any representations received about why the meeting should be held in public and a statement of its response to any such representations;
- (c) that Notice must list any decision that would involve the disclosure or likely disclosure of confidential information that is due to be made at that meeting together with details of the matter excluding any details that would reveal such confidential or exempt information; and
- (d) that Notice must be published on the Council's website.

18.2 The Notice under 18.1 must include a statement of the reasons for the meeting being held in private.

18.3 At least five clear days before a private meeting, a further notice of the intention to hold a meeting must be available and published on the Council's website. This will form the Cabinet agenda for the meeting.

19. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

All Members of the Cabinet will be served notice of, and are entitled to attend, all private meetings of the Cabinet or Committees of the Cabinet.

The Chief Executive, the Chief Financial Officer, the Monitoring Officer (or Deputies) and the Corporate Directors in the light of items to be discussed, or their nominated representatives, at the discretion of the Chief Executive can attend.

20. RIGHTS OF OVERVIEW AND SCRUTINY MEMBERS

20.1 Upon request from a member of an overview and scrutiny committee, the Cabinet **must** make available any document which contains material relating to any business transacted at a public or private meeting of the Cabinet and any decisions made (whether by individual Cabinet Members or Officers).

20.2 This request must be complied with and the documentation provided as soon as reasonably practicable, but no later than 10 clear days after the request is made.

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- 20.3** If the Cabinet determines that material will not be provided, it must provide the member of the overview and scrutiny committee with a written statement, setting out its reasons for that decision.

Limits on Rights

The member of an overview and scrutiny committee will not be entitled to:

- (a) any document in draft form; or
- (b) any part of a document which contains exempt or confidential information unless it relates to an action or decision that is being scrutinised or to any review in a relevant overview and scrutiny committee's work programme; or
- (c) any exempt material which contains advice provided by a political adviser or assistant.

21. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

21.1 Material Relating to Previous Business

All Members will be entitled to inspect any document that is in the possession of, or under the control of, the Cabinet and contains material relating to any business previously transacted at a private meeting unless it contains exempt or confidential information, or the advice of a political adviser or assistant.

21.2 Material Relating to Key Decisions

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet, which relates to any key decision unless paragraph 21.1 above applies.

21.3 Nature of Rights

These rights of a Member are additional to any other rights they may have.

BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

1. The Framework for Cabinet Decisions

The Council will be responsible for the adoption of its Budget and Policy Framework as set out in Article 4. Once a Budget or Policy Framework is in place, it will be the responsibility of the Cabinet to implement it.

2. Process for Developing the Policy Framework

The process by which the Policy Framework shall be developed is:

- (a) The Cabinet will publicise on the Council's website a timetable for making proposals to the Council for the adoption of any plan or strategy that forms part of the Policy Framework, and the Cabinet's arrangements for consultation after publication of those initial proposals. The Chairman of each Overview and Scrutiny Committee will also be notified. The consultation period shall in each instance be not less than 3 weeks.
- (b) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses to that consultation. If an Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. The Cabinet will take any response from an Overview and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.

Proposals from the Cabinet shall include recommendations regarding any aspects of the proposed plan or strategy that they consider full Council should delegate to the Cabinet the ability to vary.

- (c) Once the Cabinet has approved firm proposals, the appropriate Corporate Director will report them at the earliest opportunity to the Council for decision.
- (d) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, substitute its own proposals in their place or, with the exception of proposals in relation to the Corporate Plan, refer them back to the Cabinet for further consideration.
 - (i) If the Council decides not to adopt the Cabinet's proposals, the Council must inform the Leader of the objections which it has to the draft plan or strategy and instruct the Leader to require the Cabinet to reconsider the draft plan or strategy in the light of those objections.
 - (ii) Where the Council gives instructions in accordance with Rule 2(d)(i), it must specify a period of at least five working days beginning on the day after the

date on which the Leader receives the instructions on behalf of the Cabinet within which the Leader may:

- (1) Submit a revision of the draft plan or strategy as amended by the Cabinet (the “revised draft plan or strategy”), with the Cabinet’s reasons for any amendments made to the draft plan or strategy, to the Committee Services Manager for consideration; or
 - (2) Inform the Committee Services Manager of any disagreement that the Cabinet has with any of the Council’s objections and the Cabinet’s reasons for any such disagreement.
- (e) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision that has immediate effect. Otherwise, it may only make an in-principle decision. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.
- (f) The decision will be publicised in accordance with Article 4 and a copy shall be given to the Leader.
- (g) An in-principle decision will automatically become effective on the expiry of the period specified in Rule 2(d)(ii) unless the Leader has submitted in writing to the Committee Services Manager a revision of the plan or strategy or informed them in writing of any disagreement that the Cabinet has with the Council in accordance with Rule 2(d)(ii).
- (h) In that case, the Chairman of the Council will call a Council meeting to be held on a date within 10 working days of receipt of the Leader’s written submission. The Council will be required to re-consider its decision taking into account the written submission provided by the Leader (which may either include a revised draft plan or strategy with reasons or the reasons for the Cabinet disagreeing with the Council’s objections to the draft plan or strategy). The Council may:-
 - (i) approve the Cabinet’s recommendation by a simple majority of votes cast at the meeting; or
 - (ii) approve a different decision that does not accord with the recommendation of the Cabinet by a simple majority; or
 - (iii) approve the Cabinet’s proposed plan or strategy (whether in the form of a draft of revised draft) by a simple majority of votes cast at the meeting; or
 - (iv) approve a different decision that does not accord with the proposed draft or revised draft plan or strategy of the Cabinet by a simple majority.
- (i) The decision shall then be made public in accordance with Article 4, and shall be implemented immediately.

- (j) In approving the Policy Framework, the Council will also specify the degree of in-year changes to the Policy Framework that may be undertaken by the Cabinet, in accordance with paragraph 7 of these Rules. Any other changes to the Policy Framework are reserved to the Council.

3. Process for Developing the Budget

Subject to Rule 4 of these Procedure Rules, the process by which the Budget shall be developed is:

- (a) The Cabinet will publicise on the Council's website a timetable for making proposals to the Council for the adoption of the budget and the Cabinet's arrangements for consultation after publication of those proposals. The Chairman of each Overview and Scrutiny Committee will also be notified.
- (b) Prior to making any budget proposals in paragraph 3(a) above, the Cabinet will draw up a draft Financial Strategy/Forecast setting out the basis on which the budget proposals are intended to be formulated. The Cabinet shall consult the relevant Overview and Scrutiny Committee on the draft Financial Strategy/Forecast. The consultation period in this instance shall be not less than 3 weeks. At the end of that period the Cabinet shall agree the Financial Strategy/Forecast having regard to the response from that Overview and Scrutiny Committee.
- (c) The Cabinet shall draw up and consult on proposals for the budget having regard to the draft or agreed Financial Strategy/Forecast. If the relevant Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. The consultation period shall be not less than 2 weeks.
- (d) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses for that consultation. The Cabinet will take any response from an Overview and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- (e) Once the Cabinet has approved the firm proposals, the Chief Financial Officer will report them at the earliest opportunity to the Council for decision.
- (f) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, or substitute its own proposals in their place.
- (g) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision that has immediate effect. Otherwise, it may only make an in-principle decision, unless the Leader of the Council having consulted the Chief

Financial Officer indicates at the meeting Cabinet's acceptance of the amended budget. The Chairman of the Council will adjourn the meeting to allow the relevant consultation to take place. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.

- (h) Where the Council makes an in-principle decision, the Committee Services Manager shall immediately inform the Leader of any objections which it has to the Cabinet's proposals and shall give him instructions requiring the Cabinet, within 5 working days beginning on the day after the date on which the Leader receives those instructions, to reconsider in the light of those objections, the proposals submitted to it.
- (i) An in-principle decision will automatically become effective at the end of 5 working days beginning on the day after the date on which the Leader receives those instructions referred to in sub-paragraph (h) above, unless within that time the Leader:
 - (a) submits to the Committee Services Manager in writing a revision of the proposals as amended by the Cabinet ("the revised proposals") together with the Cabinet's reasons for any amendments made to the proposals; or
 - (b) informs the Committee Services Manager in writing of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.
- (j) In that case, the Chairman of the Council will call a Council meeting to be held on a date within 6 working days of receipt of the revised proposals or the Cabinet's disagreement. The Council will be required to re-consider its decision and to take into account the revised proposals, the Cabinet's reasons for any amendments made to the proposals, any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.

The Council may by a simple majority of votes cast at the meeting:-

- (i) confirm its original decision; or
- (ii) adopt (with or without modification) the original proposal or, if there is one, the revised proposal; or
- (iii) amend the original proposal or, if there is one, the revised proposal; or
- (iv) substitute its own proposals.
- (k) The decision shall then be made public in accordance with Article 4, and shall be implemented immediately.

- (l) In approving the budget, the Council will also specify the extent of virement within the budget that may be undertaken by the Cabinet. Any other changes to the budget are reserved to the Council.

4. Submission of Budget Proposals before 8th February

In the event of the Cabinet submitting their firm proposals for the budget to Council before 8 February in any financial year and the Council has any objections to those proposals, the actions set out in Schedule 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 shall be followed.

5. Decisions outside the Budget or Policy Framework

- (a) Subject to the provisions of Rule 3(l) the Cabinet, individual members of the Cabinet and any officers discharging Cabinet functions may only take decisions which are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to Rule 6.
- (b) If the Cabinet, individual members of the Cabinet and any officers discharging Cabinet functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Financial Officer as to whether the decision they want to make would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those Officers is that the decision would not be in line with the existing budget and/or Policy Framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in Rule 6 shall apply.

6. Urgent Decisions outside the Budget or Policy Framework

- (a) The Cabinet, an individual member of the Cabinet or Officers discharging Cabinet functions may take a decision which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:
 - (i) If it is not practical to convene a quorate meeting of the full Council; and
 - (ii) If the Chairman of the relevant Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of full Council and the Chairman of the relevant Overview and Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the

absence of the Chairman of that Overview and Scrutiny Committee, the consent of the Vice-Chairman of that Overview and Scrutiny Committee will suffice. In their absence the Chairman of the Council's consent will suffice, and in their absence the consent of the Vice-Chairman of the Council.

- (b) Following the decision, the Leader will provide a full report to the next practicable ordinary meeting of the Council explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

7. Virement

The Council's budget can only be varied by the Council except as provided for in the Financial Procedure Rules. These rules make provision for:

- (a) Virements – the transfer of sums between budgetary heads
- (b) Supplementary Estimates – the provision from reserves or from a specific provision of sums to increase the overall budget or the approval of negative Supplementary Estimates for the specific purpose of reducing the Council's net expenditure.

These rules specify the limits and procedures governing approval of these budget variations and may be varied from time to time by the Council to meet changing service and portfolio operational needs.

8. In-Year Changes to Policy Framework

The responsibility for agreeing the Budget and Policy Framework lies with the Council, and decisions by the Cabinet, an individual member of the Cabinet or Officers discharging Cabinet functions must be in line with it. No changes to any plan or strategy that make up the Policy Framework may be made by those bodies or individuals except those:

- (a) which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint; or
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance; or
- (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; or
- (d) relating to aspects of any plan or strategy where full Council has delegated to the Cabinet the ability to vary.

9. Call-in of Decisions outside the Budget or Policy Framework

- (a) Where an Overview and Scrutiny Committee is of the opinion that either a proposed decision or a decision which has been called-in under the Overview and Scrutiny Procedure Rules is or would be, contrary to the Council's Budget and Policy Framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Financial Officer.
- (b) The call-in procedures set out in Rules 13 and 17 of the Overview and Scrutiny Procedure Rules must be adhered to.
- (c) If, having had regard to the advice of the Monitoring Officer and/or Chief Financial Officer, which will be summarised within the Report, the Overview and Scrutiny Committee considers the decision is contrary to the Budget or Policy Framework; the Committee may refer the matter to the next practicable meeting of the Council, subject to the provisions of the Council Procedure Rules.
- (d) Council will receive a written report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Financial Officer. The Council may either:
 - (i) endorse a decision or proposal of the decision taker as falling within the existing Budget and Policy Framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
 - (ii) amend the Council's Financial Procedure Rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that Cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
 - (iii) where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of the Monitoring Officer and/or Chief Financial Officer.

OVERVIEW AND SCRUTINY PROCEDURE RULES

1. OVERVIEW AND SCRUTINY COMMITTEES

The Council will have two Overview and Scrutiny Committees (“the Committees”), which together will perform all overview and scrutiny functions on behalf of the Council. They will each consist of nine members, who will be appointed by the full Council (normally) at its annual meeting. Their terms of reference and functions will be as set out in Part 2, Article 6 of the Constitution.

2. MEMBERSHIP

All Councillors except Cabinet members may be members of the Overview and Scrutiny Committees. However, no Member may be involved in scrutinising a decision in which they have been directly involved in making.

3. CO-OPTED MEMBERS (WITHOUT VOTING RIGHTS)

Each Overview and Scrutiny Committee shall be entitled to appoint people as Co-opted Members (without voting rights) as considered appropriate to enable them to perform their overview and scrutiny functions. The duration of the appointment will be determined by the Committee. In addition, the Council may determine which groups or bodies should be represented on a particular Committee by Co-opted Members (without voting rights).

4. MEETINGS OF THE COMMITTEE

Meetings of the Overview and Scrutiny Committees will be held in accordance with the programme of meetings approved at the Annual Meeting of the Council. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the Chairman of the relevant Committee, or by the Head of Democratic Services & Elections, if considered necessary or appropriate.

Programmed meetings may also be cancelled, following consultation with the Committee’s Chairman, where the business to be transacted would not warrant the holding of the meeting as originally envisaged.

5. QUORUM

The quorum for the Committee shall be as set out in Part 4 (Council Procedure Rules).

6. CHAIRMEN

The Chairmen of the Committees shall be appointed as set out in Part 4 (Council Procedure Rules).

The Chairmen of the Overview and Scrutiny Committees will meet with the Head of Democratic Services & Elections and relevant officers to co-ordinate the business of the relevant Committees and determine which Committee will assume responsibility for any particular issue. In consultation with the Chairman of the two Committees, it may be proposed that a joint Panel or Group to be established by the Committees.

7. WORK PROGRAMME

Each Overview and Scrutiny Committee will submit a work programme for the year ahead and a review of the previous year's activities to the Council for approval. In addition, it will be responsible for co-ordinating and prioritising its work programme on an ongoing basis.

In preparing, co-ordinating and prioritising its programme, each Overview and Scrutiny Committee will take into account:-

- The General Role and Principles of undertaking its functions, as set out in Part 2 Article 6
- the planned work on the preparation of elements of the Budget and Policy Framework;
- provision for budget scrutiny and scrutiny of the Treasury Management Strategy, as appropriate;
- the need for statutory timetables to be met;
- the expressed wishes of the members of the committee;
- requests from the Cabinet to carry out reviews and/or suggestions from the liaison meetings held under the Cabinet Overview & Scrutiny Protocol; and
- requests from Members and/or Group Leaders in accordance with Rule 8.

8. AGENDA ITEMS

Any member of an Overview and Scrutiny Committee shall be entitled to give notice to the Head of Democratic Services & Elections that they wish an item relevant to the terms of reference and the functions of the Committee (but with the exception of matters relating to crime and disorder) to be included on the agenda for the next meeting of that Committee. Such notice must be given by delivering it, in writing (or by personal e-mail) to the Head of Democratic Services & Elections no later than midday seven working days before the day of the meeting. On receipt of such a notice the Head of Democratic Services & Elections will ensure that the item is included on the agenda.

OVERVIEW AND SCRUTINY PROCEDURE RULES

Any such request by Members will be considered at the next available meeting where the Committee will decide if the item should form part of the work programme.

The Leader of any political group may request that an item be included on the Overview and Scrutiny work programme. The relevant Overview and Scrutiny Committee will consider the request on the agenda and determine at its meeting, whether the item is appropriate for inclusion on the work programme.

The relevant Overview and Scrutiny Committee will respond, as soon as their work programme permits, to requests from the Council and if it considers appropriate, the Cabinet to review particular areas of Council activity. Such referrals will be accompanied by Council/Cabinet's view on the matter under consideration to assist the relevant Overview and Scrutiny Committee in effective investigation of the matter. Where they do so, the relevant Overview and Scrutiny Committee shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or Cabinet shall consider the report at its following meeting.

In addition to the above any member of the Authority who is not a member of the Council's designated crime and disorder committee (i.e. the Community Leadership Overview & Scrutiny Committee) can refer any local crime and disorder matter to that committee for its consideration in accordance with the legislative requirements. Such a reference must be given by delivering it, in writing (or by personal e-mail) to the Head of Democratic Services & Elections no later than midday seven working days before the day of the meeting. On receipt of such a notice the Head of Democratic Services & Elections will ensure that the item is included on the agenda. Any such reference by a Member will be considered at the meeting concerned where the Committee will decide how to proceed with the reference (within the legislative requirements).

9. COUNCILLORS CALL FOR ACTION

The Councillors Call for Action is an additional means for Councillors to raise issues of local community concern, for consideration by the Council's overview and scrutiny function, on behalf of residents. A Councillors Call for Action should only be raised where other means of resolving the matter have been exhausted.

- (a) Any Member of the Council may raise a Councillors Call for Action, which should be sent to the Council's Head of Democratic Services & Elections.
- (b) Once the Councillors Call for Action is received, the matter must be considered by the relevant Overview and Scrutiny Committee, whose terms of reference the matter falls within and they must endeavour to consider the matter within a reasonable timescale. Where the matter falls within the terms of reference of more than one Committee, the Chairmen of the Committees will determine the most appropriate Committee to deal with the matter, except where the matter relates to a crime and disorder issue where all

such matters must be considered by the Overview and Scrutiny Committee responsible for crime and disorder matters.

- (c) If a Councillors Call for Action is deemed not to be valid, a letter will be sent to the Member concerned informing them of the reasons for this. Where the issue has been deemed not to be valid because other methods of resolution have not been exhausted, the Call for Action may be re-submitted, if necessary, once the Councillor concerned has pursued the matter further.

10. PROCEDURE AT COMMITTEE MEETINGS

- (a) The Committees shall consider the following business:
 - (i) Minutes of the last meeting;
 - (ii) Declarations of Interest;
 - (iii) Consideration of any matter referred to the Committee for a decision in relation to the call-in of a decision;
 - (iv) Any Councillors Call for Action raised in accordance with Overview and Scrutiny Rule 9;
 - (v) Questions submitted pursuant to Council Procedure Rule 38;
 - (vi) Work Programming Issues (having due regard to the General Role and Principles as set out in Article 6 of the Constitution) which shall include:
 - (1) Matters raised by a Member/Group Leader under Overview and Scrutiny Rule 8;
 - (2) Questions raised on forthcoming executive decisions in accordance with Overview and Scrutiny Procedure Rule 13;
 - (3) Responses of Council/Cabinet/Partners to reports and/or recommendations of the Overview and Scrutiny Committee;
 - (4) Responses of the Cabinet to called-in decisions referred to reconsideration; and
 - (5) Summary of forthcoming (and completed) enquiries as directed by Council or otherwise approved by the Committee for that year.
 - (vii) Interim and/or Finalised Reports from Task and Finish Groups on enquiries undertaken by those Groups; and

OVERVIEW AND SCRUTINY PROCEDURE RULES

- (viii) The business otherwise set out on the agenda for the meeting.
- (b) Where an Overview and Scrutiny Committee undertakes researched and evidence reviews on a specific topic, on a task and finish basis (e.g. with a view to policy development), the relevant Committee may also ask people to attend to give evidence at the Task and Finish Group meetings that are to be conducted in accordance with the following principles:
- (i) that the terms and reference of any Task and Finish Group must be agreed by the relevant Overview and Scrutiny Committee prior to its commencement;
 - (ii) consideration being given to the Council's priorities and resources when making researched and evidenced recommendations and referral decisions as an outcome of the scrutiny;
 - (iii) that the reviews be conducted fairly and all members of the Task and Finish Group be given the opportunity to ask questions of attendees, and to contribute and speak;
 - (iv) that those assisting the Task and Finish Group by giving evidence be treated with respect and courtesy; and
 - (v) that the review by the Task and Finish Group be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any Task and Finish review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

11. POLICY REVIEW AND DEVELOPMENT

- (a) The role of the Overview and Scrutiny Committees in relation to the development of the Council's Budget and Policy Framework is set out in detail in the Budget and Policy Framework Procedure Rules within this Constitution.
- (b) In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, each Overview and Scrutiny Committee may make proposals or act as consultee for the Cabinet for developments in so far as they relate to matters within their terms of reference.
- (c) Each Overview and Scrutiny Committee where relevant to their terms of reference, may undertake enquiries into the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. Enquiries may involve Councillors going on site visits, conducting public surveys, holding public meetings, commissioning research and doing all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses

to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so (subject to the appropriate budget being available).

- (d) To assist Members of the Overview and Scrutiny Committees to develop appropriate approaches to individual enquiries (and support officers in their role for individual enquiries), the Head of Democratic Services & Elections may (from time to time) issue practice guides on such approaches.
- (e) Where resources permit, each Overview and Scrutiny Committee may establish, task and finish groups to undertake the matters in (c) above and to gather the evidence in the ways set out. Likewise, enquiries may also be conducted through informal meetings of the Members of the Committee, scrutiny days and off agenda briefings. Joint task and finish groups (which may be styled panels) may be formed, where necessary, by two Overview and Scrutiny Committees in agreement to examine subjects that are, in part, in both of the terms of reference for those Committees.

Membership of task and finish groups will not be limited to members of the relevant Overview and Scrutiny Committee(s). While they are not subject to the political balance rules that apply to formal Committees/Sub-Committees of the Council, from among the nominees for a particular task and finish group regard will be given to the broad overall political balance of the Council when determining the membership of the group.

- (f) All enquiries undertaken away from a formal meeting of the relevant Overview and Scrutiny Committee will conclude with a final report to that Overview and Scrutiny Committee. It will be for that Committee to determine the finalised report and recommendations arising from the enquiry. An enquiry can identify the need for an interim report, ahead of the final report, and this too will be subject to consideration by the relevant Overview and Scrutiny Committee.

If Full Council has directly requested a report on that matter then the final report will be submitted to Full Council for its determination.

12. REPORTS FROM AN OVERVIEW AND SCRUTINY COMMITTEE

- (a) Specific evidence based reports from an Overview and Scrutiny Committee that contain recommendations on proposals for development, will be submitted formally for consideration by Cabinet (or to Full Council directly (if appropriate) from the “crime and disorder committee” or otherwise if Full Council has directly requested a report on that matter). If the proposals would involve a change to the existing Budget and/or Policy Framework, the Cabinet will consider the matter and make a recommendation to Full Council. The report will be drafted by Officers and agreed by the relevant Chairman in respect of the proposals from the relevant Overview and Scrutiny Committee.

- (b) The Cabinet shall consider the report from the relevant Overview and Scrutiny Committee at the next meeting of the Cabinet for which the agenda has not yet been published.
- (c) In addition to making recommendations on specific proposals for development, the Overview and Scrutiny Committees may make more general comments/suggestions regarding matters they have considered, which they would like the relevant Cabinet Member to consider and take appropriate action. In such instances, a copy of the relevant minute will be sent to the Cabinet Member.
- (d) Where specific evidence-based recommendations on proposals for development from the Overview and Scrutiny Committees relate to matters that are the responsibility of Partner Authorities and organisations, notice in writing by way of a formal report will be provided to the relevant Partner Authority or organisation requiring them to have regard to the recommendations. The Partner or organisation will be requested to respond to the relevant Committee within two calendar months setting out action, if any, that is to be taken in response to the recommendations.

13. SCRUTINY OF PROPOSED AND RECENT DECISIONS

The Overview and Scrutiny Committees will, at their ordinary meetings, review the new and/or amended forthcoming decisions relevant to their terms of reference. If they wish to enquire into any forthcoming decisions, such an enquiry might consist of questioning members of the Cabinet and Officers, and seeking the views of local stakeholders and/or other interested parties. The Cabinet will take into account any recommendations expressed by the relevant Overview and Scrutiny Committees when determining the final decision and record their response within any report and/or decision.

Matters may only be raised on the forthcoming decisions at Committee meetings where the Member has notified the Head of Democratic Services & Elections in writing (or by personal email) of the question they wish to ask, no later than Midday, two working days before the day of the meeting.

The Overview and Scrutiny Committee shall also be provided with a list of decisions by Cabinet/an individual Portfolio Holder taken since the Committee's last ordinary meeting and which that previous meeting had not itself had notice of in the record of forthcoming decisions. As such, if after preparation of the agenda for an ordinary meeting of an Overview and Scrutiny Committee notice of a proposed decision is given and the decision then is taken prior to the following ordinary meeting of the Committee, that second meeting of the Committee will be advised of the decision. This list is for the purposes of completeness and to inform the work programme discussion of the Committee. Other than informing this process the Committee may only note the list.

14. RIGHTS OF COMMITTEE MEMBERS TO DOCUMENTS

OVERVIEW AND SCRUTINY PROCEDURE RULES

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- (a) In addition to their rights as Councillors, members of the Overview and Scrutiny Committees in fulfilling their functions have the right to documents, and as provided for in Access to Information Procedure 20 (Rights of Overview and Scrutiny Members).
 - (b) This would not prevent more detailed liaison between the Cabinet and any Overview and Scrutiny Committee as appropriate.

15. MEMBERS AND OFFICERS GIVING ACCOUNT

- (a) It shall be for the relevant Management Team member to determine which Officers attend to provide advice to Overview and Scrutiny Committees, subject to each Committee being able to supplement this as thought necessary through (b), (c) and (d) below: However, the Chief Executive, Chief Financial Officer and Monitoring Officer have the right to attend, speak on an item of business, provide representations and present a report to discharge their statutory and constitutional duties whenever necessary. In such instances, the Overview and Scrutiny Committee will give due regard of the relevant advice provided. The decision and minutes of the meeting will record the advice, how it was taken into account and reasons for any departure.
- (b) Any Overview and Scrutiny Committee may scrutinise and review decisions made or action taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the Overview and Scrutiny role, it may require any Cabinet Member, or any Senior Officer to attend before it to explain in relation to matters within their remit:
 - (i) any particular decision or series of decisions (excluding decisions made as a consequence of a hearing/decision on an application by the Planning, Licensing and Registration, Audit, Human Resources and Council Tax or Standards Committees or Sub-Committees/Panels of those Committees); and/or
 - (ii) the extent to which the actions taken implement Council policy.
- (c) Where any Cabinet Member or Senior Officer is required to attend a meeting of the relevant Overview and Scrutiny Committee, at least seven working days^{*} notice of the meeting at which they are required to attend shall be given. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the relevant Committee. Where the account to be given to the Committee will require production of a report, then the Member or Officer concerned will be given sufficient notice to allow for the preparation of that document.
- (d) Where, in exceptional circumstances, the Cabinet Member or Senior Officer is unable to attend on the required date, the Chairman of the relevant Committee, shall, in

OVERVIEW AND SCRUTINY PROCEDURE RULES

consultation with the Member or Officer, arrange a substitute or an alternative date for attendance.

- (e) Participation by any Cabinet Member(s) in the general debate of the Overview and Scrutiny Committees will be at the discretion of the relevant Chairman (this rule does not apply when the Committee is considering a call-in).
- (f) In this paragraph, reference to an Overview and Scrutiny Committee includes enquiries undertaken through informal meeting of the Members of the Committee, task and finish groups, scrutiny days and off agenda briefings etc.

16. ATTENDANCE BY OTHERS

Each Overview and Scrutiny Committee may, in so far as it relates to matters within their terms of reference, invite people other than those referred to in paragraph 15 above to address them, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and Officers in other parts of the public sector and may invite such people to attend. Attendance by those invited is entirely optional but encouraged in the spirit of partnership working and community engagement.

All such invitations will be made through the Head of Democratic Services & Elections, in his capacity as the Council's designated Scrutiny Officer (Article 12 of the Constitution), so that a consistent and co-ordinated approach to invitations can be maintained. All such requests from individual Members shall be referenced to the Head of Democratic Services & Elections. This approach shall be followed in respect of less formal overview and scrutiny enquiries (such as through task and finish groups).

17. CALL-IN

When a decision is made by the Cabinet, or an individual member of the Cabinet, the decision is published, normally within five working days of being made. The Chairman of the relevant Overview and Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision. Decisions will also be sent to all Members.

That notice will include the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the decision is called-in.

- (a) The rules applying to call-in are:
- (i) All executive decisions taken at Cabinet meetings, or by individual Cabinet Members or by Officers (who are making a Key Decision as defined in Article 13.03), may be called-in, subject to the exceptions outlined in Procedure Rule 18;
 - (ii) Prior to holding a call-in, the callers-in are expected to attempt to resolve the matter through informal mediation, together with the relevant Cabinet Member and/or the Leader of the Council, if appropriate to do so;
 - (iii) The Committee Services Manager, will process call-in notices received from:
 - a. The Chairman of the relevant Overview and Scrutiny Committee; or
 - b. Three Non-Cabinet Members of the Council.

All valid call-in notices will be referred to the relevant Overview and Scrutiny Committee for determination and the decision-maker will be notified of the call-in.
 - (iv) A notice of call-in must be made on the appropriate prescribed form or email (so long as the email addresses the relevant information required) and must be received within five working days of the date of publication of the decision. Use of the prescribed form is encouraged, and should be completed in full, with reference to the criteria for submitting call-in requests and stating the reasons why the issue needs to be scrutinised.
 - (v) Individual decisions taken by Non-Executive Committees (Planning, Licensing, Standards and Audit Committees) cannot be the subject of call-in; and
 - (vi) Any decision can only be called-in once.
- (b) Those seeking to call-in a decision shall be required to state their reasons, in accordance with the criteria set, in the call-in notice form based on one or more of the following seven assessment criteria. These seven criteria are as follows:
- (i) The decision-maker has failed to consult relevant people, or bodies, in contravention of defined Council policies or procedures.
 - (ii) The decision is contrary to the Council's Budget or Policy Framework.
 - (iii) The decision is not consistent with Council policy.
 - (iv) The decision-maker did not take into account relevant considerations or other material factors and therefore, the decision is unreasonable.

- (v) The decision is contrary to a previously agreed decision made in Full Council, which has not been superseded by a subsequent decision.
- (vi) The decision is inconsistent with a previous Overview and Scrutiny recommendation that has been accepted by Cabinet or Council and that recommendation has not been superseded by a subsequent decision.
- (vii) The decision was not taken in accordance with the principles set out in Article 13 (Decision-Making) of the Constitution.

(c) **Mediation Process**

- (i) Those seeking to call-in a decision shall state, when providing their reasons in the call-in notice, whether they wish to enter into mediation with the relevant Cabinet Member(s) and if so, what element of the decision and/or further information would they wish to discuss as part of the mediation.
- (ii) Once those seeking the call-in have provided this information, the relevant Cabinet Member(s) must respond and confirm whether they wish to engage with the mediation process.
- (iii) Upon confirmation that the parties wish to mediate, Committee Services will set up a mediation, at which Officer(s) with knowledge of the background to the decision can attend to assist with providing or clarifying any information.
- (iv) The mediation meeting must be held no later than three working days before the date of any meeting arranged to allow consideration of the call-in by the relevant Overview and Scrutiny Committee.
- (v) The Council's Monitoring Officer and/or Section 151 Officer (or their appointed deputies) may attend the mediation meeting at their individual discretion.
- (vi) The Officer from Committee Services attending the mediation, will within 24 hours, produce a note for circulation to all parties to the meeting for approval. That note must include any and all assurances given by, or agreements reached with the Cabinet Member(s).
- (vii) Once those assurances or agreements are subsequently confirmed as being acceptable by all parties in writing then the call-in will be treated as having been dealt with and any further required action in relation to the decision will be undertaken in accordance with the Council's Constitution.

The Mediation Process does not preclude the relevant Cabinet Member(s), upon being made aware of the call-in and the reasons for it, making an immediate, unilateral undertaking to amend or rescind their decision or undertake any other appropriate action. Committee Services will inform the callers-in of such unilateral undertaking and ask if they are satisfied by that undertaking. If the callers-in confirm the undertaking as being acceptable to them in writing then the call-in will be treated as having been dealt with and any further required action in relation to the decision will be undertaken in accordance with the Council's Constitution.

- (d) The submission of a call-in notice shall have the effect of suspending the implementation of the decision pending consideration of the matter by the relevant Overview and Scrutiny Committee, who must meet to consider the matter within 15 working days from the date following receipt of the call-in notice.

If the relevant Committee does not meet within this period, the decision shall take effect on the expiry of the 15 working day period. The Chairman of the relevant Overview and Scrutiny Committee is under an obligation to ensure that the meeting is held within 15 days.

If the relevant Overview and Scrutiny Committee has already commented or made recommendations on the specific matter which has been called-in prior to the decision being made then it will be deemed to be pre-determined on the matter and the call-in will be considered by another Overview and Scrutiny Committee.

- (e) At the meeting to consider the call-in notice, the Overview and Scrutiny Committee shall limit its consideration to the reasons stated in the call-in notice.
- (i) The layout of the meeting will provide separate tables for both the callers-in and the relevant Cabinet Member to sit at for the item of the call-in.
 - (ii) Stage One of the meeting – the Councillor(s) requesting the call-in shall attend and explain their objections to the decision and the reasons for the call-in against the stated criteria.
 - (iii) Stage Two – the decision-maker (relevant Cabinet Member and relevant officer) shall establish the reasons behind the decision and can determine whether it should be referred back to the Cabinet Member for consideration.
 - (iv) Stage Three – Questions can be asked by:
 - a. The callers-in;
 - b. The relevant Cabinet Member or relevant Officer; and
 - c. The Committee.

All questions will be at the discretion of the Chairman, taking account of relevance to the subject matter.

- (f) It should be noted that, although a decision may be deemed to meet the criteria for call-in, this does not automatically mean the matter should be referred back to the decision-maker. There may be compelling reasons for the decision being made and all evidence should be heard before determining what action should be taken.
- (h) Participation in the general debate will not be permitted but the callers-in and relevant Cabinet Member may answer questions or points of clarification arising through the debate, at the discretion of the relevant Chairman.
- (i) On considering the matter, the Committee will decide whether or not to ask the decision-maker to reconsider its decision.
- (j) If, having had regard to the advice of the Monitoring Officer, which will be summarised within the Report, the Committee considers the executive decision is contrary to the Budget or Policy Framework; the Committee may refer the matter to the next practicable meeting of the Council, subject to the provisions of Council Procedure Rules.
- (k) If the relevant Overview and Scrutiny Committee decides to ask the decision-maker to reconsider their decision, the decision-maker shall be required to do so within 15 working days following the meeting of the relevant Overview and Scrutiny Committee, unless the decision maker was an Officer in which case it will be referred back to the Leader of the Council or relevant Portfolio Holder for consideration. In that circumstance the Leader of the Council or relevant Portfolio Holder shall be required to reconsider the decision within 15 working days.
- (l) If the Overview and Scrutiny Committee decides that it does not wish to refer the matter back to the decision-maker or to Council, the decision shall be confirmed and take effect immediately following the meeting of the Committee.
- (m) If the matter is referred to Council, who do not object to the decision, the subject of call-in, no further action is necessary and the decision will be effective on the date of the Council meeting. If Council does object, it only has authority to make decisions where it is considered contrary to the Budget and Policy Framework. The Council must refer any decision relating to Cabinet Functions, to which it objects, back to the decision-maker, together with the Council's views on the decision. The decision-maker shall, within a further 15 working days, choose whether to amend the decision or not before reaching a final decision and implementing it.
- (n) **Decisions referred back to the Decision Maker**

The comments and views provided by Council or the relevant Overview and Scrutiny Committee when referring a decision back for reconsideration shall be final and no further representations shall be made to the decision-maker.

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The decision-maker will send a report to the relevant Overview and Scrutiny Committee, once a decision has been reconsidered, and that report should include the reason why the decision-maker has either reconfirmed the original decision or why the decision has changed.

(o) **Withdrawal of a Call-in**

A request to call-in a decision may be withdrawn in writing (or by personal email) at any time by one of the Members making the request.

18. EXCEPTIONS TO CALL-IN

The call-in procedure set out above shall not apply in respect of Cabinet decisions regarding the following:

(i) **Urgent Decisions**

A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public interests. The record of the decision, and notice by which it is made public, shall state whether in the opinion of the decision-making person, or body, the decision is an urgent one and why, and therefore not subject to call-in.

The Chairman of the relevant Overview and Scrutiny Committee must agree that the proposed decision is reasonable in all its circumstances and that it should be treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the Head of Paid Service or his/her nominee's consent shall be required.

Decisions taken as a matter of urgency and exempted from call-in must be reported by the Leader to the next practicable ordinary meeting of the Council, together with the reasons for urgency.

(ii) **Other Exceptions**

- (a) "Provisional" or "in principle" decisions where the issue is to be referred to an Overview and Scrutiny Committee for comment.
- (b) Decisions taken under the "Special Urgency" procedure as provided for in Access to Information Procedure Rule 15.
- (c) Recommendations from Cabinet to Council.
- (d) Decisions by the Cabinet where the issue has been referred to them by the Council or an Overview and Scrutiny Committee for their view or comment shall not be subject to call-in.
- (e) Unless the decision has taken into account new material considerations arising since the original consultation with the Council or an Overview and Scrutiny

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Committee a decision by the Cabinet in response to such consultation shall not be subject to call-in.

- (f) Where Full Council has delegated to the Cabinet the ability to approve additional information in respect of the Corporate Plan to ensure that statutory publishing deadlines are met, such decisions shall be construed as urgent for the purposes of Rule 18(i) above. In such circumstances the Chairman of the relevant Committee, or other Chairman or Vice-Chairman so authorised to act in his absence, will only be required to agree that the proposed decision is reasonable in all the circumstances.
- (iii) The operation of the provisions relating to call-in and urgency shall be monitored in accordance with Article 15 of this Constitution and a report submitted to Council with proposals for review if necessary.

FINANCIAL PROCEDURE RULES

1. INTRODUCTION

- 1.1** Subject to meeting any requirements contained in the Key Decision Rules and the Decision Making Rules, the Council will conduct its financial affairs based upon its Budget and Policy Framework Procedure Rules, together with these Financial Procedure Rules and the Procurement Procedure Rules. These Financial Procedure Rules set out the responsibilities and management arrangements that will be followed to ensure that the Council, Members and its Officers exercise due probity and accountability for the public monies for which they have responsibility. These rules and the Procurement Procedure Rules apply to all financial transactions of the Council either for itself or where it is acting as the Accountable Body or Agent.
- 1.2** The Chief Financial Officer shall keep under review these Financial Procedure Rules and the Procurement Procedure Rules and ensure that they are appropriate to the running of the Council. Any proposed changes must be recommended to the Cabinet and subsequently agreed by the Council.

The Financial Procedure Rules are set out as follows:

SECTION	TOPIC COVERED
2.	Definitions
3.	Responsibilities
4.	Financial Planning and Budget approval
5.	Authority to Incur Expenditure
6.	Changes to budgets after approval by Council
7.	Financial management of budgets during the year
8.	Final accounts, out-turn and Statement of Accounts
9.	Financial administration
10.	Write-Offs of Sums due to the Council
11.	Insurances
12.	Inventories stocks and stores
13.	Banking Arrangements
14.	Investments, Loans and Borrowing
15.	Land and Property transactions
16.	External Funding
17.	Proceeds of Crime Act 2002 (anti-money laundering)
18.	State Aid

2. DEFINITIONS

For the purpose of these regulations the following definitions will apply:

TERM	DEFINITION
Head of Department	The term of Head of Department refers to the officer to whom responsibility for a department, function or action has been delegated in accordance with the Council's Scheme of Delegation.
Service	Service shall be those services as set out in the Council's published budget book or where subsequent amendments have been approved.
Estimate	Each line of budget included within each service, or each project line included in the Capital Programme, in the Council's published budget book or where subsequent approval has been given.
Forecast	An estimate of the likely budget for the years following the financial year for which an estimate has been approved.
Expenditure	All direct expenditure as detailed in the Council's published budget book or where subsequent approval has been given.
Income	All direct income as detailed in the Council's published budget book or where subsequent approval has been given.
Virement	A virement is the transfer of a sum from one estimate to another and may include an increase in expenditure provided it is financed by additional income not already provided in the approved budgets.
Supplementary Estimate	This is an increase in the budget approved by Council and can be in respect of either capital or revenue. A transfer from reserves would finance the additional expenditure.
Negative Supplementary Estimate	A negative Supplementary Estimate is the reverse of a Supplementary Estimate and has the effect of reducing an otherwise available budget with the specific purpose of reducing the Council's net expenditure. A transfer to reserves would arise as a result of reducing expenditure.
Section 106 Agreement	Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

3. RESPONSIBILITIES

- 3.1** The Leader, each Portfolio Holder and Head of Department shall consult with the Chief Financial Officer, in advance, in respect of any report/proposal which seeks provisional or final approval to any proposed revenue or capital expenditure or service investment or income which is not included in the Council's approved budgets (without

reservation). The Chief Financial Officer will bring all such matters to the immediate attention of Management Team.

- 3.2** The Chief Financial Officer shall be responsible, under the general direction of the Cabinet and Management Team for the financial administration of the Council's activities.
- 3.3** The Chief Financial Officer is responsible for ensuring that the Corporate Finance & Governance Portfolio Holder is informed of and consulted on all significant financial issues.
- 3.4** The Chief Financial Officer shall inform and advise Management Team about the Council's finances and financial performance of its activities, who will in conjunction with the Corporate Finance & Governance Portfolio Holder ensure that the Leader, each Portfolio Holder, Committees and Council are advised appropriately.
- 3.5** The Chief Financial Officer shall ensure that adequate and prudent financial planning, including annual budgets and longer-term forecasting, is undertaken by the Council to protect its finances.
- 3.6** Any requirement in these Financial Procedure Rules and the Council's other procedures to obtain approval for or to report to the Council, Committee, Cabinet or Portfolio Holder, on any action shall include the requirement to consult with the Chief Financial Officer where Council finances are concerned.
- 3.7** The Chief Financial Officer has a duty to ensure that the financial implications of decisions made by Heads of Department in respect of services are not to the detriment of the Council as a whole.
- 3.8** The Chief Financial Officer, their Deputy or the Chief Executive is authorised to deal with any General Fund Revenue or HRA virement on exceptional grounds of urgency, such as civil emergencies. If this exemption is relied upon, the relevant Officer must provide a report to the responsible decision maker as soon as practicably possible.

4. FINANCIAL PLANNING AND BUDGET APPROVAL

- 4.1** In accordance with the timetable and format determined by the Chief Financial Officer, Heads of Department will prepare:
 - 4.1.1** Detailed revised estimates of income and expenditure of revenue accounts for the current financial year
 - 4.1.2** Detailed revised estimates of expenditure on capital projects for the current financial year

- 4.1.3** Detailed forecasts of expenditure on capital projects for the forthcoming financial years, the number of which is to be determined by Cabinet.
 - 4.1.4** Detailed forecasts of income and expenditure of revenue budgets for the forthcoming financial years, the number of which to be determined by Cabinet.
- 4.2** The information prepared by the Heads of Department will be collated and checked by the Chief Financial Officer.
- 4.3** Each financial year, and in accordance with the agreed Financial Strategy/Forecast determined in accordance with the Budget and Policy Framework Procedure Rule 3, the Chief Financial Officer will submit to Management Team for their consideration:
 - 4.3.1** A forecast of net revenue expenditure for the forthcoming year(s);
 - 4.3.2** A forecast of capital expenditure for the forthcoming year(s) together with known and anticipated funding streams. All such schemes must be in accordance with the Council's approved Capital Strategy and will have been subjected to an investment appraisal in accordance with the Prudential Code and will only be included if it can be demonstrated that the investment is prudent and within affordable and sustainable levels;
 - 4.3.3** The forecast position of the Council's Reserves over the period of the forecast;
 - 4.3.4** The Council Tax rate for the forthcoming financial year(s) resulting from the proposals;
 - 4.3.5** Initial draft revised prudential indicators for the current year and the following 3 years based on the draft capital programme.
 - 4.3.6** Any other information required in accordance with the Financial Strategy/Forecast agreed for the year in question.
- 4.4** Management Team will then, in the light of the Chief Financial Officer submission in 4.3 above, and in accordance with the Budget and Policy Framework Procedure Rule 3, make recommendations to the Cabinet setting out proposed draft budgets.
- 4.5** The Cabinet will, in accordance with the Budget and Policy Framework Procedure Rule 3, draw up firm proposals for consideration by the Council.
- 4.6** In submitting the budget to the Council the Cabinet may attach a reservation to any item and, subject to the approval of the Council, no avoidable expenditure shall be incurred in respect of any such item until the Council has withdrawn the reservation.

5. AUTHORITY TO INCUR EXPENDITURE

In relation to all expenditure both revenue and capital, however funded, and in accordance with delegated powers an approved scheme is one where there is:-

- (a) Provision of a service consistent with an historic nature and level that is, and has in prior years, been specifically allocated and defined within the ongoing base Budget;
- (b) Any change to a service set out in (a) above where the appropriate authority to the change has been obtained in accordance with delegated powers;
- (c) Otherwise, a scheme that has the necessary approval from Council, Cabinet, Portfolio Holder or Officer in accordance with delegated powers.

For any expenditure to be incurred the necessary budget must also be in place. Where the necessary budget is not in place then amendments to the budget agreed by Council can only be made in accordance with section 6 below.

6. CHANGES TO BUDGETS AFTER APPROVAL BY COUNCIL

6.1 Supplementary Estimates

- 6.1.1** A supplementary estimate will increase the Council's net expenditure and will, if it relates to revenue expenditure, result in a reduction in the Council's reserves. If it relates to capital expenditure it will either increase the Council's use of capital receipts, increase the amount needed to be borrowed or, as in the case of revenue expenditure, reduce the Council's reserves. Therefore a supplementary estimate is needed in all cases of increased overall net expenditure, whether capital or revenue.
- 6.1.2** A supplementary estimate should not normally be considered unless the matter is essential and unavoidable and all other options for applying a virement have been considered.
- 6.1.3** Once the Council Tax for any financial year is set any subsequent increase in items (a) to (d) below for that same year will require a supplementary estimate. This does not have to be approved before a commitment is made, if in the opinion of the Chief Financial Officer, the matter is urgent. The Chief Financial Officer shall report any increase in the Council's overall net expenditure to the Cabinet at the earliest opportunity and recommend to Cabinet whether the increased expenditure should be financed by virement or supplementary estimate. If the supplementary estimate is outside the scope of the Cabinet's authority appropriate recommendations will be made to Council.

- (a) Salaries, wages and pensions increases arising from nationally negotiated decisions, and variations in contributions under the National Insurance and Superannuation Acts;
- (b) Price increases in connection with continuing contracts for revenue services where, in the opinion of the Chief Financial Officer, such increases are reasonable;
- (c) Reductions in the amount of income from government, local or public authority sources;
- (d) Interest rates or other similar financing factors.

6.1.4 No specific supplementary estimate approval is required at any time for the following:

- (a) Expenditure which is being funded entirely by income received under section 106 agreements and held in the section 106 receipts in advance holding account where that expenditure is in accordance with the terms of the section 106 agreement. In these circumstances the Chief Financial Officer must agree the expenditure, and the financing.
- (b) Debt written off for which specific provision was made in the Council's bad debt provision at the end of the previous financial year.
- (c) Expenditure on a specific activity that has previously been approved in accordance with the Council's constitution and for which the funding of that expenditure in future years has been placed in a dedicated earmarked reserve, and the expenditure is to be financed by the use of that reserve. In these circumstances the Chief Financial Officer must agree the expenditure, and the financing.
- (d) For expenditure where the Council receives full funding from an external source for a specified project and there are no additional revenue costs to the Council in either the current financial year or future financial years.

6.1.5 A supplementary estimate can be approved as follows:

- (a) **Corporate Finance and Governance Portfolio Holder** may approve a supplementary estimate of any single item (revenue or capital) up to £50,000 subject to a maximum aggregate value of £150,000 for such single items in any one financial year and providing any single supplementary estimate does not cause the total of supplementary

estimates approved by the Corporate Finance & Governance Portfolio Holder and Cabinet to exceed £1,000,000 for General Fund Services (capital or revenue) or £1,000,000 in respect of the Housing Revenue Account (capital or revenue) for the financial year concerned.

- (b) **Cabinet** may approve a supplementary estimate of any single item (revenue or capital) up to £1,000,000 subject to that supplementary estimate not causing the total of supplementary estimates approved by the Cabinet and the Corporate Finance & Governance Portfolio Holder to exceed £1,500,000 for General Fund Services (capital or revenue) or £1,500,000 in respect of Housing Revenue Account (capital or revenue) for the financial year concerned.
- (c) **Council** may approve a supplementary estimate up to any amount for General Fund or Housing Revenue Account. However Council must be advised if any decision is likely to result in the Council's agreed minimum working balance not being maintained for the current financial year and the length of the Council's approved financial strategy. In the case of the Housing Revenue Account, Council must be advised if any decision is likely to result in the Revenue Account balance being in deficit over the same period.

6.1.6 Where a Head of Department wishes to apply for a supplementary estimate a report shall be made, following consultation with the Chief Financial Officer, to Management Team. Management Team will then make a recommendation where appropriate to the Corporate Finance & Governance Portfolio Holder or Cabinet. Cabinet must recommend to Council any request for supplementary estimates that requires the approval of Council.

6.2 Negative Supplementary Estimates

A negative supplementary estimate (having the effect of reducing an otherwise available budget) with the specific purpose of reducing the Council's net expenditure may be approved based on the same limits set out in 6.1.5 above.

6.3 Virements

6.3.1 A virement, unlike a supplementary estimate, will not increase the Council's overall net expenditure. However to ensure that the budget, functions and service levels approved by Council are not compromised virements can only be undertaken under the following conditions.

FINANCIAL PROCEDURE RULES

6.3.2 Virement rules do not need to be followed in the following circumstances but a scheme will still need to be approved including agreement of what is to be delivered:-

- (a) Where expenditure is being funded entirely by income received under section 106 agreements and that income has been received and accounted for in the current financial year and where that expenditure is in accordance with the terms of the section 106 agreement. In these circumstances the Chief Financial Officer must agree the expenditure, and the financing.
- (b) For expenditure where the Council receives full funding from an external source for a specified project and there are no additional revenue costs to the Council in either the current financial year or future financial years. In these circumstances the Chief Financial Officer must agree the expenditure and the financing.

If there are additional costs to the Council then that expenditure must be financed in accordance with these Financial Procedure Rules.

- (c) Subject to agreement of the Chief Financial Officer:
 - (i) Where a decision requires an amendment to the budgetary analysis within the Council's financial information system in order that the Council's accounts can properly reflect the financial transactions of that decision.
 - (ii) Where the budgetary analysis within the Council's financial information system need to be amended in order to comply with required accounting standards or to properly reflect the costs of an activity or function.
 - (iii) If not subject to any separate delegation, where a budget has been established via an earlier decision or Cabinet/Full Council, any subsequent itemised expenditure from that budget (rather than a transfer between budget headings which would require a virement), in such circumstances, an Officer decision will be required following consultation with the relevant Portfolio Holder.

6.3.3 Virement rules are required to be followed in the following circumstances:

- (a) The transfer of a sum from one estimate to another, which can be within or between services.
- (b) Where an expenditure estimate is to be increased and offset by a known increase in an income estimate including fees and charges.

- (c) Where reduced income is to be offset by a sustainable reduction in expenditure.

6.3.4 The conditions for a virement are:

All virements must be made within the terms and limits prescribed in these Financial Procedure Rules (see 6.3.5):

- (a) Subject to (b) to (h) below a Head of Department can apply a virement provided that the Department is able to ensure that:
 - (i) Overall, the minimum agreed level of service would still be provided
 - (ii) The net service cost will be contained within the overall approved budget and the Council's overall costs will not be increased
 - (iii) There are no additional budgetary implications in future years
 - (iv) The service being provided is within the Council's approved policy
- (b) All virements between **revenue and capital budgets** must be as set out below.
- (c) A virement cannot be made where the proposed expenditure or reduction in income relates to an item which has **previously been considered** and been rejected by the Council, the Cabinet or responsible Portfolio Holder.
- (d) Where a virement is proposed and the expenditure is in respect of an item not provided for within an approved budgeted service level, but can be met by fortuitous savings (such as from a tendering process or against growth items identified in the Financial Strategy/Forecast), such expenditure if in excess of £15,000 shall be referred to Cabinet for approval. This excludes savings from minor restructuring. In respect of savings against Financial Strategy/Forecast Growth Items, the limit will apply to the aggregated value of all requested virements from such budgets.
- (e) Cabinet must approve all virements, which are likely to result in a further and/or additional burden on future years' Council Tax and revenues.

- (f) Where significant virements are necessary, it is NOT acceptable to disaggregate the total sum into a number of smaller virements so that these smaller sums fall within the rules/limits of these Financial Procedure Rules. The limits will apply to the aggregated value of the transfer to or from any one estimate.

6.3.5 Virement Limits and Approvals

(a) Transfers within an approved estimate

Virement Value	Approval Required
No limit	The Head of Department providing the expenditure does not impose an ongoing commitment on the Council, which has not already been approved and budgeted for.

(b) General Fund Revenue and HRA

Virement Value	Approval Required
Not more than £15,000.	The Head of Department
Over £15,000 but not more than £30,000	The Head of Department, together with the approval of the Management Team together with the Portfolio Holder(s) and/or Committee(s)
Over £30,000 but not more than £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) and the Corporate Finance & Governance Portfolio Holder
Over £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) and Cabinet

(c) **General Fund Capital Schemes**

Virement Value	Approval Required
Not more than £15,000.	The Head of Department
Over £15,000 but not more than £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) and the Corporate Finance & Governance Portfolio Holder
Over £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) and Cabinet

(d) **Housing Revenue Account Capital Schemes**

Virement Value	Approval Required
Not more than £100,000	Corporate Director (Operations & Delivery), provided that the total Capital Scheme allocation as approved is not exceeded and provided the Chief Financial Officer advises that no increase to Housing Revenue Account costs results.
Over £100,000	Housing Portfolio Holder provided the total HIP allocation as approved is not exceeded and provided the Assistant Director (Finance & IT) advises that no increase to Housing Revenue Account and General Fund revenue costs results.

(e) **Between Capital and Revenue**

Virement Value	Approval Required
(i) Increase in an approved Capital budget.	<p>a) When the increase in the cost of the project is a supplementary estimate and must be agreed in accordance with these Financial Procedure Rules.</p> <p>b) When the financing from an existing revenue budget is a virement between the revenue financing of capital expenditure budget and the revenue budget which is being reduced and normal virement rules as set out in these Financial Procedure Rules are to apply. In these circumstances the Assistant Director (Finance & IT) must agree the expenditure and the financing.</p>
(ii) Increase in an approved capital budget which is to be financed by an increase in borrowing or use of capital receipts	This is a supplementary estimate, which must be agreed in accordance with these Financial Procedure Rules.
(iii) Increase in an approved revenue budget, which is to be financed by a reduction in an approved capital budget which results in a reduction in the revenue financing of capital expenditure sufficient to meet the entire increase in the revenue budget	This is a virement between the revenue financing of capital expenditure budget and the revenue budget, which is being increased, and normal virement rules as set out in these Financial Procedure Rules are to apply. In these circumstances the Assistant Director (Finance & IT) must agree the expenditure and the financing.

If none of the above circumstances set out in (i), (ii) and (iii) above apply.	A supplementary estimate or virement must be obtained in accordance with these Financial Procedure Rules.
Irrespective of the above in all cases where there is an increase to the General Fund revenue costs	A supplementary estimate or virement must be obtained in accordance with these Financial Procedure Rules.

- 6.4** The Chief Financial Officer shall ensure that all virements comply with these Financial Procedure Rules and will amend the Council's financial information systems as appropriate.
- 6.5** The Chief Financial Officer will maintain an up-to-date record of all virements and supplementary estimates that have been actioned to date and make this available to the Corporate Finance & Governance Portfolio Holder on request.

7. FINANCIAL MANAGEMENT OF BUDGETS DURING THE YEAR

- 7.1** Once the Council has approved the budget, officers to whom authority has been delegated, may incur expenditure within the amount provided under each head of estimate as varied by any supplementary estimate or virement approved under these Financial Procedure Rules provided that:
- (a) The matter is not one to which the Cabinet has attached a reservation
 - (b) Where appropriate any necessary external consent has been obtained
 - (c) Procurement Procedure Rules have been complied with
- 7.2** Responsibility for the control of capital and revenue expenditure (including the award of grants) and income for a service or function shall rest with the appropriate Head of Department. Each Head of Department shall notify the Chief Financial Officer of any actual or prospective overspending of expenditure or shortfall in income in excess of the budget which cannot be met by virement as set out in these Financial Procedure Rules.
- 7.3** The Chief Financial Officer has a duty under Section 28 of the Local Government Act 2003 to monitor budgets and the underlying assumptions formulating the budget throughout the year. Where an approved expenditure budget is likely to be overspent or there is likely to be a shortfall in an income budget the Chief Financial Officer shall ensure that corrective action is taken. In exercising this duty the Chief Financial Officer may, irrespective of section 6.2 above, examine all budgets and seek explanations

from Heads of Department as necessary. The Head of Department shall provide the Chief Financial Officer with any information and explanation requested.

- 7.4** The Chief Financial Officer shall provide Heads of Department with adequate and timely accounting information and reports, in appropriate detail, to enable those Heads of Department to carry out budgetary control of their budgets.
- 7.5** The Chief Financial Officer shall determine the level and detail at which budgets and financial management reports are maintained for use by officers and for reporting to Members.
- 7.6** The Chief Financial Officer shall in conjunction with the Management Team ensure that Portfolio Holders, Cabinet and the Council are fully informed of the Council's financial position.

8. FINAL ACCOUNTS, OUT-TURN REPORT AND STATEMENT OF ACCOUNTS

- 8.1** An Outturn Report for the previous financial year will be prepared by the Chief Financial Officer, in respect of revenue and capital items (including Housing), in accordance with the timetable necessary to produce the Statement of Accounts by the statutory deadline. The outturn report will seek the approval of the Corporate Finance & Governance Portfolio Holder for:
 - 8.1.1** Any transfers to and from reserves
 - 8.1.2** The funding treatment of capital expenditure and the treatment of capital receipts.
 - 8.1.3** The carrying forward of capital slippage and revenue commitment sums in respect of any unspent monies in one year to a later year or to reserves
 - 8.1.4** The carrying forward of overspent sums in respect of Capital projects and revenue budgets that will be financed by a reduction in the following years budget in respect of any overspent monies in one year to a later year or to be financed from reserves.
- 8.2** The Chief Financial Officer will prepare the Council's Statement of Accounts in accordance with statutory requirements and will incorporate all decisions approved by the Corporate Finance & Governance Portfolio Holder in 8.1 above. Any further decisions that may be required following the outturn process, such as allocating money brought forward from the prior year will be made by Cabinet at a subsequent meeting.
- 8.3** All Heads of Department shall supply the Chief Financial Officer with accurate and timely information as may be required for the compilation of the final and other accounts and matters incidental thereto to enable the above requirements to be

achieved. That information shall be supplied in a format specified by the Chief Financial Officer.

9. FINANCIAL ADMINISTRATION

9.1 Internal Audit

9.1.1 The designated Head of Internal Audit is the Council's officer for the purposes of compliance with statutory Section 151 responsibilities in respect of Internal Audit along with any other relevant regulations or standards.

9.1.2 The designated Head of Internal Audit shall ensure that independent internal audit staff examine and audit the expenditure, income and property and other assets of the Council and its officers. To enable the designated Head of Internal Audit to achieve this, Internal Audit shall have the right of entry to all establishments and the right to examine all records, cash, stores and other properties belonging to or appertaining to the finances of the Council and to carry out such checks and require and receive such explanations as considered necessary.

9.1.3 Following completion of each audit a written report shall be submitted to the Head of Department, who must determine and notify the designated Head of Internal Audit of the action they propose to take.

9.1.4 In planning the conduct of these audits, the designated Head of Internal Audit shall arrange, as far as possible, for the views of the Head of Department to be taken into account.

9.1.5 Heads of Department **must** report **any financial irregularity or suspected irregularity**, including those affecting cash, stores or property to the designated Head of Internal Audit **immediately the irregularity or suspected irregularity becomes known**.

9.2 Accounting Arrangements

9.2.1 The Chief Financial Officer shall determine, provide, and manage the Council's Financial Information System.

9.2.2 All financial returns to Government, the Council's Statement of Accounts and all budget monitoring reports will be prepared from the information in the Council's Financial Information System or such other system that the Chief Financial Officer has agreed can be used to provide the information.

- 9.2.3** Each Head of Department is required to obtain the approval of the Chief Financial Officer for all accounting procedures and records that are proposed. This shall include any computer-based systems that store, utilise or process **any** financial information and must be capable of interfacing and/or integrating with the Council's Financial Information System.
- 9.2.4** All Heads of Department shall ensure that their approved accounting procedures and records are reconciled to the Council's Financial Information System and that adequate records are maintained to demonstrate this.
- 9.2.5** In this respect each Head of Department shall provide the Chief Financial Officer with details of all authorised officers within their department, setting out matters that those officers are authorised to deal with and, where appropriate, the financial limits and shall notify the Chief Financial Officer of those officers' appointment or departure.
- 9.2.6** Any officer having in their charge money, equipment, stores or other property for which they are accountable to the Council shall take all reasonable precautions for its safe custody and proper use.

9.3 Responsibilities for Computer System Legislation

- 9.3.1** All Heads of Department who services utilise computer installations and software shall be responsible for the security and privacy of all data held in those installations, and for ensuring compliance with all relevant legislation in respect of the licensing and use of that software. This includes taking all necessary action to safeguard against computer viruses or other form of data corruption.
- 9.3.2** Heads of Department shall also ensure that all necessary registrations are made under the Data Protection Act and that those registrations are regularly monitored and updated where necessary. Staff shall also be reminded of their individual responsibilities under this Act and the Freedom of Information Act.
- 9.3.3** Similarly, each Head of Department shall ensure that all other relevant computer system legislation is complied with, in particular copyright and patents acts concerning the use of software, scanners and other electronic storage means, for which the appropriate licence fee has not been paid, and the Computer Misuse Act.

9.4 Orders for Works, Goods and Services

- 9.4.1** All official orders and associated documents shall bear the name and logo of Tendring District Council and shall be in an agreed standard format and

produced by the approved ordering system. They shall be issued only by Heads of Department and their authorised staff and be in accordance with these Financial Procedure Rules and the Procurement Procedure Rules.

9.5 Certificate and Payment of Invoices

- 9.5.1** Invoices for payment by the Council shall not be made out by any officer of the Council, other than in circumstances agreed in advance with the Chief Financial Officer, nor shall an Officer add any item to an invoice rendered by a supplier.
- 9.5.2** The reasons for any amendment to an invoice shall be recorded and retained in a safe and secure manner in accordance with the directions issued by the Chief Financial Officer.
- 9.5.3** Any Head of Department who issues an order shall be responsible for ensuring the examination, verification and certification of the relevant invoice(s), except in circumstances as determined by the Chief Financial Officer, and for correctly and promptly recording on the Council's approved ordering system the receipt of goods, works or services.
- 9.5.4** Before certifying an invoice the certifying officer must be satisfied, within the tolerances specified by the Chief Financial Officer, that:
- (a) The invoice confirms with the official order
 - (b) That the goods have been received, examined and approved for quality and quantity and that any services have been rendered or any work done satisfactorily and receipted on the approved ordering system
 - (c) That the prices charged are correct
 - (d) That the expenditure is, to the best of the certifying officer's belief, lawful and has been duly authorised.
 - (e) That no invoice for the same goods, service or work has previously been passed for payment
 - (f) The invoice is arithmetically correct
 - (g) That the expenditure has been properly analysed to the appropriate accounting code(s)
 - (h) That the allocation of VAT has been correctly made

- (i) That the expenditure can be financed from within the appropriate approved estimate.

Where a grant has been approved, the above should be followed by the certifying officer where appropriate.

9.5.5 It is the responsibility of a Head of Department receiving goods or materials to ensure that appropriate entries are made in inventories, stores or other records.

9.5.6 Wherever practicable the respective duties of ordering, receiving and certifying the relevant invoices for payment of goods, services or work shall not be performed by one and the same officer, and in no case shall an invoice be finally certified for payment by an officer assuming personal control over the goods, works or services to which the invoice relates.

9.5.7 The Chief Financial Officer shall examine, so far as he/she considers necessary, invoices passed for payment and shall make all such enquiries and receive all such enquiries and receive all such information and explanations, as shall be required.

9.5.8 All Heads of Department shall ensure that the Council's prompt payment of invoices are met.

9.6 Income

9.6.1 All arrangements for the collection of monies due to the Council and the issuing of debtor invoices shall be as directed by the Chief Financial Officer.

9.6.2 All monies received shall, without delay, either be paid in as instructed by the Chief Financial Officer or be banked in the Council's name to the bank accounts designated by the Chief Financial Officer.

9.6.3 Heads of Department must ensure that, where an invoice is to be issued for sums due to the Council that the invoice is issued immediately the sum due is known. Where a large sum is likely to be due, interim invoices are to be issued.

9.6.4 Where an invoice is to be issued the Head of Department issuing the invoice must ensure that the invoice is correct and the sum demanded is properly due to the Council and meets all the legal obligations especially those required to enforce non-payment if such circumstances arise.

9.6.5 Each officer who banks money to the credit of the Council's bank account shall enter on the paying-in slip, and on the duplicate thereof, particulars of the payment. In the case of each cheque paid in he/she shall record:-

- (a) The amount of the cheque
- (b) A reference which shall connect the cheque with the debt or debts in respect of which it was received.

- 9.6.6** Where monies are due to the Council under contracts, leases, tenancy agreements, agreement for the sale of property and any other agreements entered into which involve the receipt of money by the Council, the Head of Department shall provide the Chief Financial Officer with all relevant particulars, as soon as possible.
- 9.6.7** Each Head of Department who, under arrangements approved by the Chief Financial Officer, is responsible for the collection or recovery of sums due to the Council shall take prompt action to expedite collection. This action shall comply with the Council's debt recovery procedures as determined and directed by the Chief Financial Officer.
- 9.6.8** Official receipt forms, receipt books, tickets and other documents of a similar nature used to collect revenue due to the Council shall be in a format approved by the Chief Financial Officer.
- 9.6.9** Heads of Department stocking such stationery shall ensure that appropriate security is maintained at all times.
- 9.6.10** Each officer authorised to receive monies on behalf of the Council shall do so only on official receipt forms, tickets or other documents of a similar nature as approved by the Chief Financial Officer, except in respect of payments by cheque or drafts where no receipt is requested, or for payments received by the Assistant Director (Governance) for which he/she is satisfied it is appropriate to give a receipt otherwise than in the official form.
- 9.6.11** Money received shall not be used to cash personal or any other cheques whatsoever except where, due to exceptional circumstances, the Chief Financial Officer has given prior approval.
- 9.6.12** Where payment is made to the Council by debit or credit card the Head of Department accepting payment must ensure that all sums due to the Council by the Credit Card or Debit Card Company is received in full by the Council and reconciled.

9.7 Remuneration, Gratuities and Allowances

9.7.1 Heads of Department shall provide the Chief Financial Officer with all appropriate details to enable the payment of all salaries, wages, compensation, gratuities and other emoluments in respect of employees or former employees.

- (a) The Assistant Director (Partnerships) must notify the Chief Financial Officer immediately of all appointments, dismissals, resignations, suspensions, transfers and changes in the rate of remuneration of employees (other than normal increments).
- (b) Heads of Department shall notify the Chief Financial Officer of all overtime or additional hours worked for which payment is to be made and all absences through sickness or other absences affecting the payment due to employees.
- (c) Claims for travelling and subsistence allowances shall be assessed monthly by Heads of Department who, within four working days of the end of each month shall notify the Chief Financial Officer of amounts due to be paid.
- (d) Each Head of Department shall notify the Chief Financial Officer of the names and specimen signatures of those officers who are authorised to certify salaries, wages and allowances documents.

9.7.2 The Chief Financial Officer shall examine, so far as he/she considers necessary all claims for payment of salaries, wages or allowances and subject to that examination, shall make all such payments which are certified by the appropriate Head of Department or other officer authorised by them in writing or in an electronic format approved by the Chief Financial Officer.

9.8 Petty Cash and Other Imprest Accounts

9.8.1 The Chief Financial Officer shall make imprest advances to Heads of Department, where appropriate, for the purpose of defraying petty expenses. The use of any alternative means of meeting expenses shall be agreed, in advance, with the Chief Financial Officer.

9.8.2 The amount of each advance and the system of operation shall be determined in consultation between the Head of Department and the Chief Financial Officer.

9.8.3 Whenever an Officer leaves the employment of the Council or ceases to be entitled to hold an imprest advance he/she shall account to the Chief Financial Officer for the unexpended balance of their advance.

- 9.8.4** All procurements made using a petty cash imprest shall be in accordance with the Procurement Procedure Rules. All procurements must be evidenced by the production, and retention with the petty cash imprest records, of a valid receipt. Where VAT is to be accounted for a valid VAT receipt shall be obtained.

10. WRITE-OFFS OF SUMS DUE TO THE COUNCIL

- 10.1** The Council has a duty to collect all sums due to it. However there are occasions when it is not possible or cost effective to proceed with the recovery of the debt. In these cases the debt needs to be written off and the following conditions, delegations, and limits apply. The Head of Department must be reasonably satisfied that recovery action/options have been “exhausted” before proceeding to seek a write off of any debt.
- 10.2** Where a debt has been raised in error or is incorrectly calculated then the debt should either be reduced or cancelled by the issue of a credit note or similar reversal of the original charge. Such reversal must be authorised by a responsible officer other than the one who raised the original debt.
- 10.3** All write-offs of debt must be set against the budget to which the original income was credited or an appropriate provision if one has been made.
- 10.4** If the write-off will result in that income budget not being achieved the Head of Department must advise the Chief Financial Officer immediately.
- 10.5** That part of any debt written off, for which provision has been made in the Council’s bad debt provision at the end of the previous financial year can be written off without further action as set out in 5.4.4(b) of these Financial Procedure Rules.
- 10.6** If the Chief Financial Officer advises that the whole or part of the debt was not included in the Council’s bad debt provision at the end of the previous financial year then the Head of Department must apply a virement or seek a supplementary estimate in accordance with section 5 of these Financial Procedure Rules to finance that part of the debt not provided for within that provision.
- 10.7** The authority to write-off debts is delegated by the Council as follows:

Item for Potential Write-off	Authority to Write-off Delegated To
Debt due to the Council where the amount owing is a Council Tax, NNDR or Housing Benefit and Rents debt which is either:- 1. A ceased account and the debt is equal to the amount charged as summons costs making the debt uneconomical to collect, or	

<p>2. Not a ceased amount but the amount owed is less than the cost of second class postage</p> <p>3. The debt due to the Council is less than £10</p> <p><i>In respect of 1. and 3. above, there should be no other “live” Council Tax or NNDR account in the name of the specific debtor.</i></p>	<p>The relevant Corporate Director</p>
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Item for Potential Write-off	Authority to Write-off Delegated To
<p>Specific debtors where:-</p> <p>(a) There is a personal bankruptcy, company insolvency, Individual/Company Voluntary Arrangement or a Debt Relief Order.</p> <p>(b) The Recovery Enforcement Agents has been unable to obtain payment and has returned the debt as “nulla bona” and insufficient assets to satisfy the debt.</p> <p>(c) The company has been struck off by Companies House.</p> <p>(d) The death of a debtor who dies insolvent and the claim against the estate has been made.</p> <p>(e) Death of a debtor who has died with no executor with whom to register a claim.</p> <p>(f) Council Tax Debts – Removal outside the jurisdiction of the Magistrates Courts of the debtor.</p> <p>(g) All other debts – Removal outside the UK of the debtor.</p> <p>(h) The remission of debts by the Magistrates or other court.</p>	<p>The Chief Financial Officer on receipt of a written report from the appropriate Head(s) of Department.</p> <p>Where joint/several liability applies to any of the criteria listed, the criteria applied must be applicable to all parties.</p>

(i) The committal to prison of the debtor in respect of the non-payment of the debt or associated debt.	
(j) The abscondment of a debtor where a tracing or other appropriate agency has failed to make a trace.	

ANY OTHER DEBTS	
Individual debts not exceeding £5,000	The Chief Financial Officer on receipt of a written report from the appropriate Head(s) of Department which should where reasonably practical identify if the specific debtor is still receiving goods or services from the Council.
Individual debts exceeding £5,000 but below £25,000	The Finance and Corporate Resources Portfolio Holder on receipt of a written joint report from the appropriate Head(s) of Department, the Chief Financial Officer and the Assistant Director (Governance) which should include a recommendation as to how the write-off will be financed and where reasonably practicable identify if the specific debtor is still receiving goods or services from the Council.
Individual debts of £25,000 and above	The Cabinet on receipt of a written joint report from the appropriate Head(s) of Department, the Chief Financial Officer and the Assistant Director (Governance) should also include a recommendation as to how the write-off will be financed and should where reasonably practical identify if the specific debtor is still receiving goods or services from the Council.

11. INSURANCE

- 11.1** The Chief Financial Officer shall be responsible for the provision of the Council's insurances. This shall include authority to accept annual renewal terms from the appointed insurer subject to such terms being within the terms of the original contract and the approved budget available. Heads of Department shall be responsible for

providing the Chief Financial Officer with all necessary information to do this in the most effective manner.

- 11.2** Each Head of Department shall give prompt notification to the Chief Financial Officer of all new risks, properties or vehicles which require to be insured, and of any alterations affecting existing insurances, indicating the amount or variation in cover required.
- 11.3** Each Head of Department shall also notify the Chief Financial Officer of any other risk which in their opinion should be included within the Council's insurance cover arrangements.
- 11.4** Heads of Department shall, as soon as they become aware of such circumstances, notify the Chief Financial Officer in writing of any claim or likely claim. Heads of Department shall **not** admit any liability or take any action that may commit the Council or its insurers in respect of any potential or actual claim.
- 11.5** Each Head of Department shall consult the Assistant Director (Governance) regarding the terms of any indemnity which the Council has been requested to give before authority is sought for the giving of the indemnity.
- 11.6** Each Head of Department shall consult the Chief Financial Officer on any case where, in their opinion, the nature or situation of any equipment, stores or other property for which they are accountable to the Council requires the provision of special security arrangements.
- 11.7** The Chief Financial Officer shall, periodically, provide Heads of Department with full details of the risks insured by the Council so that they may check and review the items for which they are responsible.

12. INVENTORIES STOCKS AND STORES

- 12.1** Inventories shall be properly maintained by Heads of Department to record appropriate items in the possession of the Council regardless of whether an item has been leased, rented, borrowed or purchased.
 - 12.1.1** All assets of the Council shall be recorded in inventories or registers maintained by Heads of Department in a form approved by the Chief Financial Officer and in accordance with procedures agreed with him/her.
 - 12.1.2** Separate registers will be maintained by the Assistant Director (Building & Public Realm) for Land and Buildings and the Assistant Director (Finance & IT) for IT equipment.
 - 12.1.3** The level or value of items to be listed shall be determined by each Head of Department in consultation with the Chief Financial Officer.

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- 12.1.4** Heads of Department are responsible for checking and certifying of inventories within their control at least once a year to ensure the security of all property under the Council's control.
- 12.1.5** The Council's property, equipment and other facilities shall not be removed other than in the ordinary course of the Council's business nor shall they be used for any other purpose. Heads of Department should ensure that where equipment is removed from Council premises to be used for work purposes elsewhere, including officers' homes that an appropriate record is maintained of such movements and that adequate insurance cover exists (including whilst in transit).
- 12.1.6** Heads of Department shall ensure that a record is maintained, in a format approved by the Chief Financial Officer, of all items written off. This record shall detail date, description, reason and include appropriate authorisation.
- 12.2** Where appropriate a Head of Department shall notify the Chief Financial Officer of any acquisition, disposal or change of an item, which is included in the Authority's balance sheet or where changes in the Council's insurance cover may be necessary.
- 12.3 Stocks and Stores**
- 12.3.1** All records of stocks and stores shall be in a form approved by the Chief Financial Officer.
- 12.3.2** Procedures for the receipt and issue of stocks and stores shall be approved by the Chief Financial Officer.
- 12.3.3** Each Head of Department shall be responsible for the custody and physical control of all stocks and stores under their control.
- 12.3.4** Each Head of Department shall arrange for continuous stock checking of stocks in hand and shall ensure that all items of stock are checked at least once in every financial year.
- 12.3.5** Each Head of Department shall furnish the Chief Financial Officer with a certificate showing the value of stocks and stores in hand under their control as at 31 March in each year in accordance with the timetable necessary to produce the Statement of Accounts by the statutory deadline.
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- 12.3.6** The Corporate Directors or Assistant Directors (where relevant) are authorised to approve the write-off of an inventory item and adjusting stocks and stores accounts up to £250 in respect of any one item or £1,250 per annum in consultation with the Chief Financial Officer.

12.4 Disposal of Stocks and Stores and items owned or managed by the Council

- 12.4.1** Where a Head of Department identifies items of equipment on an inventory or stocks or stores no longer required and they are satisfied that the items/stores are of no use to other Heads of Department then they shall arrange for disposal which can include being offered for sale to staff/Council Members where the sale is based on the highest price offered.

Only then:

If the total estimated value of the items is in excess of £1,000 then disposal shall be by means of a public auction or open tender

- 12.4.2** Whatever method of disposal is applied, where the value of the items to be disposed of needs to be written from the accounts, the cost shall be allocated to a separately identifiable write-off code provided by the Chief Financial Officer.

- 12.4.3** Income from any disposal shall similarly be identifiable using a code provided by the Chief Financial Officer

- 12.5** Where there is a net cost of disposal the Head of Department must finance the cost by virement or supplementary estimate in accordance with these Financial Procedure Rules.

13. BANKING ARRANGEMENTS

- 13.1** Only the Chief Financial Officer shall be authorised to open bank accounts for monies under the control of the Council and these shall be in the name of the Council. Day to day operation of bank accounts shall be determined by the Chief Financial Officer.

- 13.2** The conduct of the Council's business with their bankers shall be made by, or under arrangements approved by the Chief Financial Officer.

- 13.2.1** A bank account or accounts shall be maintained by the Council into which all monies received by the Council shall be paid. Withdrawals from these accounts and transfers from one account to another shall be made only on the authority of the Chief Financial Officer or other officer authorised by him/her in writing.

13.2.2 Payments made on the Council's behalf shall be made using BACS transfers wherever possible or otherwise by crossed cheques. The Chief Financial Officer, or other officer authorised by him/her in writing, may make alternative arrangements where they consider it necessary or appropriate, in the interest of the Council.

13.2.3 Manual signatures of the Chief Financial Officer, or other officers authorised by him/her in writing, shall be required in accordance with arrangements determined by the Chief Financial Officer.

14. INVESTMENTS, LOANS AND BORROWING

14.1 The Council has adopted the CIPFA Treasury Management in Public Services Code of Practice (The Code) 2009.

14.1.1 All securities in the name of the Council and the title deeds of all property in the ownership of the Council shall be held in the custody of the Property Service.

14.1.2 This Council will create and maintain, as the cornerstones for effective treasury management:-

- (a) A treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities, including also non-treasury investments.
- (b) Treasury Management Practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.

14.1.3 The contents of the policy statement and TMPs will follow the recommendations contained in the Code and Guidance from central Government, subject only to amendment where necessary to reflect the particular circumstances of this Council. Such amendments will not result in the Council materially deviating from the Code's key principles.

14.2 The Council will receive reports on its treasury management policies, practices and activities as follows:-

14.2.1 Each year in accordance with statutory requirements and before the start of the forthcoming year Full Council will, following a recommendation by Cabinet and consideration by the Resources and Services Overview and Scrutiny Committee, approve an Annual Treasury Strategy for the forthcoming year. The Annual Treasury Strategy will include an investment strategy, a capital strategy and a borrowing strategy. The investment strategy will include a schedule of those instruments the Council will consider using for investments

in the forthcoming financial year. The borrowing strategy will include a statement of the anticipated borrowing requirement for the following financial year. The Annual Treasury Strategy will also include the prudential and treasury indicators for the forthcoming year and at least the subsequent 2 years. The Capital Strategy will include a projection of external debt and use of internal borrowing to support capital expenditure, provision for the repayment of debt over the life of the debt, the authorised limit and operational boundary for the following year and the approach to treasury management, including due processes, due diligence and defining the Council's risk appetite.

- 14.2.2** The Annual Treasury Strategy will be reviewed as necessary throughout the year. As a minimum the Chief Financial Officer will review the strategy as at the end of September and report the findings of that review to Cabinet, which may at its discretion, forward the report to Council.
- 14.2.3** The Chief Financial Officer will report to Cabinet at the earliest opportunity after 31 March in any year on the Council's Treasury Management performance and activities in the preceding financial year.
- 14.2.4** The Chief Financial Officer will report during the course of the financial year on the Council's Treasury Management performance and activities. Such reports to be considered by Cabinet and the Resources and Services Overview and Scrutiny Committee.
- 14.3** The Council's Chief Financial Officer shall, in accordance with the Council's TMPs and the Council's approved Annual Treasury Strategy, be authorised to:
- (a) Borrow sums of money
 - (b) Reschedule or restructure the existing debt portfolio
 - (c) Invest surplus funds
 - (d) Determine those counterparties and countries that meet the Council's credit rating criteria
 - (e) Determine the money brokers the Council will use for temporary borrowing and investment and long term borrowing
 - (f) Amend as necessary and in accordance with the Council's Treasury Management practices those schedules set out therein
 - (g) Take urgent action to safeguard the Council's investments, including where necessary temporarily breaching the conditions set out in the TMPs. The Corporate Finance & Governance Portfolio Holder is to be advised of the action taken as soon as practicable.
- 14.4** The execution and administration of treasury management decisions is the responsibility of the Chief Financial Officer, who will act in accordance with the Council's policy statement and TMPs and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.

15. LAND AND PROPERTY TRANSACTIONS

- 15.1** All land and property transactions must be undertaken in accordance with the Council's **Property Dealing Procedure**.
- 15.2** Any amendments to the **Property Dealing Procedure** will be made by Full Council as constitutional amendments.

16. EXTERNAL FUNDING

- 16.1** External funding refers to applications to external organisations, including Government departments and agencies for the funding of expenditure. The expenditure may be for the Council's own services or for those services provided in partnership with other public bodies, voluntary sector bodies or private sector organisations.
- 16.2** In any partnership arrangement the Chief Financial Officer must ensure that there are adequate controls in place in respect of the Council's own financial liabilities to the partnership and that there are adequate controls in place for the partnership itself.
- 16.3** Any application for external funding to finance or contribute to the financing of a function, investment or activity for which the Council is either the sole provider or is the accountable body must be approved by Management Team following consultation with the Chief Financial Officer to ensure the external funding being sought is in accordance with the Council's priorities and not an additional impact on resources. Such approval will be recorded with an Officer Decision.
- 16.4** When making application for payment of funds from the body awarding the grant it is a statutory obligation that all figures in the claim be supported by adequate, and comprehensive working papers. All such working papers will be in a format and detail as determined by the Chief Financial Officer.

17. PROCEEDS OF CRIME ACT 2002 (ANTI-MONEY LAUNDERING)

- 17.1** The Proceeds of Crime Act 2002 sets out some of the obligations placed on individuals and organisations to report known or suspected money-laundering activities. This means that both the Council itself and individual officers within the Council are bound by this Act. All employees of the Council must report any suspicions. Failure to do so is a criminal offence.
- 17.2** It is the Council's policy to do all it can to prevent, wherever possible, the Council and its staff being exposed to money laundering, to identify the potential areas where it may occur and to comply with all legal and regulatory requirements especially with regard to reporting of actual or suspected cases.
- 17.3** All Heads of Department will ensure that all staff for whom they are responsible and who are involved in financial transactions are aware of the Council's and their own obligations in respect of money laundering.

17.4 The Chief Financial Officer, or officer(s) nominated by him/her will be responsible for anti-money laundering measures within the Council to ensure compliance with the Proceeds of Crime Act 2002 and fulfil the Council's policy in respect of money laundering.

17.5 The following instances could be an attempt at money laundering and should raise suspicions and must be reported to the Chief Financial Officer or nominated officer(s).

The Chief Financial Officer will determine the limits and procedures to be followed in the event of these activities arising.

17.5.1 Payment in cash of an unusually large sum of money.

17.5.2 Payment in cash of a sum in excess of the amount owing; particularly if a double payment is made, followed by a request for a non-cash refund.

17.5.3 The use of Trusts or offshore funds for handling proceeds or settlement of a transaction should be questioned.

17.5.4 Care should be exercised and further enquiries may be needed in the following instances:

- (a) A third party intermediary becomes involved in a transaction
- (b) The identify of a third party is hard to establish or is undisclosed
- (c) A party is evasive as to the source or destiny of funds
- (d) A third party uses a vehicle company and the ultimate ownership is concealed or difficult to establish.

18. STATE AID

18.1 State aid rules are in place to protect the European Community free market by ensuring state resources are not used to distort competition or give an unfair advantage. State aid rules can apply to voluntary and non-profit making organisations. State aid has four characteristics:

- (a) It is granted by the State or through state resources (this includes local authorities);
- (b) It favours certain undertakings, or the production of certain goods (this can include voluntary and non-profit making organisations if they are engaged in economic activity);
- (c) It distorts or threatens to distort competition;
- (d) It affects trade between member states.

If all four characteristics are present the state aid is prohibited, subject to certain

exemptions. State aid takes many forms, it relates to a financial advantage of any kind.

- 18.2** Any support given to organisations must not breach state aid rules.
- 18.3** Issues regarding state aid must be checked prior to the award of support and advice sought as appropriate (guidance is available from the Department for Business Innovation and Skills).
- 18.4** Where state aid rules are considered to apply, appropriate approvals must be obtained from the European Commission prior to the award of the support unless specific regulations do not require advance approval, for example they are covered by a block exemption (limits apply) or the de minimis regulations.
- 18.5** If state aid is being given under a block exemption the aid must comply with every condition stated in the block exemption regulation and appropriate procedures for notifying the Commission of the award must be followed.
- 18.6** If state aid is being given under the de minimis regulations all relevant procedures must be followed, in particular:
- (a) the recipient must be informed of the de minimis nature of the grant
 - (b) full information must be obtained from the recipient about other de minimis aid received during the previous three years
 - (c) new de minimis aid must only be granted if it will not raise the total aid received in the relevant period of three years over the de minimis limit applicable at the time
 - (d) all records of de minimis aid paid must be kept in accordance with the regulations and for the relevant minimum time period.
- 18.7** All aid given must be notified to the Chief Financial Officer and financial records must separately identify any aid given.

PROPERTY DEALING PROCEDURE

1. NEGOTIATION OF PROPERTY DEALS

- 1.1** Property Deal means the acquisition or disposal by the Council of any interest in land, including freehold, leasehold, by way of tenancy, any rent review, lease variation, lease renewal or any other dealing or proposed dealing with an interest in land or licence to use land.
- 1.2** Members must not engage in negotiations of any kind relating to any Property Deal or proposed Property Deal.
- 1.3** Every request to the Council from any party for a deal within this procedure shall be referred to the Assistant Director (Building & Public Realm), or, by the Chief Executive, to a Corporate Director.
- 1.4** Every Property Deal shall be conducted in accordance with the Property Dealing Procedure, excluding the sale of dwellings under right-to-buy legislation, the sale and purchase of Shared Equity and DIYSO properties, and arrangements for utilities to be provided on Council owned land.
- 1.5** Any Property Deal will be dealt with by appropriate officers in accordance with the Property Office Procedures to be agreed from time to time by the Assistant Director (Building & Public Realm) with the Council's Section 151 and Monitoring Officers. The Property Office Procedures set out the practice to be followed by any Officer acting under delegated powers.

2. PROPERTY OFFICE PROCEDURE

- 2.1** "Property Office Procedure" means all applicable steps of the Property Office Procedure at the time being.
- 2.2** The Assistant Director (Building & Public Realm) will ensure that adequate office procedures are agreed with the Section 151 and Monitoring Officers and maintained. The Property Office Procedures must include appropriate controls on the conduct of Property Deals. The Property Office Procedure should contain other procedures and guidance on the management of property by other parts of the Council.
- 2.3** In relation to those instances where a Portfolio Holder is the decision maker, the Assistant Director (Building & Public Realm), in consultation with the Monitoring Officer, the Section 151 Officer and the Head of Internal Audit, will ensure that there is an adequate set of formal principles for decision making in place and maintained. This set of principles should be set out in:-

the Property Strategy; or

the Housing Strategy; or

the Housing Acquisitions Policy; or

the Commercial Investment Property Policy.

It should also enable the Portfolio Holder to demonstrate that they have assessed the deal against the principles. Where the deal is not in accord with the Property Strategy or the Housing Strategy or the Housing Acquisitions Strategy or the Commercial Investment Property Policy, as appropriate, it will be referred to the Cabinet for determination.

3. VALUATIONS

- 3.1** In relation to Property Deals and to any appropriation of land the Assistant Director (Building & Public Realm) will carry out or obtain appropriate valuations proportionate to the open market value or rental:

<u>Type of Deal</u>	<u>Valuation(s) Required</u>
Licences and Tenancies at Will	Officer valuation to be prepared and retained
Leases, interests and freeholds up to £300,000	One full external professional valuation to be obtained
Leases, interests and freeholds at £300,000 or over	A full external professional valuation to be obtained, plus a further valuation at the Property & Project Manager's discretion, if deemed necessary in their professional opinion.
As above but in any ransom or other circumstances where the seeking of two valuations would be impractical in the opinion of the Assistant Director (Building & Public Realm)	One full external professional valuation to be obtained. Assistant Director (Building & Public Realm) to include reasoning in the report for decision.

- 3.2** The decision to initiate the Property Dealing Procedure will be taken by the Corporate Director (Operations and Delivery). In those circumstances where the decision involves a Freehold Acquisition or Disposal that decision to initiate the Property Dealing Procedure will be taken by the Corporate Director in consultation with the relevant Portfolio Holder.

APPENDIX A
Levels of Decision Making

Right or interest to be granted/acquired	Officer who is Head of Department or Corporate Director	Officer who is Corporate Director (Operations & Delivery)	Relevant Portfolio Holder (See Note below)	Cabinet
Reporting	Formal Record of Officer Decision to be completed and published*		Formal Report and Record of Decision required to be completed and published	
1. A licence or access agreement for 12 months or less				
2. a licence or access agreement for more than 12 months or any tenancy at will				
3. Tenancies for less than seven years excluding security of tenure				
4. Renewal, assignment or surrender of tenancies as 3 above				
5. Tenancies for seven years or more or tenancies not excluding security of tenure				
6. Renewal, assignment or surrender of tenancies as 5 above				
7. Grant, acquisition or release of Rights of Way, Easements or other permanent rights				
8. Freehold property interest less than £100,000				
9. Freehold property interest is £100,000 or over but less than £300,000				
10. Freehold property interest is £300,000 or over				
11. Decision whether to continue to pursue a transaction as an appropriate course of				

Part 5 – RULES OF PROCEDURE

PROPERTY DEALING PROCEDURE

action, including under the General Disposal Consent Order, and in situations where the agreed price differs substantially from the valuation advice received				
12. Any disposal of open space where objections have been received				
13. New Lease to residential tenant under Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993 (commonly referred to as a lease extension)				
14. Extensions to Shared Equity Leases (Leasehold Reform Act 1967 – Deed of Variation to alter rent to a modern rent with no premium paid)				

*Subject to access to information rules.

Note: The relevant Portfolio Holder will be determined by whether the property sites, or will sit, within the General Fund or the Housing Revenue Account.

Greyed box indicates level of decision making.

SECTION 1 – SECTION SUMMARY

1.0 Procurement rules are set out across the following sections:

- SECTION 1 - General Requirements
- SECTION 2 – Exemptions from Procedure Rules
- SECTION 3 – The Procurement Framework and Central Purchasing
- SECTION 4 – Quotation and Tenders
 - 4.1 General Requirements
 - 4.2 Quotations (*Procurement up to £50,000*)
 - 4.3 Tenders (*Procurement over £50,000*)
 - 4.3.1 Selecting Suppliers
 - 4.3.2 Open Competitive Tenders
 - 4.3.3 Selective Tenders
 - 4.3.4 The number of suppliers invited to tender
 - 4.3.5 Going out to Tender
 - 4.3.6 Receipt of Tenders
 - 4.3.7 Opening of Tenders
 - 4.3.8 Acceptance of Tenders
 - 4.3.9 Tender Evaluation Panel
- SECTION 5 – Other Procurement Rules
- SECTION 6 – Official Order Rules

SECTION 1 – GENERAL REQUIREMENTS

1.1 Before undertaking any procurement, Departments should satisfy themselves that:

- The works, goods or services are required and a need can be demonstrated
- There are no reasonable alternatives e.g. sharing or utilising spare capacity/inventories elsewhere within the Council
- They are aware of the current statutory contract value thresholds in accordance with the Public Contract Regulations 2015 (as amended) as shown on the Council's Intranet.
- Where relevant, they have considered the requirements of the Public Services (Social Value) Act 2012 and have recorded/evidenced the outcomes against the associated requirements:-
 - ❖ *how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area*
 - ❖ *how, in conducting the process of procurement, it might act with a view to securing that improvement.*

Procurement Procedure Rules apply to the procurement of ALL goods, works or services. The Council's approved computerised ordering system will be used for all procurement, except where otherwise detailed within these Procurement Procedure Rules.

Procurement can only take place where budgetary provision is available to fund the goods, works or services required (see Financial Procedure Rules).

Where the Council contracts with a third party (who is not an officer of this Council) to supervise a contract on its behalf, the Corporate Director/Head of Department entering into that contract will be required to ensure that the third party complies with the requirements of these Procurement Procedure Rules.

Where the Council enters into or administers a contract either as an agent, or on behalf of another public body the Council's Procurement Procedure Rules will apply unless written instructions have been received by the Council to the contrary.

These Procurement Procedure Rules will not apply where statute or subordinate legislation prescribes otherwise.

Delegation relating to the engagement of consultancy services is set out separately within the "Common to all Portfolio Holders" section of the Constitution. However, for completeness, the Corporate Directors/Heads of Department only have delegated authority for the engagement of consultancy services or specialist professional advice up to the value of £15,000 and procurement rules must be followed. For schemes where fees are expected to exceed £15,000 consultation with the Portfolio Holder or Committee Chairman is required.

Procurement within the Council is co-ordinated by Governance Services and in all cases where catalogues or other pre-negotiated approaches are not used, then consultation with Governance Services should be undertaken to identify potential alternative options or additional procurement opportunities.

Where building works form part of the procurement, then it is expected that Departments will discuss their requirements with the internal surveyor as appropriate.

1.2 Use of Local Suppliers

All Procurement should be in line with the Council's Procurement Strategy which includes the recognition of the use of local suppliers and providing a fair basis for them to compete for the provision of goods, works and services required by the Council.

SECTION 2 – EXEMPTION FROM PROCUREMENT RULES

2.1 The Corporate Directors/Heads of Department shall be exempt from the need to obtain competitive quotations/prices where any of the following circumstances apply:-

- (a) The goods or services are procured from an in-house service
- (b) The goods are proprietary items of which there is only one supplier, or are sold by all suppliers at a fixed price
- (c) The matter is one of urgency as determined by the appropriate Corporate Director/Head of Department following consultation with the responsible Portfolio Holder or the Leader of the Council.
- (d) The contractor or supplier is specified for works to this Council for which an external client is making payment.
- (e) Where the work is of a specialist nature and the Corporate Director/Head of Department can demonstrate that it is not possible to obtain more than one quotation or tender.
- (f) For the engagement of Counsel by the Assistant Director (Governance).
- (g) Where a partnership arrangement has been entered into with a contractor or a supplier as a result of competitive tendering, and the proposed procurement is within or related to the documented scope of that partnership arrangement. In such cases the Corporate Director/Head of Department must be able to demonstrate that the proposed procurement through such a partnership arrangement is advantageous to the Council (e.g. continuity of service or product supply, or extension of existing arrangements). The documentation to be issued will take the form of a contract variation as determined in the partnership contract and/or via the Official Ordering rules or if appropriate the documentation to be issued will be as required by the Procurement Procedure Rules for the value of the procurement. *(EU limits must be observed to ensure no thresholds are exceeded)*.
- (h) For purchases from petty cash.

In all cases where an exemption is applied the Corporate Director/Head of Department shall maintain a record to evidence this.

2.2 Further exemption from Procurement Procedure Rules may be sought where a Head of Department can demonstrate that exemption is justified by special circumstances.

- (a) Where no specific exemption is provided above:
 - Where the value of the contract or procurement is estimated to be less than £50,000 exemption may be granted by the Chief Financial Officer in consultation with the

Corporate Finance & Governance Portfolio Holder. The procuring service must publish an Officer Decision to record this.

- Where the total value of the contract, or procurement, is estimated to be between £50,000 and £250,000 the Corporate Finance & Governance Portfolio Holder may, on the recommendation of the Chief Financial Officer, grant exemption. In such cases a formal Portfolio Holder decision must be made.
- Where the total contract, or procurement, is estimated to exceed £250,000, the Cabinet, or a Committee may, on the recommendation of the Chief Financial Officer, grant exemption. In such cases a record of the exemption must be made in the minutes of the Cabinet, or Committee.

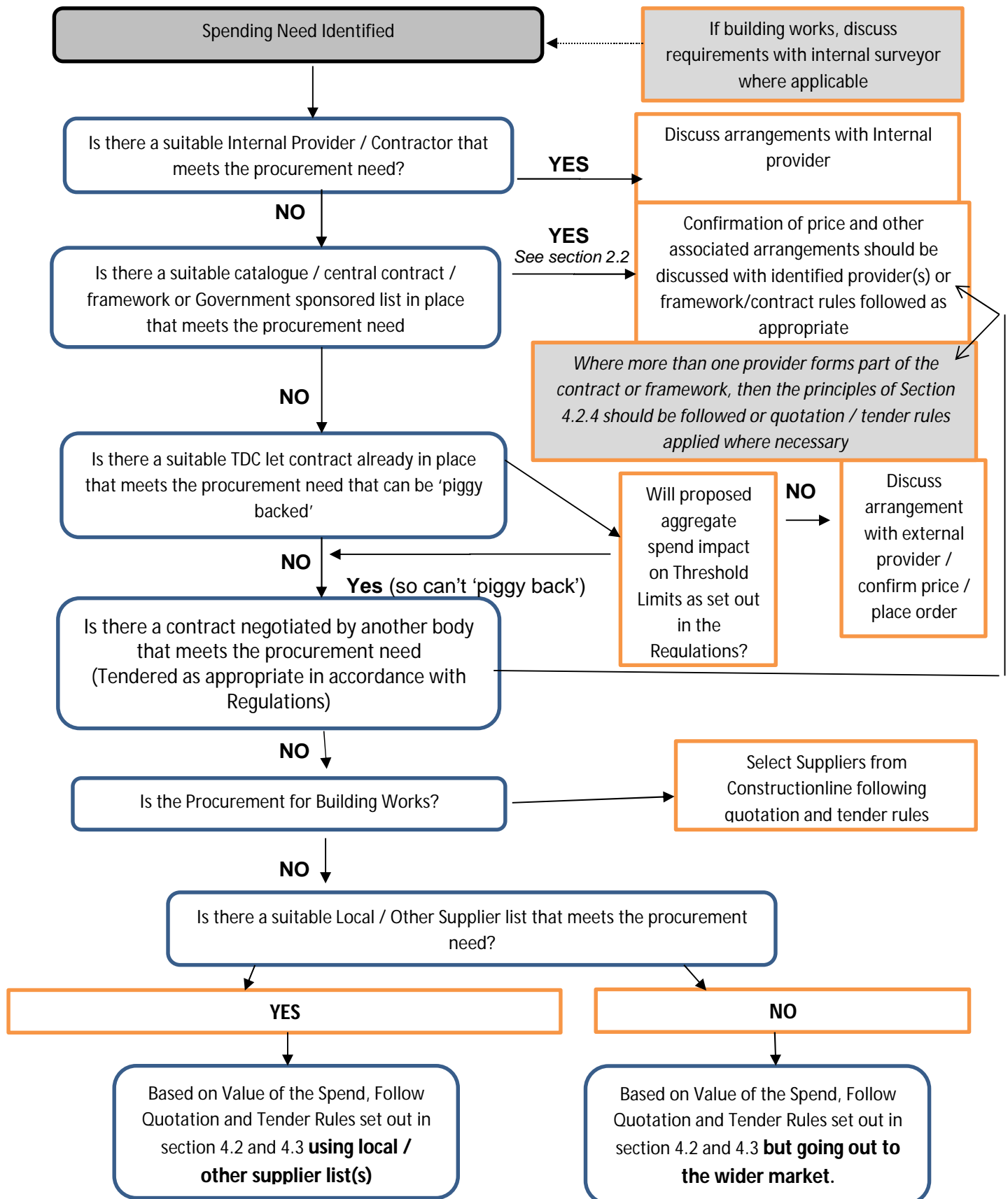
2.3 Alternative/Indirect Service Delivery

Where the Council seeks to implement alternative delivery options, for whole or parts of services, those procurements will be achieved in accordance with the Council's Procurement Strategy. Such procurements may not necessarily be able to be undertaken within Procurement Procedure Rules given the number and combination of different procurement routes and processes that may be applicable, but must:-

- (i) Comply with all relevant statutory provisions including European Procurement Directives.
- (ii) Follow a documented process determined by the responsible Corporate Director/Head of Department, the Chief Financial Officer and the Assistant Director (Governance), and agreed by Management Team and the Cabinet, in advance of the process. The process must demonstrate compliance with the principals of openness and accountability.
- (iii) Be capable of providing clear probity trails, particularly in respect of the opening and evaluation of any associated bids or tenders.
- (iv) Comply with any Procurement Procedure Rules that remain applicable, or offer alternatives that meet the requirements of the Assistant Director (Governance).

SECTION 3 – THE PROCUREMENT FRAMEWORK

- 3.1** All procurement is expected to following the following process/framework taking each step in sequence noting that the overall value of procurement is not the initial consideration. Governance Services should be consulted at the relevant stage of the process as necessary.



3.2 Central Purchasing

This includes:

- Central Contracts – Where the Council has taken advantage of negotiating with an external provider for the supply of goods, works or services.
- Partnership Agreements – Where the Council has decided to enter into partnership agreements either directly with other public bodies, or as part of a consortium of public bodies, for the procurement of goods, works or services.

Procurement Procedure Rules will be followed to select the supplier/contractor to be used for central contracts or if this Council is undertaking the tendering process to select the supplier/contractor under a partnership approach.

- Specialist call-off contracts - Where contracts have been tendered/negotiated by other public bodies and include the option for other Public Bodies to participate.

If the use of any such contract is not considered to offer Value for Money, then the relevant Corporate Director/Head of Department should consult with the Chief Financial Officer and the Assistant Director (Governance) in order to identify the most appropriate/advantageous procurement route.

SECTION 4 – QUOTATIONS AND TENDERS

4.1 General Requirements

- (a) Disaggregation of any procurement, in order to apply a lower level to each of the parts is not permitted.
- (b) Where any procurement spans a number of periods, or years, the total estimated cost will be the cumulative total of all periods, or years covered.
- (c) The use of electronic “portals” or other electronic means must be used to widely advertise goods, works or services required by the Council where appropriate, to ensure equal opportunity between local and non-local suppliers.
- (d) Procurement **up to £50,000** (excluding VAT) – **Quotation Rules Apply (Section 4.2).**
- (e) Procurement **over £50,000** (excluding VAT) – **Tender Rules Apply (Section 4.3).**

4.2 **QUOTATIONS** (Procurement up to £50,000 excluding VAT)

After the appropriate procurement route has been identified by following the framework set out in 3.1 above and if appropriate:

4.2.1 **Procurement up to £10,000 (excluding VAT)**

Where procurement is less than £2,500 then value for money should be demonstrated by obtaining two prices where possible.

Where procurement is in excess of £2,500, the seeking of two prices would be expected, with evidence retained by the department.

4.2.2 Procurement over £10,000, but not expected to exceed £50,000 (excluding VAT)

A minimum of three quotations should be sought by the department in addition to the production of a documented specification to include:

- (i) Identification of the procurement of goods, works or services required.
- (ii) Identification of any periods over which the goods, works or services are to be provided. In appropriate cases, provide for the payment of liquidated damages by a contractor where there is a failure to complete the contract within the period(s) specified.
- (iii) Provision for the retention of stated sums/percentages and the retention period to be applied where appropriate.
- (iv) Provision for the contractor to provide a performance bond, or parent company guarantee where appropriate.
- (v) Unless an exemption is obtained from the Assistant Director (Governance), the Council Standard Contract for Services must be used when seeking quotations for £25,000 and above. When seeking an exemption, the relevant department will identify why any additional or replacement terms and conditions are necessary for the service being sought.
- (vi) All contractors or suppliers asked to provide a quotation must be advised that the quotation must be sent to a specified e-mail address, and that quotations e-mailed to any other Council e-mail address will be disqualified.

4.2.3 All quotations shall be sought electronically:

The responsible Corporate Director/Head of Department shall arrange for a secure e-mail address to be set up on the Council's e-mail system. Access to this e-mail address must not be available until the time of quotation opening. Access to the secure e-mail address shall be controlled by an independent senior member of staff not involved with the project or tender process or a member of the Procurement Service.

Where the lowest quotation received exceeds £50,000 (excluding VAT), Tender Rules shall be followed from that stage as if tenders had been sought.

If the value of the lowest quotation received exceeds the limit of the quotation category applied, then the Corporate Director/Head of Department must seek sufficient further quotations applicable to the level of the value of that lowest quotation.

4.2.4 The Corporate Director/Head of Department is under no obligation to accept any of the quotations. However where they are prepared to accept a quotation, the most financially advantageous quotation should be accepted unless other factors such as quality, local supply, performance and deliverability are also considered as part of the selection process. In accordance with the Council's overall requirements to demonstrate Value for Money. Evidence is expected to be retained and recorded in an Officer Decision to support such decisions where procurement exceeds £10,000.

4.3 **TENDERS** (*Procurement greater than £50,000 excluding VAT*)

After the appropriate procurement route has been identified by following the framework set out in 3.1 above and if appropriate:

4.3.1 **Selection of Suppliers**

Tenders Over Statutory Thresholds

- (a) Where the total estimated value of a proposed contract over its term is expected to exceed the appropriate current Public Contract Regulations 2015 (as amended) thresholds, such regulations will take precedence over these tender procedures.

Tenders Under Statutory Thresholds

The appropriate Corporate Director/Head of Department will determine whether to use **Open Competitive Tendering** or **Selective Tendering** as set out separately below.

4.3.2 **Open Competitive Tenders**

A notice inviting tenders shall be prepared which should:-

- (i) Set out the nature and purpose of the contract and specify that expressions of interest are sought and set out details of where further information/tender documents can be obtained.
- (ii) Be advertised via the Council's electronic "portal" that is open to all potential suppliers or alternatively in at least one newspaper or journal circulating among suppliers/contractors who undertake such contracts. The notice period to be allowed for potential suppliers to request additional tender documentation should be determined by the Corporate Director/Head of Department.

Following the expiry of the notice period, Tender documentation will be sent to interested parties in accordance with **SECTION 4.3.5**.

4.3.3 **Selective Tendering**

Where the Council can access a central/framework arrangement, government sponsored list or a contract negotiated by another public body as set out in **SECTION 3.2** above, more than one supplier may be eligible under such arrangements. If this is the case, tender documentation

should be sent to the relevant parties in accordance with **SECTION 4.3.5**. In all other cases the following process should be undertaken:

A public notice shall:-

1. Specify details of the goods, works or services to be tendered.
2. Specify a time limit determined by the Corporate Director/Head of Department during which time potential suppliers can request that they be considered for inclusion in the associated tender process.
3. After expiry of the period specified in the public notice, the responsible Corporate Director/Head of Department will undertake an evaluation of the suppliers. This evaluation may be subject to Tender Evaluation Panel review.
4. The responsible Corporate Director/Head of Department, and where appropriate the Tender Evaluation Panel, will in consultation with the appropriate Portfolio Holder or Chairman of the relevant Committee select those contractors suitable and capable to tender for the proposed contract.

Following the conclusion of the evaluation process, Tender documentation will be sent to interested parties in accordance with **SECTION 4.3.5** below:

4.3.4 The Number of Suppliers Invited to Tender

Invitations to tender shall ensure fair competition and where possible include a mix of local and non-local suppliers and shall be sent to:-

Not less than 4 contractors, with the maximum number as determined by the relevant Corporate Director/Head of Department. (Where less than 4 suitable contractors have been identified from the selection process, then all shall be invited to tender).

4.3.5 Going out to Tender

General Rules

Tenders must:

- (i) Specify the goods, works or services to be supplied, contract value, any discounts or other deductions that may apply, the period(s) during which the contract is to be performed and any other relevant terms and conditions that the responsible Corporate Director/Head of Department considers necessary.
- (ii) In appropriate cases, provide for the retention of stated sums/percentages and the retention period to be applied.
- (iii) In appropriate cases, provided for the payment of liquidated damages by a contractor where there is a failure to complete the contract within the period(s) specified.

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- (iv) In appropriate cases, and at the discretion of the responsible Corporate Director/Head of Department, make provision requiring the contractor to provide a performance bond and/or a parent company guarantee.
 - (v) Identify the basis on which the submitted tenders will be evaluated. (Where the evaluation is other than a straightforward financial evaluation based upon lowest submitted price, the proposed evaluation process must be submitted to the Tender Evaluation Panel for agreement before tenders are sought).
 - (vi) Tenders are required to be submitted on a form of tender prepared by, or agreed by, the Council which shall include a statement that the Council will not be bound to consider or accept any tender.
 - (vii) Specify the closing date and time by which tenders must be received.
 - (viii) Where the Corporate Director/Head of Department considers that the Council may benefit from the use of post tender negotiation, that officer shall ensure that such intention is included in the documentation submitted to tenderers and before seeking tenders agree a suitable procedure with the Tender Evaluation Panel.
 - (ix) Specify social value considerations as appropriate.
 - (x) Unless an exemption is obtained from the Assistant Director (Governance), the Council's Standard Contract for Services must be used. The draft contract must be supplied as part of the tender exercise. When seeking an exemption, the relevant department will identify why an alternative model contract is required or any additional or replacement terms and conditions are necessary for the service being sought.

4.3.6 Receipt of Tenders

Unless determined otherwise by the responsible Corporate Director/Head of Department in consultation with Governance Services, all tenders should be requested to be returned electronically by e-mail. However, whatever form of tender response is implemented, all tenders must be submitted in the same manner.

The responsible Corporate Director/Head of Department shall arrange for a secure e-mail address to be set up on the Council's e-mail system. Access to this e-mail system must not be available until the time of tender opening. Access to the secure e-mail address shall be controlled by an independent senior member of staff not involved with the project or tender process or a member of the Procurement Service.

Tender documentation sent to potential providers must state that tenders must only be sent to the specified e-mail address and that tenders e-mailed to any other Council e-mail address or after the closing date and time will be disqualified.

As soon as practical after the closing date and time, a designated Governance Services Officer will arrange for the formal recording of the tenders submitted.

In exceptional circumstances where hard copy tenders are requested, then the email requirement above is replaced by the tender returns being addressed to the Head of Democratic Services & Elections or their designated Officer. Prospective tenderers must be instructed to clearly mark envelopes with the fact that it is a tender submission and that it is not to be opened until after the relevant closing date and time.

4.3.7 Opening of Tenders

(a)(1) Electronic Submission of Tenders

Having obtained the necessary password from IT Services, the Head of Democratic Services & Elections (or other officer to whom they have delegated the responsibility) will access the appropriate electronic tenderbox and open, in turn, the Form of Tender document from the Tenderers contained therein. That Officer will also check the “Spam” email box to ensure that no Tendered documents have been misidentified.

That Officer will check that the Tenderer’s email was received before the deadline for receipt of tenders and will record the name of the Tenderer and the amount of the tender. The Officer will then forward, by email, the Tenderer’s email to the relevant Officer who is overseeing the tender process. The Officer will then repeat the process for all of the Tenderers. The Officer will then close down the electronic tenderbox and will then email the password to the relevant officer who is overseeing the tender process so that they can conduct their own checks et cetera.

The Officer will also complete the Record of Tenders Received (containing the information set out in (b) below) and they will also email that document to the relevant Officer who is overseeing the tender process for their records et cetera.

(a)(2) Hard Copy Submission of Tenders

As soon as possible after the relevant closing date and time the hard copy tenders received will be opened in the presence of:-

- (i) The Head of Democratic Services & Elections or his nominated representative;
- (ii) The responsible Corporate Director/Head of Department or their nominated representative; and
- (iii) At their sole discretion as to the necessity of their attendance, the Council’s Head of Internal Audit, or their nominated representative.

The officer referred to in (i) above will open the tender envelope, locate the form of Tender, record the name of the tenderer and the amount of the tender and initial against the amount on the Form of Tender. The Officer referred to in (ii) above will also similarly append their initials. That process will then be repeated for all of the Tender Envelopes.

The Officer referred to in (i) above will also complete the Record of Tenders Received (containing the information set out in (b) below) and they will produce two copies. One will be kept by that Officer and the second will be handed to the Officer referred to in (ii) above for the records et cetera.

- (b) The Head of Democratic Services & Elections, or other officer to whom they have delegated that responsibility, shall prepare and maintain a register of tenders received and shall record in that register the following particulars:-
 - (i) The title and closing date and time for receipt of tenders
 - (ii) The date upon which the tender was received (if it was a hard copy tender)
 - (iii) Where a tender is received after the closing time on the closing date and is considered or accepted, the reason(s) why it was considered or accepted
 - (iv) The name of the tenderer and the amount of the tender
 - (v) The date upon which the tenders received were opened
 - (vi) All officers present at the opening of hard copy tenders shall immediately sign against the relevant Record of Tenders Received document as evidence of such tenders having been opened in their presence.
 - (vii) The signature of the officer to whom the tenders were handed after opening
- (c) Any tender received after the closing time and date shall, unless Procurement Procedure Rule 4.3.7 (b)(iii) applies thereto, be returned by the Head of Democratic Services & Elections, or their delegated Officer promptly to the tenderer. The tender may be opened to ascertain the name and postal or email address of the tenderer, but no details of the tender shall be disclosed to any other party whether internal or external.

4.3.8 Acceptance of Tenders

- (a) Unless the requirements of Procurement Procedure Rules 4.3.5 (v) have been applied, the most financially advantageous tender to the Council shall be accepted by the Corporate Director/Head of Department (in consultation with the relevant Portfolio Holder or Committee Chairman).
- (b) Where Procurement Procedure Rule 4.3.5 (v) applies, the tenders must be evaluated in accordance with the agreed evaluation process/criteria, and evidence retained to demonstrate this. The tender identified as most advantageous to the Council shall be accepted by the Corporate Director/Head of Department (in consultation with the relevant Portfolio Holder or Committee Chairman).
- (c) In those instances when only one Tender has been submitted but it is deemed advantageous to the Council following the evaluation process, that tender shall be accepted by the Corporate Director/Head of Department, in consultation with the Corporate Finance & Governance Portfolio Holder and the relevant Portfolio Holder or Committee Chairman.

The Corporate Director/Head of Department will produce a detailed report explaining why this course of action has been pursued and the said report will be circulated, alongside the Officer decision, to all members of the Council.

4.3.9 Tender Evaluation Consultation

The Council will undertake a Tender Evaluation Consultation of all tenders, estimated at over £50,000 (excluding VAT) being sought. This should include, where appropriate, any proposed method of evaluation of expressions of interest from prospective contractors. The Consultation will be led by the relevant Corporate Director or their designated officer and will include officers determined by them along with a senior officer from the department letting the contract.

The Tender Evaluation Consultation shall also have the right to include technical assistance/expertise from other departments as considered necessary.

Officer decisions recording the award of contract should include reference to the views/comments identified by the consultees.

An external representation can be accepted into any Tender Evaluation Consultation. In all cases where an external representative is included, they must be asked to declare any potential interests.

SECTION 5 – OTHER PROCUREMENT RULES

5.1 Contract Clauses

Unless an exemption is obtained from the Assistant Director (Governance), the Council's Standard Contract for Services must be used. The draft Contract must be supplied as part of the tender exercise. When seeking an exemption, the relevant department will identify why an alternative model contract is required or any additional or replacement terms and conditions are necessary for the service being sought. In all cases, contracts must follow any guidance issued by the Monitoring Officer in this regard.

5.2 Authorised Officers

- (a) Each Corporate Director/Head of Department is responsible for advising the Chief Financial Officer, in writing, of those officers who are empowered to enter into contracts, or procurement, on behalf of the Council, and any maximum limits on the values concerned.
- (b) Each Corporate Director/Head of Department shall advise the Chief Financial Officer in writing, immediately of any changes to those officers so empowered, or their limits.
- (c) Only officers so empowered will be provided with a level of access to any computerised procurement system operated by, or on behalf of, the Council, that enables them to authorise official orders within the limits set.

5.3 Nominated Sub-Contractors and Suppliers

- (a) Competitive quotations/tenders shall be sought for the execution of works or for the supply of goods or materials by a nominated subcontractor in accordance with these Procurement Procedure Rules, unless it is considered impractical to do so.

- (b) Where the estimated value of the subcontract does not exceed £50,000 the responsible Corporate Director/Head of Department shall determine whether it is practical to obtain quotations.
- (c) Where the estimated value of the subcontract exceeds £50,000 and the responsible Corporate Director/Head of Department considers the obtaining of tenders to be impractical the approval of the Leader of the Council, relevant Portfolio Holder or Committee Chairman for the proposed course of action shall be sought.
- (d) The invitation to a subcontractor to quote/tender shall include an undertaking that, if selected, the subcontractor will enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in respect of goods, works or services included in their subcontract.

SECTION 6 – OFFICIAL ORDER RULES

6.1 General Requirements

ALL goods, works or services must be subject to an official order unless an exemption is provided in Section 6.2 below.

- (a) All orders shall be placed using the Council's approved ordering system, unless exempted elsewhere in these Procurement Procedure Rules.
- (b) The format of the Council's approved standard official purchase orders (either hard copy or electronic) and any standard terms and conditions to be applied to each order shall be determined by the Assistant Director (Finance & IT) and the Assistant Director (Governance).
- (c) In the event of the need to issue a variation to an order, this will be by issue of a further order and must clearly identify the order number of the order to be varied.
- (d) All orders must:-

(i)	Bear the name and logo of Tendring District Council
(ii)	Clearly identify goods, works, or services to be procured, and all other detail as is mandatory on the Council's approved ordering computer system.
(iii)	Contain any other detail, terms and conditions that are applicable to that order. For the engagement of consultancy services or specialist professional advice this must include a condition relating to professional indemnity insurance.
(iv)	Have a value or an accurate estimate of the value of the goods, works, or services entered into on the Council's electronic ordering system.
(v)	Must be authorised by an officer duly authorised by the responsible Corporate Director/Head of Department.

6.2 Exemptions from Official Order Rules

Verbal orders, orders that are not accompanied by an official order or not exempt as set out below should only be made in special/exceptional circumstances and only after consultation with the Assistant Director (Finance & IT) or their designated officer. In the case of emergencies where an officer needs to take appropriate action to protect the Council's position or its assets then a verbal order can be made but the Assistant Director (Finance & IT) must be informed as soon as practical thereafter.

Where verbal orders are made they should be followed up by entering the necessary details on the Council's ordering system in accordance with 6.1 above as soon as possible.

A Corporate Director/Head of Department shall be exempt from the need to raise an official order in the following circumstances:-

(a)	For cash purchases using the Council's Petty Cash system, where ordering using the approved computer system is considered not to be practical. A maximum limit of £50 (excluding VAT) is applicable to each procurement made using the Council's Petty Cash system.
(b)	For the periodic payment of rent and National Non Domestic Rates.
(c)	For the periodic payment of former public utility supplies.
(d)	Where the nature of the goods, works or service requires an appropriate standard form of written contract.
(e)	For contract variations where a written contract requires a form of written contract variation, that is not in the format of the Council's standard official order.
(f)	For HRA assets where orders for goods, works or services are required to be raised through the Council's authorised Housing Management computer system.
(g)	For the engagement of Counsel by the Assistant Director (Governance).
(h)	Where the Chief Financial Officer has agreed the use of purchase cards or where one of the Council's credit cards is used. However, whenever possible, an Official Order should be raised as soon as possible for audit and recording purposes after the transaction has been made using a corporate credit card.
(i)	Any other circumstances as agreed, in advance of the procurement, by the Assistant Director (Finance & IT).
(j)	Where goods or services are procured in-house.

OFFICER EMPLOYMENT PROCEDURE RULES

Introduction

In accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) (“the Regulations”) and subject to the Procedure Rules set out below, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the Council must be discharged, on behalf of the Council, by the officer designated under section 4(1) of the Local Government and Housing Act 1989 (designation and reports of Head of Paid Service) as the Head of Paid Service or by an officer nominated by him. Should any conflict arise between these officer Employment Procedure Rules and the relevant legislation, the latter will prevail.

Nothing shall prevent a person from serving as a member of a committee or sub-committee established by the Council to consider an appeal by –

- (a) another person against any decision relating to the appointment of that person as a member of staff of the Council, or
- (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against that member of staff.

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, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or Officer of the Council; or of the partner of such persons (or if they are related in any other way to such persons).
 - (ii) No candidate so related to a Councillor or Officer will be appointed without the authority of the Head of Paid Service or an Officer nominated by him.
 - (iii) A candidate who fails to disclose a relationship as set out in (i) above shall be disqualified for the appointment and, if appointed, shall be liable to dismissal without notice.
- (b) Seeking support for appointment
 - (i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillors for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

OFFICER EMPLOYMENT PROCEDURE RULES

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- (ii) Subject to paragraph (iii), no Councillors will seek support for any person for any appointment with the Council.

2. RECRUITMENT OF HEAD OF PAID SERVICE AND CHIEF OFFICERS

Where the Council proposes to appoint a Chief Officer (* as defined in Paragraph 3 of Part II of Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2011 (as amended) and any assistant to political groups) and it is not proposed that the appointment will be made exclusively from among its existing Officers, the Council will:

1. (a) Draw up a statement specifying:
 - (i) the duties of the Officer concerned
 - (ii) Any qualifications or qualities to be sought in the person to be appointed
- (b) 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.
- (c) Make arrangements for a copy of the statement mentioned in (a) above to be sent to the person on request.
2. Where a post has been advertised as provided in 2.1 above, the Council shall –
 - (a) Interview all qualified applicants for the post, or
 - (b) select a shortlist of such qualified applicants and interview those included on the shortlist
3. Where no qualified person has applied, the Council shall make further arrangements for advertisement in accordance with 1. above.

3. APPOINTMENT OF HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCIAL OFFICER

- (a) Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the appointment of an officer designated as the head of the authority's paid service, Full Council must approve that appointment before an offer of appointment is made to that person.
- (b) Full Council will approve the appointment of the Head of Paid Service, Monitoring Officer and Chief Financial Officer following the recommendation of the Human Resources Sub-Committee of the Council. That Sub-Committee must include at least one member of the Cabinet.
- (c) Full Council may approve and make the appointment of the Head of Paid Service, Monitoring Officer and Chief Financial Officer only where no valid well-founded objection has been made by any member of the Cabinet.

4. APPOINTMENT OF CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

- (a) The Human Resources Sub-Committee of the Council will appoint the Chief Officers (*). That Sub-Committee must include at least one member of the Cabinet.
- (b) An offer of appointment to the post of a Chief Officer (*) shall be made only where no valid well-founded objection from any member of the Cabinet has been received.
- (c) A central record of Chief Officer posts covered by Paragraph 3 of Part II of Schedule 2 of the Local Authorities (Standing Orders) Regulations 2001 (as amended) will be produced by the Head of Paid Service and Monitoring Officer and held in Human Resources.

5. NOTIFICATION OF APPOINTMENTS

- (a) An offer of appointment can only be made to an individual by the correct 'appointer', being the Council or a committee, sub-committee or authorised nominated officer of the Council discharging the function of appointment on behalf of the Council as determined by the Regulations and these Procedure Rules.
- (b) No offer of an appointment shall be made to the Head of Paid Service, Monitoring Officer, Chief Financial Officer, or Chief Officer post (*) until:
 - (i) The Chairman of the Human Resources Sub-Committee (on behalf of the Sub-Committee) has notified the Assistant Director (Partnerships) of the name of the person to whom the post is to be offered and any other matter relevant to the appointment which the Sub-Committee has notified to the Assistant Director (Partnerships).
 - (ii) The Assistant Director (Partnerships) has notified every member of the Cabinet of the name and of the person to whom the post is to be offered any other particulars relevant to the appointment and the period for objection.
- (c) The Leader of the Council may object, on behalf of the Cabinet, to the appointment within 3 working days of the issue of the notice in (a) above.
- (d) An offer of appointment may then only be made if:
 - (i) The Leader of the Council has notified the Assistant Director (Partnerships) within 3 working days that neither they, nor any other Member of the Cabinet has any objection to the making of the appointment.

OFFICER EMPLOYMENT PROCEDURE RULES

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- (ii) The Assistant Director (Partnerships) has notified the Sub-Committee that they have not received any objection from the Leader in the period specified in (b) above.
 - (iii) The Sub-Committee is satisfied that any objection received from the Leader within that period is neither material nor well-founded.

6. OTHER APPOINTMENTS

The appointment of Officers below the Deputy Chief Officer is the responsibility of the Head of Paid Service or their nominee, and may not be made by Councillors.

7. DISCIPLINARY ACTION IN CONNECTION WITH CHIEF OFFICERS

- (a) The Human Resources Sub-Committee shall deal with disciplinary action (has the same meaning as defined in the Local Authorities (Standing Orders) (England) Regulations 2001 in connection with the Council's Chief Officers (*) as defined in this Constitution, and any assistant to political groups and resolve any action which it considers appropriate.
- (b) With regards to disciplinary issues in connection with the Council's statutory officers, the Committee can only resolve action short of dismissal. In instances where its recommendation is to dismiss any Statutory Officer it must adhere to the processes set out in these Procedure Rules and the full Human Resources and Council Tax Committee together with the Independent Persons must refer its recommendation to Full Council.
- (c) The Council's statutory officers are those defined as Head of the Council's Paid Service, Chief Financial Officer and Monitoring Officer.

8. DISCIPLINARY ACTION IN CONNECTION WITH OFFICERS BELOW DEPUTY CHIEF OFFICER

Members will not be involved in the disciplinary action or dismissal against any officer below a Deputy Chief Officer. The Council's disciplinary, capability and related procedures, as adopted from time to time will apply, and may allow a right of appeal to members in respect of disciplinary action.

9. DISCIPLINARY & DISMISSAL CASES INVOLVING THE COUNCIL'S STATUTORY OFFICERS: HEAD OF PAID SERVICE, THE CHIEF FINANCIAL OFFICER AND THE MONITORING OFFICER:

9.1 *In the following paragraphs-*

- (a) *"the 2011 Act" means the Localism Act 2011;*

OFFICER EMPLOYMENT PROCEDURE RULES

(b) “chief finance officer”, “disciplinary action”, “head of the authority’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;

(c) “independent person” means a person appointed under section 28(7) of the 2011 Act;

(d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts;

(e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;

(f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and

(g) “relevant officer” means the chief finance officer, head of the authority’s paid service or monitoring officer, as the case may be.

9.2 A relevant officer may not be dismissed by the authority unless the procedure set out in the following paragraphs is complied with.

9.3 The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

9.4 In paragraph 2.3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

9.5 Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 2.3 in accordance with the following priority order-

(a) a relevant independent person who has been appointed by the authority and who is a local government elector;

(b) any other relevant independent person who has been appointed by the authority;

(c) a relevant independent person who has been appointed by another authority or authorities.

9.6 The authority is not required to appoint more than two relevant independent persons in accordance with paragraph 2.5 but may do so.

OFFICER EMPLOYMENT PROCEDURE RULES

9.7 The authority must appoint any Panel at least 20 working days before the relevant meeting.

9.8 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular-

- (a) any advice, views or recommendations of the Panel;*
- (b) the conclusions of any investigation into the proposed dismissal; and*
- (c) any representations from the relevant officer.*

2.9 Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as an independent person under the 2011 Act.

10. DISMISSAL

- (a) Members will not be involved in the dismissal of any officer below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct. 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.
- (b) Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the dismissal of an officer designated as the Head of Paid Service, Chief Finance Officer or Monitoring Officer, Full Council must approve that dismissal before notice is given to that person (the statutory procedure set out in 9 above must be followed prior to such dismissal)
- (c) Where a committee or sub-committee is discharging, on behalf of the Council, the function of the dismissal of a Chief Officer, at least one member of the executive must be a member of that committee or sub-committee.
- (d) Notices of dismissal can only be made to an officer by the correct 'dismissor', being the Council or a committee, sub-committee or an authorised nominated officer of the Council discharging the function of dismissal on behalf of the Council as determined by the Regulations and these Procedure Rules.
- (e) Notice of dismissal must not be given to the Head of Paid Service, Monitoring Officer, Chief Financial Officer, or Chief Officer post (*) until:
 - (i) The Chairman of the Human Resources Sub-Committee (on behalf of the Sub-Committee) has notified the Assistant Director (Partnerships) of the name of the

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OFFICER EMPLOYMENT PROCEDURE RULES

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- person the Sub-Committee wishes to dismiss and any other particulars relevant to the dismissal which the Sub-Committee has notified to the Assistant Director (Partnerships).
- (ii) The Assistant Director (Partnerships) has notified every member of the Cabinet of the name of the person who the dismisor wishes to dismiss, any other particulars relevant to the dismissal and the period for objection.
- (f) The Leader of the Council may object, on behalf of the Cabinet, to the dismissal within 3 working days of the issue of the notice in (b) above.
- (g) Notice of dismissal may then only be made if:
- (i) The Leader of the Council has notified the Assistant Director (Partnerships) within 3 working days that neither they, nor any other Member of the Cabinet has any objection to the dismissal; or
- (ii) The Assistant Director (Partnerships) has notified the Sub-Committee that they have not received any objection from the Leader in the period specified in (f) above.
- (iii) The Sub-Committee is satisfied that any objection received from the Leader within that period is neither material nor well-founded.

SCHEME FOR DEALING WITH PETITIONS

Tendring District Council recognises the importance of petitions as a means of engaging with local communities, enabling the public to air concerns, and as a mechanism for generating service improvements. These pages set out what a petition is, how the public can submit a petition, how it will be dealt with and what the Council can do to respond to the issues raised.

What Constitutes a Petition

Any communication which is signed by, or sent to the Council by **30 or more** people who live, work or study within Tendring shall be treated as a petition provided that such communication has a clear message or instruction upon which it would wish the Council to act.

Any communication which is signed by, or sent to the Council by **less** than 30 of the people who live, work or study within Tendring shall not be treated as a petition but, where it relates to a matter for which the Council has responsibility for, it shall be forwarded to the appropriate officer of the Council to acknowledge and advise what action, if any, will be taken.

Signatory Eligibility

The Council is keen to receive feedback from all residents, visitors and from people working or studying in the Tendring area, through various communication channels. However, only those people who are either (a) permanent residents of Tendring or (b) non-residents who can be clearly identified as either working or studying in Tendring can trigger a formal petition response.

There is no legislation supporting the minimum age requirement for a person to initiate or support a petition. Accordingly, children and young people have the ability to submit a petition as it is deemed they have the same rights and opportunity for their voices to be heard as well as adults. However, it is recognised that in practice, a teacher or parent would oversee the submission of a petition from school children where such children are under 16 years of age.

Whilst the Council welcomes petitions as a means of highlighting concerns within a local area, the lead petitioner has a responsibility to ensure that any petition submitted is done so under the principle of good faith and be decent, honest and respectful.

Information to be included

Any petition submitted must contain the following:

- A clear and concise statement covering the subject of the petition, the area to which the petition relates and what action the petitioners want the Council to take;

- The contact details for the petition organiser (lead petitioner) so the Council knows who to contact (where the lead petitioner is not identified, the Council shall correspond with the person named first on the petition);
- The name, full address, postcode and signature of any person supporting a traditional paper petition (address details will be checked). Such a petition must be accompanied by a dated covering letter that identifies the key information outlined in this procedure about the purpose of the petition, what action is called for and contact details for the lead petitioner;
- The name, postcode and email address for those persons who sign up to an electronic petition or e-petition; and
- The date the petition was submitted.

Any petition that does not comply with the above requirements will be deemed invalid.

1. How to Submit a Petition to the Council

Petitions can be submitted to the Council in the following ways:

- E-petition – The petition must be submitted via the Petitions function on the Council's website (www.tendringdc.gov.uk). Where no end date to an e-petition is specified, the Council shall set this at 93 days from the date of receipt of the petition.
- Paper petitions must be sent to The Committee Services Manager, Tendring District Council, Democratic Services & Elections, Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE.

2. What happens when a Petition is submitted?

- Receipt of a petition will be formally acknowledged to the lead petitioner in writing or by email as appropriate, within five working days of its receipt. In relation to an E-petition the lead petitioner will be informed that the Council will deem the petition to be held 'in abeyance' until such time as the end date has passed. At which time the Council will count up and, if necessary, verify the signatures etc. The Council will then action the petition in accordance with the provisions of this Scheme.
- The Council will accept any petition on face value but reserves the right to verify the signatures or investigate further, if deemed necessary. The petition must not be vexatious or frivolous or defamatory or offensive. It must not be substantially the same as a Petition previously received and dealt with by the Council within the past 12 months.

- It must also relate to a matter for which the Council has responsibility for, subject to the exceptions detailed below:

Petitions Received in respect of Planning Applications, the Local Plan making process and other Regulatory Matters (such as licensing applications submitted under the Licensing Act 2003 and the Gambling Act 2005)

Petitions received in respect of planning or licensing applications shall not be treated as petitions for the purposes of this scheme but will be sent to the appropriate department and will be considered as representations received in relation to that particular application or planning matter.

Petitions received in respect of the Local Plan making process will be referred to the Planning Policy & Local Plan Committee.

Community Governance Petitions

Community Governance petitions will be considered initially against the relevant provisions of the Local Government and Public Involvement in Health Act 2007. Those petitions that do not meet the criteria under that Act to trigger a Community Governance Review will then be considered against the criteria contained within this Scheme.

Petitions for a Referendum for an Elected Mayor and Cabinet or a Committee System of Local Government

Petitions for a referendum for an Elected Mayor and Cabinet or a return to a Committee System of Local Government will be considered initially against the relevant provisions of the Local Government Act 2000 and related legislation such as the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2011 (as amended). Those petitions that do not meet the criteria under that Act and supporting legislation to trigger a Referendum will then be considered against the criteria contained within this Scheme.

The Head of Democratic Services & Elections (or, in their absence or other unavailability, the Committee Services Manager) will decide whether a petition is valid and/or acceptable. In making their decision those Officers will consult, if necessary, the Monitoring Officer. If the decision made is to reject the petition as being invalid and/or unacceptable the Head of Democratic Services and Elections (or Committee Services Manager) will inform the Lead Petitioner accordingly, explaining the reasons why the petition cannot be accepted under this scheme and, if appropriate, informing the petitioner that the petition will be forwarded to the relevant department together with a request that they respond directly to the petitioner on the matters raised.

- If the issue contained within the petition is not something which the Council would ordinarily consider in public as it would require the disclosure of confidential or exempt information (as defined in local government law), the lead petitioner will be informed accordingly, explaining the reasons why the petition cannot be accepted under this scheme and where appropriate, referring the petitioner to the relevant department and advising them as to how their views can be expressed via alternative means.
- If the issue contained within the petition does not relate to any functions or responsibilities of the District Council, but does relate to a matter for which Essex County Council or other body or partner is responsible, the petition will be forwarded to that organisation and the lead petitioner advised accordingly.
- Each petition received shall be based on a tiered system whereby:
 - (a) A valid petition containing 30 to 500 signatures from Tendring residents or non-residents who can be clearly identified as either working or studying in Tendring, will be reported to Council for information. It will then be presented to the first practicable meeting of the Cabinet (if it relates to a matter that is an Executive function under the law) or the appropriate committee and then, if so requested, the matter will be investigated and a report will be brought back to the Cabinet/Committee for consideration;
 - (b) A valid petition containing 501, or more signatures from Tendring residents or non-residents who can be clearly identified as either working or studying in Tendring, will be reported to Council to advise that the petition has been received. Once it has been investigated, a report will be prepared and presented with the petition at the next meeting of the Council for consideration. If it relates to a matter that is an Executive function under the law the petition will also be presented to the first practicable meeting of the Cabinet and any views, comments or recommendations made by Cabinet will be incorporated into the aforementioned report to Council.
 - (c) The appropriate Ward Member(s) will be informed of receipt of a petition and any action to be taken.

Note: Where the subject of a petition requires urgent action (i.e. it cannot wait until the following meeting of the Council) it is proposed that the petition be investigated and a report be presented to the first available meeting of the appropriate committee or Cabinet (if it relates to a matter that is an Executive function under the law).

In the period immediately before an election or referendum the Council may need to deal with petitions differently. If this is the case, the Head of Democratic Services & Elections,

having consulted the Monitoring Officer, will explain, in writing, the reasons to the Lead Petitioner and inform them of the revised timescale that will apply.

- When a petition is being initially considered by a committee or the Cabinet (or Council, following investigation and a report being brought back), the lead petitioner will be invited to address the committee, Cabinet or Council as the case may be, outlining the reasons for the submission of the petition and what action they would like the Council to take. The lead petitioner (or his or her representative) will have a time limit of three minutes for their speech and the petition will then be discussed by Councillors. A Ward Councillor can, at the request of the lead petitioner, present the petition to the committee, Cabinet or Council, as the case may be, on their behalf and will have a time limit of three minutes for their speech.
- Where the lead petitioner requests a representative or a Ward Councillor to speak on their behalf, the lead petitioner must inform the Head of Democratic Services & Elections (or the Committee Services Manager) in writing or by email in advance of the relevant meeting of the name of that representative/Ward Councillor.
- Should two petitions be received on the same issue (including if one is in support and one opposing a course of action) then both lead petitioners will be invited to address Cabinet or Council at the same time.
- The relevant Ward Member(s), Cabinet Member(s) and officers will be informed when a valid petition covering their Wards and/or areas of responsibility is received and when and how the petition will be considered.
- The lead petitioner will be informed, in writing, of the committee's Cabinet's or Council's decision as the case may be and this information will also be published on the Council's website via the Minutes of the relevant meeting at which the petition was dealt with. If a further meeting is to be held to consider the issues raised in the petition, the lead petitioner will be supplied with the relevant details and will also be given the opportunity to attend and, if so requested by the chairman, address that meeting and/or answer any questions posed at the meeting.
- Relevant Officers will be required to attend any meeting to assist in the scrutiny and investigation of issues raised in the petition. As a general principle, the relevant Officers should be at a Head of Service level or above.
- Where possible, the consideration of a petition will be held in public but, in exceptional circumstances, it may be necessary for an issue to be considered as a "exempt" item under the Local Government Act 1972, the Access to Information Act 1985 and other relevant legislation. In such circumstances, the lead petitioner, public and press will be excluded from the meeting (or part of it) but the reasons for their exclusion will be clearly communicated to them and will also be included in the Minutes of that meeting.

3. What happens after a Petition has been considered?

There are several courses of action available to the committee, Cabinet or the Council (as appropriate) once a petition has been considered, including:

- No action (with reasons as to why no action is proposed)
- Taking the action requested in the petition
- Taking an alternative or amended course of action to that requested in the petition (with reasons as to why such action is being taken)
- Undertaking research into the matters raised (this could include referring the matter to the relevant Portfolio Holder, or officer of the Council) and holding a meeting with the petitioners.
- Referring the petition to a Committee or Cabinet or an external person/body (such as the County Council or Government body or Public Services or the Ombudsman or Member(s) of Parliament
- Holding a public meeting
- Holding an inquiry
- Providing a written response to the lead petitioner setting out the Council's views on the request in the petition
- Deferring consideration of the petition to a future committee, Cabinet or Council meeting
- Calling for a referendum (if permitted under the legislation and subject to costs)

TENDRING DISTRICT COUNCIL



MEMBERS' CODE OF CONDUCT

(Adopted by the Council on 22 November 2022
with a commencement date of 23 May 2023)

(Code as regards the conduct which is expected of all elected Councillors, voting co-opted members
and appointed members)

Local Government Association Model Councillor Code of Conduct 2020

JOINT STATEMENT

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviors and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

INTRODUCTION

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

DEFINITIONS

For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who

a) is a member of any committee or sub-committee of the authority, or;

b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

PURPOSE OF THE CODE OF CONDUCT

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

GENERAL PRINCIPLES OF COUNCILLOR CONDUCT

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

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- I impartially exercise my responsibilities in the interests of the local community
 - I do not improperly seek to confer an advantage, or disadvantage, on any person
 - I avoid conflicts of interest
 - I exercise reasonable care and diligence; and
 - I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

APPLICATION OF THE CODE OF CONDUCT

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

STANDARDS OF COUNCILLOR CONDUCT

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**

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- i. I have received the consent of a person authorised to give it;**
 - ii. I am required by law to do so;**
 - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - iv. the disclosure is:**
 - 1. reasonable and in the public interest; and**
 - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
 - 3. I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local or authorising their use by others:

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

- 8.1 I undertake Code of Conduct training provided by my local authority.**
- 8.2 I cooperate with any Code of Conduct investigation and/or determination.**
- 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority**9. Interests****As a councillor:**

- 9.1 I register and disclose my interests.**

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. Gifts and hospitality**As a councillor:**

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- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendices

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

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 disclose and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

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.

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.

Honesty

Holders of public office should be truthful.

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.

Appendix B Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

“Disclosable pecuniary interest” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

“Partner” means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registrable Interests (as set out in **Table 2**), you must disclose the interest., you must disclose the interest. You may

Speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which **affects** –
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a relative, close associate; or
 - c. a financial interest or well-being of a body included under the Other Registrable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) **affects** the financial interest or well-being:
 - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. [Where you have an Other Registrable Interest or Non-Registrable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a</p>

	right to occupy or to receive income.
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Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; 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 councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

* 'director' includes a member of the committee of management of an industrial and provident society.

* '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.

Table 2: Other Registerable Interests

You must register as an Other Registrable Interest;

- a) any unpaid directorship
 - b) any body of which are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
 - c) any body
 - (i) exercising functions of a public nature
 - (ii) directed to charitable purposes or
 - (iii) 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 member or in a position of general control or management

Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations.

These are:

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.

Approved 3rd 12.2020
Updated 19 January and 17 May 2021

TENDRING DISTRICT COUNCIL COMPLAINTS PROCEDURE

1. Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member (with voting rights) of this Authority (“Tendring District Council” or a Town or Parish Council within its area (see 1.3 below)) has failed to comply with the Member Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Member Code of Conduct.
- 1.2 Under **Section 28(6) and (7) of the Localism Act 2011**, Tendring District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Authority (*or of a Town or Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Town and Parish Councils within the Tendring District are set out on the Council's website.
- 1.4 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation against a Member, which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles.

2. The Member Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the website or on request from reception at the Council Offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council's Code of Conduct, you should visit the website operated by the Town or Parish Council or request the Town or Parish Council Clerk to allow you to inspect the Town or Parish Council's Code of Conduct.

3. Making a Complaint

- 3.1 If you wish to make a complaint, please write to or email:

The Monitoring Officer, Tendring District Council,
Corporate Services, Town Hall, Station Road,
Clacton-on-Sea, Essex CO15 1SE

standards@tendringdc.gov.uk

The Complaints Form can be downloaded from the website.

- 3.2 The Monitoring Officer is a senior officer of the authority who has a statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the

system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which is available on request from the reception at the Council Offices or via the website. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The name and address of a complainant will be provided to the member that is the subject of the complaint. In exceptional cases, we may agree to withhold your name and address from the member. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form along with the reasons why you feel it necessary for your name and address to be withheld. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

- 3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.

- 3.5 Following receipt of your complaint, the Monitoring Officer will:-

- (a) acknowledge receipt of your complaint within 10 working days of receiving it;
- (b) notify, within 10 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above;
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint; and
- (d) your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.

- 3.6 The Complaints Procedure Flowchart is set out at the end of this procedure for reference.

- 3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.

- 3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaints procedure. The Monitoring Officer will also adhere to this confidentiality and only inform/contact any such individuals which are identified in the procedure or by the parties. If the details of the complaint are made public, it may be necessary for a statement to be issued by the Monitoring Officer for clarification only.

4. Will your complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, may consult with one of the Independent Persons before making a decision as to whether the complaint:

- 4.1.1 Merits no further action
- 4.1.2 Merits early informal resolution or mediation
- 4.1.3 Merits further investigation

4.2 In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.3 The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria included at **Annex D (set out at the end of this procedure for reference)**.

Where the Monitoring Officer has taken a decision, you will be informed of the decision and the reasons for that decision. The Monitoring Officer may require additional information in order to come to a decision, and may come back to you for such information. In the absence of a response from you within 15 working days the Monitoring Officer may close the complaint. Information may be requested from the member against whom your complaint is directed to enable the Monitoring Officer to take the decision. In the absence of the subject Member's response within 15 working days the Monitoring Officer may proceed with the complaint.

Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer *may* also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

Any failure to comply with the time scale by the Monitoring Officer or parties concerned will be notified to the Standards Committee or Sub-Committee together with reasons for the delay and the member subject of the complaint and the complainant will be kept informed of progress and reasons for the delay.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or agreeing to mediation and/or

other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

Where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required for informal resolution or mediation; this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies, subject to the necessary Legal Jurisdiction Criteria Test being applied.

5. Referral to the Standards Committee or Sub-Committee and how is the Investigation conducted?

(The Committee and Sub-Committee Terms of Reference are included at **Annex C (set out at the end of this procedure for reference)**).

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints a summary of which is attached as **Annex E (set out at the end of this procedure for reference)**.

The Council has a Town and Parish Councils' Standards Sub-Committee which has responsibility for dealing with complaints regarding the actions of a Town or Parish Councillor, reference to the Sub-Committee throughout this procedure relates to the Town and Parish Council's Standards Sub-Committee.

- 5.2 If the Monitoring Officer decides that a complaint merits further investigation without referral to the Standards Committee or Sub-Committee, he/she will commission the investigation to be undertaken by a suitably qualified investigator with requisite experience and may include another officer of the Council, a senior officer of another authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained.

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed. Any information supplied to the Monitoring Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, may be shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards

Committee is convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.

- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer's report is sufficient, subject to 6.3 below, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.
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Exceptional cases may include but not be limited to matters where the evidence is so finely balanced or is in the public interest to do so.

7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- 7.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and will then either refer the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with one of the Independent Persons and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or mediation and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee or Sub-Committee (*and the Town or Parish Council*) for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Committee or Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and made available for public and press inspection, however, the Investigators Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, may adjourn the meeting for a short period and deliberate together in private. The hearing will then be reconvened and the Decision will be announced in public. It is expected that this will usually be on the same day.

The Standards Committee or Sub-Committee, with the benefit of any comments or advice from one of the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the decision is contrary to a recommendation from the Investigating Officer and/or Monitoring Officer, detailed reasons will be required to be published in the Decision Notice. The decision of the Standards Committee or Sub-Committee will also be reported to the next meeting of Full Council.

If the Standards Committee or Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action might the Standards Committee or Sub-Committee take where a member has failed to comply with the Code of Conduct?

8.1 The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-

- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
- 8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;
- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to (*or recommend that the Town or Parish Council*) arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (*or recommend to the Town or Parish council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Town or Parish Council*);
- 8.1.7 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of (*or recommend to the Town or Parish Council that it withdraws*) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or

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- 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of *(or recommend that the Town or Parish Council exclude)* the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.
- 9. What happens at the end of the hearing?**
- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member *(and to the Town or Parish Council if appropriate)*, make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.
- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent Person will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.
- 10. Who forms the Standard Committee or Sub-Committee?**
- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Tendring District Association of Local Councils);
- 10.3 At least one of the two Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether a member's conduct constitutes a failure to comply with the Code of
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Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who are the Independent Persons?

- 11.1 The Council has appointed two Independent Persons to support the Standards Committee and Sub-Committee.
- 11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.
- 11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person protocol which sets out some general principles.

12. Revision of these Arrangements

The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

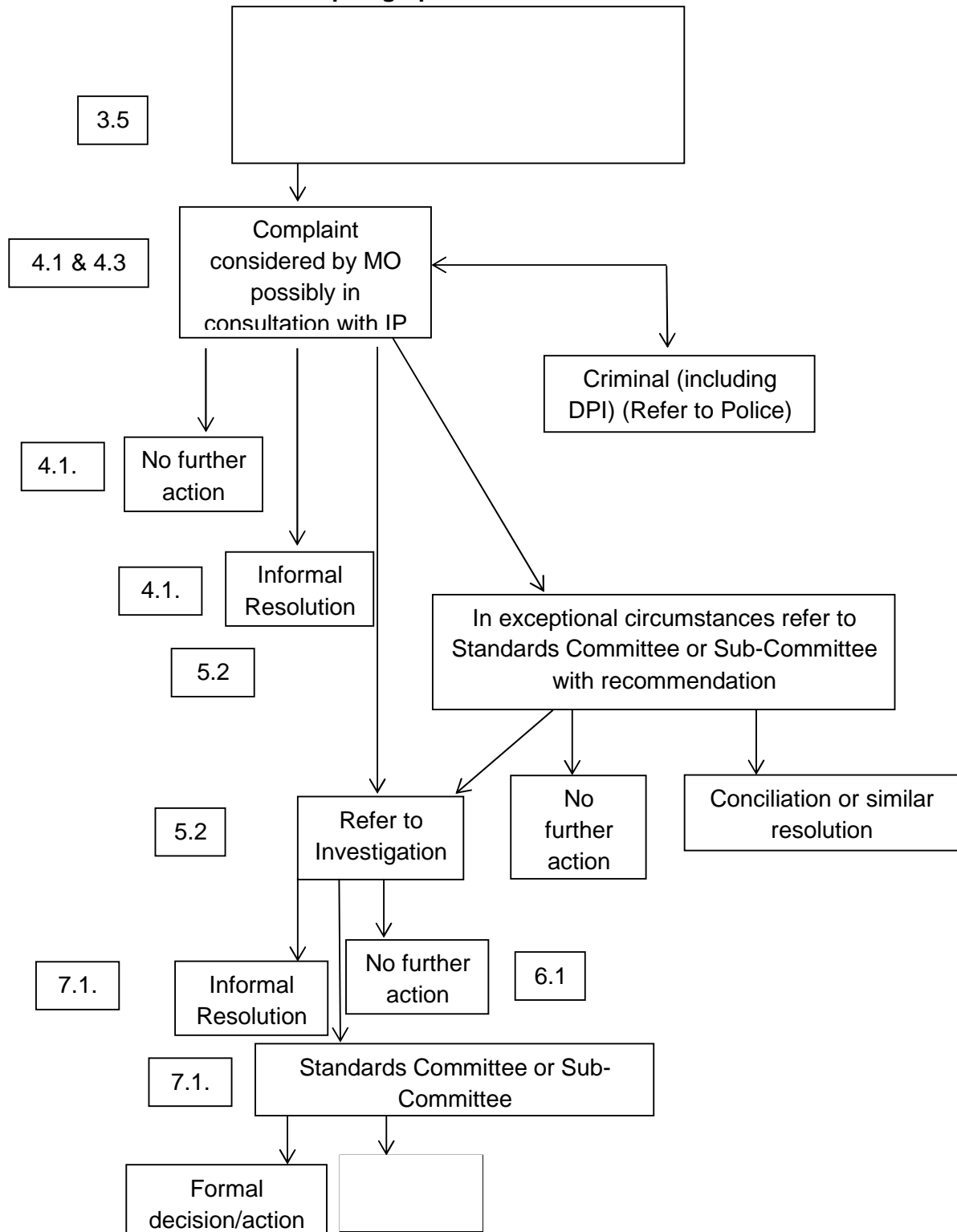
13. Appeals

- 13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee.
- 13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

ANNEX B

This Flowchart is to be read in conjunction with the Tendring District Council's Complaints Procedure

(Reference is made to the relevant paragraphs of the Procedure in the boxes on the left hand side)



**ANNEX C – STANDARDS COMMITTEE AND TOWN AND PARISH COUNCILS' SUB-COMMITTEE
TERMS OF REFERENCE**

Committee	Functions and Terms of Reference	Delegated Functions
Standards Committee	<ol style="list-style-type: none"> 1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority; 2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels of the Council; 3. To advise the Council on the adoption or revision of the Members' Code of Conduct; 4. To advise, train or arrange training on matters relating to and assisting Members, Co-opted Members and Town and Parish Councillors on observing the Members' Code of Conduct; 5. To approve procedures for the conduct of hearings into complaints against Members; 6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council; 7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework; 8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints; 9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and 10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee. 	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure. 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation • Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation. 3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.

(Grey)

	<p>Proceedings:</p> <ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and 4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council. 	<ol style="list-style-type: none"> 4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct. 5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011. 6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.
Committee	Functions and Terms of Reference	Delegated Functions
Town and Parish Councils' Standards Sub-Committee	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p>Proceedings:</p> <ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and; 	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure. 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether

(Grey)

	<p>4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.</p>	<p>the complaint:</p> <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation • Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation. <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p> <p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>
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ANNEX D
CONDUCT COMPLAINTS ASSESSMENT CRITERIA**Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee**

1. The complaint is not considered sufficiently serious to warrant investigation;
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”;
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
5. It is about someone who is no longer a Councillor;
6. There is insufficient information available;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances, e.g. an allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee;
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

Complaint which may be referred for investigation and/or to the Standards Committee or Sub-Committee

1. It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee or Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to consider; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to consider; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to consider.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ time and Members’ time. This is an important consideration where the complaint is relatively minor.

ANNEX E
STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

Members are reminded that they are required to co-operate with the investigation process as part of their compliance with the Code of Conduct and to ensure that the procedure is undertaken in an efficient and resourceful manner.

1. Planning Stage:

Upon receipt of an instruction to carry out an investigation the Investigator should:-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Members' Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.
- Tendring District Council has imposed a 3 month deadline for an investigation to be completed; this may be reduced by the Monitoring Officer in each individual case. The Investigating Officer must confirm that the deadline is achievable and regularly update the Monitoring Officer, subject member of the complainant and the complainant as to progress.

2. Evidence Gathering Stage:

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.
- If new evidence is obtained through the investigation that the subject member has not been made aware of, this should be provided to the Councillor to respond to either orally or in writing.

3. Interview Stage:

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (preferably in order of: the complainant, witnesses and subject member and any of their witnesses).
- The Investigating Officer when interviewing the subject member must ask them to respond to each point of the complaint and alleged breach of the Code of Conduct.
- The Investigating Officer should make every effort to gather evidence from the Complainant and subject member by way of a face to face interview.

4. Report Stage:

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain:
 - Details of who was interviewed, who supplied information and whether through written documentation or verbally;
 - Agreed facts;
 - Facts not agreed and corresponding conflicting evidence;
 - An assessment on all of the alleged breaches of the Code of Conduct forming the complaint and those identified by the Monitoring Officer or Investigator;
 - Conclusions as to whether a breach has occurred;
 - Where a draft report is issued this will be supplied to both the complainant and subject member for comment, in addition to the Monitoring Officer.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion.

TENDRING DISTRICT COUNCIL MONITORING OFFICER PROTOCOL

This Protocol relates to the discharge of the Monitoring Officer functions in relation to the assessment of an allegation that a Member of the District, Town or Parish Council has failed to comply with the Council's Members' Code of Conduct.

1. Overarching Principles:

- (a) The Monitoring Officer is a statutory appointment under s.5 of the Local Government and Housing Act 1989.
- (b) This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
- (c) The Monitoring Officer will discharge their statutory responsibilities with a positive determination contributing to promotion and maintenance of high standards of conduct, in a manner that enhances the overall reputation of the Council, in particular:
 - Complying with the law (including any relevant Codes of Conduct);
 - Complying with any general Guidance issued including consideration of Best Practice;
 - Complying with the procedures adopted by the Standards Committee following such guidance;
 - Complying with the Council's Constitution and standing orders; and
 - Acting impartially in the interests of fair and natural justice.
- (d) The Monitoring Officer must establish and maintain a Register of Interests of Members and co-opted Members of the Authority.
- (e) The Monitoring Officer is employed by Tendring District Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members. Accordingly, when they are of the opinion that providing advice to a Member or group of Members on a matter is incompatible with their role as adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority.
- (f) Where the advice or recommendation of the Monitoring Officer is departed from by the Standards Committee or Sub-Committee, in accordance with administrative law, full reasons will be provided by the relevant Committee in making its decision.
- (g) This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure and Independent Person's Protocol.
- (h) The Monitoring Officer is the principal adviser to the Standards Committee and Sub-Committee. Additional advice and support is provided by Officers within the Legal and Democratic Services teams.

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- (i) The Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends in relation to the promotion and maintenance of high standards of conduct at these Authorities.
 - (j) The Monitoring Officer will act on complaints received and throughout the process in accordance with the Complaints Procedure. Under Section 4.1 of that Procedure the Monitoring Officer will review every complaint received and, before taking a decision, may consult with one of the Independent Persons as to whether the complaint:
 - (i) Merits no further action;
 - (ii) Merits early formal resolution or mediation; or
 - (iii) Merits further investigation.

A formal Decision Notice of that decision will be prepared and circulated to the interested parties.

There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee though a complaint can be made to the Local Government and Social Care Ombudsman.

- (k) In circumstances where either the Monitoring Officer or one of the Officers has made a complaint, witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not exist. These procedures will consist of maintaining an information barrier and restricted access to the matter in consideration; this is referred to as “conflicted out”.

In practical terms, in these circumstances, the Monitoring Officer or Officer will take no part in the process unless called upon either as the complainant or as a witness.

- (l) In instances (exceptional circumstances) where the Monitoring Officer decides to refer a complaint to the Standards Committee or Sub-Committee for initial assessment or further investigation, in accordance with the Complaints Procedure (see flowchart), any approved information as is readily available, which would assist the Standards Committee or Sub-Committee in its function of considering the allegation will be attached to their Report.
- (m) In providing information, in any manner at any stage in the process, the Monitoring Officer must satisfy that they have the legal power to do so and the requirements of the Data Protection Act 2018, the UK General Data Protection Regulation (GDPR) and Freedom of Information Act 2000 have been considered, as reflected in the Council's Constitution.
- (n) It is recognised that, where a complaint is referred for investigation, this may not be personally conducted by the Monitoring Officer. The investigator instructed will be suitably qualified with the requisite experience and may include another senior officer of the Council, a senior officer of another Authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained. Wherever

possible and if appropriate to do so, the Monitoring Officer will seek external resources from outside of the County of Essex.

2. Receipt of Allegations:

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints Procedure. The Monitoring Officer will treat this as a general complaint and forward it to be dealt with under the Council's general formal complaints process, as appropriate.
- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

3. Consultation with the Independent Persons:

- (a) The Monitoring Officer and supporting Officers will facilitate the contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the Complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the parties.
- (b) The Monitoring Officer will allocate roles for the Independent Persons in accordance with their Protocol and each party will be notified who the relevant Independent Person is and that they will be in contact shortly.
- (c) The Monitoring Officer does not have to agree with the Independent Person but if a different view is taken the Monitoring Officer will consult with another Independent Person in the first instance, before making a final decision.

4. Standards Committee and Sub-Committee:

- (a) The Monitoring Officer, in consultation with the relevant Chairman of the Standards Committee or Sub-Committee will decide on the type of attendance permitted for an Independent Person when considering complaints.
- (b) All meetings of the Standards Committee or Sub-Committee are considered to be open to the public and press unless (c) and (d) below apply.
- (c) The Monitoring Officer will advise the Standards Committee or Sub-Committee when to go into private session and exclude public access to the meeting in accordance with the Access to Information Procedure Rules, as set out in the Council's Constitution.
- (d) In accordance with Access to Information Procedure Rules, if the Monitoring Officer or Deputy Monitoring Officer, in the Monitoring Officer's absence, considers it appropriate, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with the meeting at which those reports are to be discussed 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.

- (e) Any decision departing from the Monitoring Officer's recommendation or advice will be supported with full reasons and recorded within the public part of the minutes for the meeting.

TENDRING DISTRICT COUNCIL INDEPENDENT PERSON PROTOCOL

This Protocol sets out the expected conduct of Tendring District Council's Independent Persons (IP) when carrying out their consultation functions in relation to an allegation that a Member, or co-opted Member, of the District Council, or a Member, or co-opted Member, of a Town or Parish Council within the District, has failed to comply with the relevant Council's Code of Conduct.

Principles

1. The role of the IP is set down in legislation (section 28 of the Localism Act 2011). *Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate.*
2. The purpose of the IP role is to enable the public to have confidence in how the District Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for members, ensuring they are adequately trained and understand the Code of Conduct.
3. This Protocol applies to all IPs equally and complements the Monitoring Officer Protocol. If the Council is in a position where less than two IPs are appointed due to a vacancy, this Protocol still applies in its entirety, so long as one IP is in place (as required by the legislation)
4. The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
5. In carrying out the role, the IP will ensure that they:
 - (a) Act in accordance with –
 - (i) any relevant legislation or guidance and the respective Council's Members' Code of Conduct in force at that time; and
 - (ii) the agreed processes/procedures approved by the District Council's Standards Committee and Constitution;
 - (b) Act impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice;
 - (c) Maintain confidentiality at all times; and
 - (d) Conduct themselves in accordance with the principles of high standards of conduct expected when acting in public life.
6. The IP role is consultative at various stages of the process, in accordance with the Complaints Procedure and the Monitoring Officer's (MO) role is to give advice to the Standards Committee or Sub-Committee.

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7. The IP is not a member of the Council's Standards Committee or Sub-Committee but is able to attend meetings of the Committee, as a member of the public. The Committee or Sub-Committee may invite comments from the IP on any reports before them, at the discretion of the Chairman.
 8. If the Standards Committee or Sub-Committee invites the IP to attend any meeting, the IP does not have any voting rights when doing so.
 9. The outcome of any prior consultation with the IP undertaken by the MO will be included within any written report presented to the Standards Committee or Sub-Committee for their consideration. The IP's views must be sought before a decision is made after a complaint has been investigated. This will be undertaken by the MO in the first instance, but in some circumstances, it may be appropriate for the Committee or Sub-Committee to do this directly.
 10. Whilst conducting hearings, if the Standards Committee or Sub-Committee meetings are adjourned for members' deliberations, an IP may be invited into these deliberations and invited to comment.
 11. The MO will consult the IP on complaints received in accordance with the Council's procedure and requests for dispensations received in accordance with the Localism Act 2011.
 12. Whilst the MO will have regard to the views expressed by the IP, they are not bound to accept their views on the matter.
 13. When deciding on how to progress with a complaint, the MO and IP should consider the conduct complaints assessment criteria contained within the procedure.
 14. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved with the matter.
 15. If both of the IPs are conflicted out from dealing with the issue, the MO will consider making a request to use the services of an IP from another principal authority.
 16. All contact with the IP should be made through the MO and should the IP be contacted directly by a complainant or Member, they should inform the MO immediately.
 17. In terms of confidentiality, the IP must not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken.
 18. The IP must provide the MO with appropriate methods of contact e.g. email and telephone numbers, and must make themselves available at all reasonable times.
 19. On those occasions when the IP knows that they will not be contactable, they must inform the MO with as much reasonable notice as possible.
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20. The IP should be prepared to give the Standards Committee or Sub-Committee, through the written report, an independent view on the complaint and the merit of the evidence put forward as required to assist the Committee in coming to a decision on the matter.
 21. When discussing the complaint with the complainant or the Member subject of the complaint, the IPs role is not to give views on the merits of the complaint or the evidence in support but to give advice and reassurance on the process.
 22. In each complaint, when necessary;
 - (a) one IP will be selected by the MO for initial consultation and if required, available to the Standards Committee or Sub-Committee for consultation as part of the Complaints Procedure and in accordance with the Localism Act 2011; and
 - (b) if requested by a party, the other IP will be made available to the Complainant or to the Member subject of the complaint – see paragraph 20 above.
 23. The MO will allocate the roles between the IPs on a case by case basis. Should less than 2 IPs be appointed at any time, so long as 1 IP is in place the IP will be expected to be available for the respective parties set out in 22 (a & b).
 24. The MO will ensure that the IPs are kept up to date with changes in legislation, national guidance or good practice.
 25. The MO will update the IPs on progress of the cases on a bi-monthly basis.

PROTOCOL ON MEMBER & OFFICER RELATIONS

INTRODUCTION:

The success of the Council is greatly dependent upon the positive nature of the working relationship between Members and Officers. Mutual trust and respect between both Members and Officers is essential to good local government.

The purpose of this protocol is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship.

The protocol also builds on the respective Codes of Conduct for both Members and Officers and through this promotes the maintenance of integrity, both real and perceived, of the Council as well as very high standards of personal conduct.

1. THE ROLES OF MEMBERS AND OFFICERS:

- 1.1 In fulfilling their roles, the elected Members and Officers are both jointly responsible for:
 - (a) acting honestly, with integrity and in the public interest; and
 - (b) open and transparent objective decision making;
- 1.2 In addition, as set out in Article 2 of the Council's Constitution, the elected Members' role is to:
 - (a) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
 - (b) Represent their communities and bring their views into the Council's decision-making process, i.e. become an advocate for their communities;
 - (c) Effectively represent the interests of their ward and of individual residents;
 - (d) Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances;
 - (e) Be involved in decision-making for the people of the District as a whole;
 - (f) Be available to represent the Council on other bodies; and

- (g) Contribute to the governance and effective management of the Council's business at meetings of the Council, Cabinet and other Committees and Sub-Committees, maintaining the highest standards of conduct and ethics.

1.3 In addition, the Officers are responsible for:

- (a) providing professional and technical advice that Members must have before them when formulating policy and when taking decisions;
- (b) lawfully implementing Members' decisions;
- (c) day-to-day administration, including staffing matters;
- (d) taking managerial and operational decisions in accordance with the Council's Scheme of Delegation;
- (e) the provision of information regarding Council services; and
- (f) undertaking public consultation.

2. WORKING RELATIONSHIPS – UNDERPINNING PRINCIPLES:

To be followed by both Members and Officers in fulfilling their duties:

- Mutual respect and courtesy between Officers and Members;
- An awareness of each other's responsibilities and duties;
- No inappropriate criticism, intimidating behaviour or the creation of a threatening work environment of any kind from either Members or Officers;
- Any appropriate challenges are to be conducted in a professional and respectful manner;
- Equal treatment, regardless of personal or political opinion (actual or perceived);
- An adherence to the law and the lawful instructions and advice of others; and
- An avoidance of close personal familiarity.

The above principles are designed to foster the good working relationships between Officers and Members that are essential to effective decision making and the delivery of services.

Alleged breaches of the Members' Code of Conduct are dealt with through the Council's Standards Committee and in relation to the Officer Code, by the Head of Paid Service, in accordance with the Council's Human Resources Policies and Procedures.

If an Officer is concerned about the conduct of a Member, they should report this to their senior manager, who will notify both the Head of Paid Service and the Monitoring Officer. These concerns could include public criticism of an Officer by a Member or unreasonable, frivolous or vexatious requests for information.

3. OFFICER APPOINTMENTS, PERFORMANCE AND POLITICAL NEUTRALITY:

- 3.1 The appointment of the Chief Executive (Head of Paid Service), the Monitoring Officer, the Chief Financial Officer, the Corporate Directors, Assistant Directors and Heads of Service will be made in accordance with the Officer Employment Procedure Rules. All other appointments are made at the appropriate Officer level.
- 3.2 The **Main Functions and Areas of Responsibility of Officers** are set out in Article 12 of the Council's Constitution. The position of the Chief Executive (Head of Paid Service) is to have overall corporate management and operational responsibility (including overall management responsibility for all officers).
- 3.3 Staffing matters (including discipline, training, setting and monitoring targets) are dealt with by the relevant managers, although the relevant Portfolio Holders/Cabinet Members will agree to targets in the case of the Chief Executive. All other targets are set at Officer level.
- 3.4 Members wishing to comment on an individual Officer's performance and/or deficiencies are usually expected to raise the matter with the relevant Corporate Director in the first instance. Thereafter to the Chief Executive if unresolved.
- 3.5 Officers are politically neutral, serve the whole Council and must avoid being identified with any political group. In order to safeguard this neutrality, Officers must avoid involvement in party political matters, such as campaigns in the political arena. This assumes particular significance in the run up to Elections. In their lives outside work, all politically restricted posts, which includes the Chief Executive, the Corporate Directors, Assistant Directors and many Senior Officers are prevented from active political involvement.
- 3.6 OFFICER ATTENDANCE AND ADVICE TO PARTY GROUPS**
 - 3.6.1 The political parties represented on the Council hold regular group meetings. Officers do not usually advise at these meetings, but may be invited to give information. All invitations should be routed through the Chief Executive.

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- 3.6.2 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such items being considered by the relevant Council decision-making body. The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member, Chairman or spokesperson (either jointly or individually) prior to a meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be most in demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.6.3 The parameters for support to party groups and individuals must be clearly understood, and to assist in this the following applies:-
- (i) The Chief Executive will inform all party groups of the facility for an Officer to attend a party group meeting for a specific purpose and will decide, on request, which Officer may attend.
 - (ii) Support must not extend beyond providing information and advice in relation to Council business. Officers must not be involved in advising on matters of party business and should not, therefore, be present at group meetings when such matters are being discussed.
 - (iii) Party group meetings are not empowered to make decisions on behalf of the Council and therefore any conclusions reached at group meetings do not rank as a Council decision and cannot be interpreted or acted upon as such.
 - (iv) Advice provided to party groups on an issue does not act as a substitute for providing all the necessary information and advice to Members at meetings when that issue is being considered.
 - (v) The attendance of Officers at a party group meeting does not confer any official standing to that meeting.
 - (vi) Special care will be exercised when non-Members are in attendance at a group meeting.
 - (vii) The provisions of the Code of Conduct do not apply to non-Members and therefore the nature of advice, guidance and information given by Officers may not be the same as that given to a Members-only meeting.
 - (viii) Officers must respect the confidentiality of discussions at party group meetings and must not relay the content of these discussions to any other party group.
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4. DECISION MAKING – PROVIDING AND CONSIDERING ADVICE

- 4.1 Decision-making by local authorities is closely regulated by law. The taking of a decision by the wrong person/body or in the wrong way can invalidate the decision from the beginning or leave it vulnerable to being challenged and overturned by a court.
- 4.2 In the event of challenge, attention may also be focussed on the information, professional advice and options made available to the decision-making body or individual prior to that decision being made. Reports and/or other papers placed before decision-making bodies or individuals must therefore contain the relevant facts, correct and complete professional advice and alternative options that may be open to the Council. Officers have the duty to ensure that all of the information on an issue for decision by Members is available, subject to the provisions in this protocol and the Constitution on access to information.
- 4.3 The Officers are responsible for providing those reports and/or papers, and the Monitoring Officer and Chief Financial Officer are required to ensure that their proper advice is placed before decision-makers.
- 4.4 Officers preparing reports for consideration by Council or its Committees do so in the best interests of the Council and not to promote the viewpoint of a particular Member or group of Members.
- 4.5 Reports to Cabinet are drafted by Officers but submitted in the name of the relevant Cabinet Member and will be prepared with their input. Members must recognise that Officers drafting reports on behalf of the Cabinet, delivering the administration's policies, must include all the relevant information, various options and highlighting financial considerations and legal powers, ensuring informed decisions are made, as a whole through the Head of Paid Service.
- 4.6 Officers have a duty to give advice to the Council and its Members using their professional technical knowledge and experience. This will be provided within the report and/or papers and at the meeting, if required.
- 4.7 Members are entitled to expect Officer attendance at meetings at an appropriate level of expertise to ensure adequate knowledge and advice on the subject matter under discussion. Officers in attendance at meetings will always be fully briefed as far as is practical on the issues under discussion on an Agenda.
- 4.8 Such advice is given in good faith and will be in line with and reflect legislation, good practice, Council procedures, experience, professional and technical knowledge, and the Council's formally adopted policies.

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- 4.9 Members are entitled to expect clear, concise and unambiguous information from Officers at all times to assist them in the decision making process. An Officer's advice must be given in accordance with the Council's instructions through the decision making and review process set out in the Council's Constitution and should be taken into account by Members when considering an action or making a decision.
 - 4.10 Officers are also expected to faithfully and conscientiously implement the lawful decisions of Councillors and properly take decisions delegated to them.
 - 4.11 Officers and Members must ensure that the Council's responsibilities regarding notification of and publication of decisions are complied with, as set out in the Access to Information Rules of Procedure in Part 5 of the Council's Constitution.
 - 4.12 In addition to legal challenges and implications, failure to follow the decision making principles may amount to breaches of both the Members' and Officers' Code of Conduct and lead respectively to action under the Standards Framework or to disciplinary proceedings.

5. ACCESS TO INFORMATION

- 5.1 Both Members and Officers must adhere to the Access to Information provisions concerning all information, including confidential information set out in Part 5 of the Council's Constitution.
- 5.2 Disclosure of confidential information by either a Member or Officer will constitute a breach of their relevant Code of Conduct and the appropriate action will be taken. In addition, the Council could be exposed to a damages or compensation claim as a result of the disclosure.
- 5.3 Members are entitled to receive information from Officers in a timely manner to reasonable requests for the purposes of undertaking their role as Ward Councillors, decision makers and performing functions, such as overview and scrutiny (**this is referred to as the common law 'need to know' principle**). Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the Member to properly perform their duties as a councillor.

However, if the Member's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go off on a 'fishing expedition' through their council's documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See *R v. Clerk to Lancashire Police Committee ex parte Hook* [1980] Q.B. 603).

In such instances, the Chief Executive, Management Team, Section 151 or Monitoring Officers may request a Member to demonstrate their 'need to know'.

6. SCRUTINY

The rules and procedures governing Officer and Member responsibilities in support of the Council's overview and scrutiny function are set out in Part 5 of the Constitution.

7. WORKING WITH THE MEDIA

7.1 Information provided to the media is governed by the Local Government Act 1986 and the Code of Practice on Local Authority Publicity. In particular:

Information should be:-

- Objective, factual and informative
- Non-party political or designed to affect public support for a political party

7.2 The functions of the Council are discharged corporately and it is not, therefore, appropriate for public resources to be used to promote the views of individual Members. This does not preclude, in the interests of public accountability, publicity of the views of individual Members when they are representing the Council.

7.3 Press releases containing comments by individual Members are similarly acceptable practice. The Communications Manager will provide the press with factual information but comment will only be provided by Officers with the prior consent of the Chief Executive and/or the relevant Portfolio Holder/Cabinet Member or the relevant Committee Chairman.

7.4 The principle that the Council cannot use public resources at any time to promote the views or policies of a particular party is heightened during **election periods**. During the period just before elections there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, the so-called "purdah" period, is defined as beginning with the last date for publication of notice of the election. Prior to this period, guidance will be issued to both Members and Officers setting out the Council's own version of the convention in the period leading up to the elections.

Tendring

District Council



MEMBERS' PLANNING CODE & PROTOCOL **Updated February 2021**

Background:

The Members' Planning Code of Good Practice as originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interest. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

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 LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

This update 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 in 2013.

For further reading please refer to "Probity in Planning" issued by the Local Government Association.

Introduction:

The aim of this Protocol: 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. 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 Committee** is to make planning decisions openly, impartially, with sound judgment 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.

When the Protocol applies this Protocol 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.

If you have any doubts about the application of this Protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.

1. 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 Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules and obligations 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 Protocol, 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 Protocol, 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 the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

2. Development Proposals and Interests (as defined by the Code of Conduct)

- **Do** disclose the existence and nature of your interest as required by the Members' 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 that 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 (but not mandatory) 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.

3. **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, when you come to make the decision, you
 - are entitled to have and to express 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 that proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal 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 and County Councillor), provided:
 - the proposal does not substantially affect the well-being or financial standing of the consultee body;
 - you make it clear to the consultee body that:
 - 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.
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
 - advise the proper officer or Chair 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.

4. **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 meetings 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 Head of Planning or Planning Manager 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 Assistant Director (Planning) 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 has been 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.

5. 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/division 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 Assistant Director (Planning) at the earliest opportunity.
- **Do** promptly refer to the Assistant Director (Planning) any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

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- **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** declare that you have been lobbied on any particular matter at the Planning Committee when the application is being considered under the Declaration of Interests item of the agenda.
 - **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 Protocol 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/division Member.

6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby or 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 area of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or 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 indicate how Members should vote on a planning issue.

7. Site Visits/Inspections

- **Do** attend site visits organised by the Council, otherwise you will NOT be permitted to sit on the Committee for those items.
- **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.

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- **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.
 - The Chairman will open the formal site visit and invite Officers to point out relevant features of the site and its surroundings. The Chairman will then invite one at a time, from those present, in the following order:
 - the applicant;
 - local Ward Members; and
 - Town and Parish Councillors

to point out any relevant features of the site and its surroundings and raise any site-related issues that they wish to draw to the attention of the Councillors. Councillors will be able to see the physical features of the site and ask questions of any speaker. There will be no discussion of the merits of the case, and all questions from Councillors and other speakers must be put through the Chairman.

- The Planning Committee party will stay together as a group. No lobbying by applicants or objectors will be allowed at the site visit. If an applicant or objector(s) persist(s) in attempting to lobby, all Councillors and Officers will leave the site.
- **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 Assistant Director (Planning) 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.

Exception to the Council's Local Practice of Undertaking Site Visits

- Whilst it is the Council's standard local practice to undertake site visits, there will be exceptional circumstances, where an organised site visit is not possible.
- Site visits are not legally required for the determination of planning applications but forms part of local practice, which protocols must clearly set out. If a site visit cannot be organised, due to exceptional circumstances, a planning application can still be determined by the Committee, so long as the guidance issued by the Council is adhered to.

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- Should circumstances prevail where the Council has had to determine it is not possible to organise a site visit, Members of the Committee will be issued with guidance by the Monitoring Officer, which is relevant to the particular situation arising. Such guidance will take into account health and safety risk assessments, current legislation and central government guidance, including that issued by the Planning Inspectorate and/or the Chief Planning Officer.
 - Although this Protocol will not set out the guidance to be issued, being dependent upon the circumstances at the time, alternative arrangements will ensure the Principles of Planning in Probity are maintained and observed so as not to prejudice the Council's decision making."

8. 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.

9. 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 Assistant Director (Planning), 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 the Corporate Director or Assistant Director (Planning) or those officers who are authorised by their Corporate Director or Assistant Director (Planning) 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.

10. 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 at the entire debate, including the officer's introduction to the matter.
- **Do** have recorded the reasons for the 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.

11. Training

- Members that have been nominated by their Group Leaders can act as a designated substitute member of the Planning or Planning Policy and Local Plan Committees. Any member of a political group is eligible to be a designated substitute member providing that they have received training in relation to planning matters under a continuing programme arranged by the Council.
- The Council provides training for Councillors on development control, local plan making and/or other planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover particular topics or to look at matters in greater depth. Training events are open to all Councillors and where places are limited, current members and named substitutes of the Planning and Local Plan Committees will take priority.
- **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.

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- **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 organised training, reviewing a sample of planning decisions to ensure that Members judgements have been based on proper planning considerations.

Adapted from the Guidance Produced by Lawyers in Local Government (LLG) and adopted by the Standards Committee December 2014 (amended pursuant to a delegation from the Standards Committee in September 2016).

Members' Referral Scheme for Planning Applications**Guidance Note March 2024**

The Terms of Reference of the Planning Committee as set out in the Constitution delegates all planning and conservation matters to Officers except in relation to certain planning applications, which are for determination by the Committee. Two of the exceptions listed are where Members request that an application should be referred to the Planning Committee. The wording is as follows:

- (vi) *Within 35 days of the commencement of formal consultation, a written request is received from a Tendring District Councillor, who is not a serving member of the Planning Committee(##) in accordance with the Member Referral Scheme requesting that the application should be brought before the Planning Committee for determination and giving material planning reasons for that request.*

(##) unless the member of the Planning Committee is making that request solely in their capacity as a Ward Member for the application in question.

- (vii) Within 35 days of the commencement of formal consultation, a written request is received from a serving member of the Planning Committee, in accordance with the Member Referral Scheme, requesting that the application should be brought before the Planning Committee for determination and providing compelling reasons why it could be considered of significant importance to the wider District or planning policy.

The following caveat applies:-

The Director (Planning), or other authorised Officer, in consultation with the Chairman of the Planning Committee and the Planning Solicitor, may allow a Member's referral request that is received after the 35 day cut-off if they are satisfied that the request could not have reasonably been submitted before the deadline and that in all other respects it meets the requirements for a valid referral.

The MEMBER REFERRAL SCHEME is based on the following principles:

- The Member Referral Scheme is approved by Full Council as part of the Council's Constitution;
- Elected Members represent their communities and the interests of their ward or of individual residents (in accordance with Article 2 of the Constitution);
- Planning Committee Members are involved in decision-making for the people of the district as a whole (in accordance with Article 2 of the Constitution – 2.03 (a) (v));
- The interests of a ward or individual residents can extend to consideration of planning applications submitted in adjacent wards and those where applications have been made which have a direct impact on other wards;
- A member of the Council's Cabinet may also be permitted to make representations and speak on any application but only if the proposed development has a direct impact on the portfolio for which the Cabinet member is responsible. The Leader of the Council must approve the Cabinet Member making representations to the Planning Committee and requesting the matter to be determined at Committee;

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- If an elected Member requests an application to be referred to the Planning Committee for determination, they will be required to personally attend the meeting of the Committee to speak on the item. Planning Services will ensure that the Member is notified when the application is scheduled for determination;
 - The Members' Referral Scheme does not apply to a householder application, which is defined as follows:

"A 'householder' application is an application to enlarge, expand, improve or alter an existing dwelling, to put up a boundary wall of fence for an existing dwelling or carry out an operation in the curtilage of an existing dwelling that is ancillary to the dwelling-house".

- Members are required to use the attached letter when referring an application to the Planning Committee to be determined, for ease of reference;

Date: 19th March 2024

Chairman of the Planning Committee

LETTER TO THE DIRECTOR (PLANNING)

Date:

Dear Director (Planning),

MEMBER REFERRAL SCHEME: PLANNING APPLICATION REF:

(*) I am the Ward Councillor for [insert the Ward] and in representing the community*/the interests of the ward* or of individual residents* request the above-mentioned application is referred to the Planning Committee for determination. The planning application is located within:

- (a) the Ward to which I am elected to(*); or
- (b) is adjacent to the Ward to which I am elected to(*); or
- (c) directly impacts the Ward to which I am elected to because (*)

.....
in respect of (b) and (c), I can confirm that I have notified the relevant Ward Councillor(s) of my intention to refer this application to the Committee for determination.

(*) I am the Cabinet Member for [insert responsibility] and the proposed development has a direct impact on the portfolio for which I am responsible. The Leader of the Council has approved representations being made to the Planning Committee.

(*) I am a current serving member of the Planning Committee and the proposed development could be considered of significant importance to the wider district or policy because
..... The Planning Committee Chairman has been consulted and approves this matter being determined by the Planning Committee. By making this request I confirm that I am not predetermined and will approach the decision making with an open mind and therefore have not highlighted any relevant material considerations below.

(#) The referral is because of the following material planning considerations (and for the reasons set out hereunder):-

In line with/potentially contrary to* the development plan (Local Plan/LDF) or Government Guidance (please state relevant policies if known) ☐

Negative/Positive* impact on urban design/street scene ☐

Highways impact and/or other traffic issues ☐

Good/Poor* layout and/or density issues ☐

Flood Risk ☐

(Grey)

Positive/Negative* Impact on neighbours ☐

Other material considerations as follows.....☐

.....
.....
.....

(#) Tick as appropriate

My reasons for the referral are as follows:-

(>) the referral is for the following compelling reasons why it could be considered of significant importance to the wider District or planning policy

.....
.....
.....

If officers are minded to approve/refuse* then there is no need for this application to be referred.

Please ensure that I am notified of the date of the committee meeting at which this application will be considered so that I am able to attend and speak on the item.

Yours faithfully,

Councillor

* Delete as appropriate.

TENDRING DISTRICT COUNCIL'S PROTOCOL FOR CABINET AND OVERVIEW & SCRUTINY ROLES

1. Introduction

- 1.1 The counterpart to operating Cabinet arrangements within a Council is the provision of Overview & Scrutiny functions. You cannot have Cabinet arrangements without its counterpart.
- 1.2 Overview & Scrutiny has the following powers in law:
- (a) to scrutinise any decision made by the Cabinet,
 - (b) to make recommendations to the Council/Cabinet with respect to functions/responsibility of the Cabinet,
 - (c) to scrutinise decisions made by non-executive functions of the Council
 - (d) to make recommendations to the Council/Cabinet with respect to the non-executive functions/responsibilities,
 - (e) to make recommendations to the Council/Cabinet on matters which affect the Council's area or the those living there.
- 1.3 The Council's Constitution sets out how those powers are to be managed and the standards Members and Officers will adhere to. The purpose of this Protocol is not to repeat the Constitutional Articles, Rules and Procedures but to focus on how the relationship between the roles of Cabinet and Overview & Scrutiny will be exercised.
- 1.4 Officers must act with political impartiality, serving the whole council rather than particular groups or members; as such they serve the Members of the Cabinet and of the Overview & Scrutiny Committees equally.
- 1.5 In operating its Overview & Scrutiny functions, the Council will have regard to the statutory guidance for this function. This Protocol is one of the measures the Council has adopted to address the following statement in the statutory guidance:

"Effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee."

2. Application of the Protocol

- 2.1 In utilising its powers in 1.2, Overview & Scrutiny will act as a 'critical friend' to the Leader and Cabinet.
- 2.2 This Protocol applies to all members of Overview & Scrutiny Committees, any Member who may sit on a Scrutiny Task and Finish Group, the Leader of the Council and all Members of the Cabinet.
- 2.3 All Members will promote the legitimate role of Overview & Scrutiny as outlined in 1.2 above.

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- 2.4 All Members must have regard to the Corporate Plan adopted by Council and its capacity and resources to deliver services efficiently, effectively, to achieve value for money and outcomes. Overview & Scrutiny Committees will be mindful of this in its work planning.

3. Trust

- 3.1 All Members should promote an atmosphere of openness at Overview & Scrutiny Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust.
- 3.2 Overview & Scrutiny Members need to trust that Cabinet Members are being open, honest and fulsome when participating in the enquiries being undertaken.
- 3.3 Cabinet Members need to trust Overview & Scrutiny Members with information and to trust in their views.
- 3.4 While Members on the Overview & Scrutiny Committees will come from different political groups including those not aligned with a registered political party, the public must trust that they will act with an independence in determining the work programme of the Committees and in undertaking enquiries identified in the work programmes.

4. Policy Development and Pre-Decision Scrutiny

- 4.1 The value of early input from Overview & Scrutiny into policy development is recognised. Through early consultation, Overview & Scrutiny can act as a sounding board and a think tank in enquiring into issues coming up on the horizon, bringing in added value. The Leader and Cabinet Members (as well as Officers) will draw to the attention of the relevant Overview & Scrutiny committee, policies and strategies that are being developed or are due for review to enable Overview & Scrutiny to build this into their work programme and thereby have a timely input.
- 4.2 All policy development will be carried out in a way to promote inclusive dialogue and to capture views of Members' with a report submitted to the relevant Overview & Scrutiny Committee for consideration by the appropriate Member of Cabinet. The Cabinet and relevant (Assistant) Director will consider the views of Overview & Scrutiny members in the development of the policy and provide a response to the Overview & Scrutiny Committee on the recommendations. The detail of the Overview & Scrutiny involvement shall also be included within the body of the report to Cabinet. The Cabinet/Full Council will continue to be responsible for approving and adopting policy whether this accepts all, some or none of the recommendations from Overview & Scrutiny.
- 4.3 Cabinet Members may wish to request views from Overview & Scrutiny Members on an individual decision before it is taken. The Cabinet Member will be responsible for circulating the details to the relevant Committee Members, through the designated Scrutiny Officer. Utilising this as an option does not exclude the decision from being subject to call-in, however, it will give the Cabinet Member the ability to consider different views and perspectives of a decision to be taken before it is taken.

- 4.4 Like all parts of the Council, Overview & Scrutiny only has a certain capacity and cannot scrutinise everything. It is for Overview & Scrutiny to determine its work programme, in an informed way, and the views of Cabinet are always welcome. Just as Cabinet is not required to accept all recommendations from Overview & Scrutiny on enquiries undertaken, Overview & Scrutiny is not required to accept recommendations from Cabinet concerning the work programme of the Committee. Both should actively consider the other's recommendations and set out reasons for its decision. Both share the ambition of quality public services for residents in, businesses of and visitors to the Council's area.

5. Holding the Cabinet to Account

- 5.1 A key role of Overview & Scrutiny is in holding the Cabinet to account for decisions taken and performance of services. In holding the Cabinet to account Overview & Scrutiny Members will:
- Consider decisions taken by the Cabinet, individually and collectively and items on the Notice of Forthcoming Decisions through formal Overview & Scrutiny Committee meetings;
 - Review service performance and performance against policy and targets;
 - Respect the 'safe space' required by Cabinet Members and senior officers to think freely and offer frank advice to each other (and to receive the same) as they formulate substantial changes to services, responses to important pressing issues or pursue intense negotiations to resolve disputes.
 - Be prepared to ask searching questions that provide a constructive challenge for the purposes of undertaking the Overview & Scrutiny function and not solely for individual information gathering purposes;
 - Be positive and respectful in their interactions with Cabinet Members. This will include being clear whether the Cabinet Member is specifically invited, sending invitations in a timely way, acknowledging the attendance of the Cabinet Member at the meeting and allowing the Cabinet Member to address the Committee and respond to questions;
 - Respond positively to a Cabinet Member if that Member wishes to attend a particular meeting for a given item and they have not been formally invited to confirm whether an invitation is to be extended to them to attend.
 - Represent (and amplify) the voices of the public;
 - Listen to the responses provided and to assist the Cabinet in identifying areas for further consideration and improvement, where necessary;
 - Recognise that not all reviews require recommendations back to Cabinet, if the Overview & Scrutiny Committee were satisfied with the subject matter under consideration
- 5.2 In return, Cabinet Members will:
- Be willing to be open, honest and engaged in providing responses to constructive challenge and, where 'safe space' to give/receive frank advice is required, what time frame that will be needed for that 'safe space', subject to resources and Officers time;
 - Value the importance of Overview & Scrutiny;
 - Be supportive of the Overview & Scrutiny process and invite and seek opinion from Overview & Scrutiny Members on decisions to be taken, where appropriate;
 - Provide a positive contribution to scrutiny meetings;
 - Attend meetings when invited to do so to answer questions and present information:
 - ✓ By way of a direct answer
 - ✓ By reference to published publications

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- ✓ By referring a matter to an officer in attendance, if they are not able to respond
 - ✓ If an answer cannot immediately be given, by providing a written answer within five working days unless it is not reasonable to do so. If considered unreasonable, an explanation as to why will be given.
 - ✓ A combination of the above options.
 - Depart the Overview & Scrutiny Committee meeting when that Committee expresses a wish to deliberate on a matter after hearing from the Cabinet Member.

5.3 Continuing dialogue should underpin Overview & Scrutiny enquiries. As such, pre-meetings (or other communication) between Cabinet Members and the Overview & Scrutiny Committee Chairman is encouraged about a forthcoming enquiry. Where possible, Overview & Scrutiny Committee Members will be encouraged to pass questions on the subject of the enquiry to the Cabinet Member/relevant Officer or outside representative in advance of a Committee meeting. As identified elsewhere, after the meeting and where recommendations are made to the Cabinet there should be a discussion between the Cabinet Member and the Chairman of the Overview & Scrutiny Committee.

5.4 The purpose of any pre-meeting (or other communication) referred to above involving a Cabinet Member is not to replace consideration of any agenda item at the published formal meeting, as it is only this setting which the formal business of the Committee can be undertaken.

6. Budget setting and monitoring - The importance of scrutiny

6.1 Budget scrutiny must also be carried out on a rolling programme. Quarterly throughout the year proactive scrutiny assists to inform the next financial year's budget and long term forecast, work can involve:

- Challenging how the budget has been constructed before it is agreed. In particular, probing any assumptions that lie behind the executive's budget strategy, i.e. is the approach incremental or is it starting from a base budget, what are the main savings proposals, how will any growth be funded, are the financial implications of proposals from departments or committees built into the overall budget and has an appropriate level of reserves been set?
- Carrying out budget monitoring activity, for example in areas where expenditure against budget looks to be well above or below forecasts and where growth/savings targets and revised forecasts are involved.
- Undertaking some evaluation of performance and value for money including how it aligns to the Council's Corporate Plan and Priorities.
- Maintaining a 'big picture' view of the financial pressures affecting the council and continuously challenging how these might impact on existing budgets and budget setting in subsequent years.

6.2 It is important to ensure that this work is undertaken throughout the year and not left until the last Budget Report to Overview and Scrutiny Committee, which is for the final consultation purposes prior to Cabinet's recommendations to Full Council. There is insufficient time to properly respond to the proposals or matters raised, due to the statutory timetable to set a budget. The Overview & Scrutiny function in this important process must be timely and add value, at the point Cabinet recommends its detailed budget proposals including the setting the level of Council Tax increase, the comments received from Overview and Scrutiny during the

year will be regarded. The Council's Budget & Policy Framework Procedure Rules sets out the Process for Developing the Budget.

7. Performance Measurement and Reporting

- 7.1 Measures of performance provide insight into whether value is being achieved and whether improvements are necessary, feasible and affordable. An open sharing of performance data will take place across the Council; including between Cabinet and Overview & Scrutiny. The purpose of reporting general performance data to the Overview & Scrutiny Committee is so that it can undertake scrutiny of it in so far as:
- (a) Is the performance monitoring system capturing the right level of data to support delivery of services – and to make recommendations thereon; and
 - (b) Is there performance as identified in the monitoring data that warrants further enquiry of an activity – and to determine whether and how that enquiry should take place; including it as appropriate in the work programme for that enquiry.
- 7.2 When enquiring into an individual service or subject, Overview & Scrutiny Committee Members will consider the performance measurements available. They will naturally assess whether this aligns with your own research; particularly the experience of service-users.
- 7.3 When considering the performance against the Cabinet's approved annual priority list of actions against the Corporate Plan Themes, Overview & Scrutiny will not normally seek to use the process to question that approved list of actions during the year. There are other Council procedures that can and should be used if there is a compelling need to review those actions. Overview & Scrutiny may legitimately have a view on what the annual priority list of actions should be the following year and these can be set out in recommendations to Cabinet.
- 7.4 Where a service of the Council is being delivered by a third party/outside company or where the matter under enquiry is the responsibility of a partner organisation, they will be encouraged to respond to enquiries from Overview & Scrutiny Committees relevant to the service/enquiry. This will include their own performance data.

8. The Inter-relationship between Cabinet, Audit and Overview & Scrutiny

- 8.1 It is important that Cabinet receives clear advice within the respective responsibilities of the Overview & Scrutiny Committees and the Audit Committee. It is therefore equally important that the formal audit role of the Audit Committee is left to that Committee. Areas in which financial scrutiny can add value, complementary to the work of the Audit Committee, including the following according to the Local Government Association:
- Reviewing draft (medium-term) financial plans
 - Monitoring internal and external audit reports, in order to identify areas where further scrutiny may be beneficial
 - Responding to requests from the public for greater clarity on the council's finance and spending plans
 - Periodically carrying out post-implementation reviews of large (in terms of revenue or capital) projects

- Challenging decisions related to new service commitments, investments, and previously unbudgeted demands
- Scrutinising the financial implications of greater partnership working
- Keeping a regular 'watching brief' on important matters affecting general resource management.

8.2 The above matters will inform the work planning of Overview & Scrutiny of Council functions and those of partners.

8.3 Cabinet, Audit and Overview & Scrutiny Committees will be guided by advice from the Council's Section 151 Officer on the boundary of responsibility between Audit and Overview & Scrutiny.

9. Overview & Scrutiny Work planning

9.1 Around the start of each Municipal Year, the Overview & Scrutiny committees will hold a work planning workshop. As part of this workshop the views of the relevant Cabinet Member(s) will be inputted alongside the views received from others. The Cabinet's adopted priorities in support of the Corporate Plan will be considered, areas of planned policy development over the relevant Municipal Year (and the next) will be provided and they will be asked to highlight any areas where overview & scrutiny may be specifically invited to assist in work (including Community Leadership areas).

9.2 The Chairmen and Vice-Chairmen of the Overview & Scrutiny Committees will meet quarterly with representatives of the Cabinet in order to ensure ongoing opportunities for Cabinet input into Overview & Scrutiny Committee work plans, ongoing opportunities for Overview & Scrutiny to input into Cabinet policy development or to address performance issues and to build on the positive working relationship between the two functions.

9.3 Overview & Scrutiny Committees may legitimately expect to receive a written report with relevant details for each item on its work programme and, where possible, this report should always be circulated with the agenda for the meeting.

10. Overview & Scrutiny Recommendations to the Cabinet

10.1 Overview & Scrutiny Committees may make recommendations to the Cabinet on functions the Council is responsible for through a formal committee meeting or, say, by way of a Task & Finish Group's Final Report.

10.2 Upon receipt of a recommendation from Overview & Scrutiny, Cabinet Members will:

- Give due consideration to any recommendations or views expressed;
- Provide an explanation for the reasons why recommendations made by Overview & Scrutiny have or have not been pursued.

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- 10.3 Once approved by the relevant Overview & Scrutiny Committee, the views of the Cabinet Member on any recommendations will be sought and included within the report. The Chairman of the Overview & Scrutiny Committee/Task & Finish Group will have the opportunity to meet with the relevant Cabinet Member(s) to discuss the recommendations and the response to those recommendations. The Final Report will then be submitted to the Cabinet for consideration. Should any of the recommendations not be approved or be only partially supported, the Cabinet will provide details of the reason why. The response of Cabinet to recommendations will be reported to the next available meeting of the Overview & Scrutiny Committee.

11. Urgent Items of Cabinet Business

- 11.1 The Chairman of the appropriate Overview and Scrutiny Committee may be requested to consent to certain decision being taken by the Cabinet/a Cabinet Member if there is an urgent decision needing to be taken and, due to that urgency, the required notice cannot be given and/or the normal call-in procedures of a decision cannot be applied. The Committee Chairman will consider each request and will not unreasonably withhold consent where the purpose of granting consent is in accordance with the legislative provisions and thereby permit the urgent decision to be made. Notice of the urgency reasons and the consent of the Committee Chairman will then follow.

12. Scrutiny Consideration of Confidential Decisions

- 12.1 Overview & Scrutiny Committee Members have a right to access exempt information supporting decisions that have been taken in order to allow an effective enquiry of the decision. Should an Overview & Scrutiny Member wish to ask questions at a public Committee meeting around an decision that itself is exempt from publication or is based on information that is so exempt, the press and public may be excluded in accordance with the Council's Constitution and the Cabinet Member will be expected to answer in an open and transparent manner. The exempt information will remain confidential and all elected members and officers who receive that information shall maintain that confidentiality in line with the codes of conduct for Elected Members and Officers.

13. Call-in

- 13.1 Following the mediation process provided for in the Constitution, and on the basis of a continuing call-in situation, Cabinet Members will be expected to attend any meetings of Overview & Scrutiny committees at which a call-in request in relation to their area of responsibility is being considered. Summarising the requirements of the relevant Procedure Rules in the Constitution, if the relevant Cabinet Member cannot attend, the Leader, should attend in their absence or designate another Cabinet Member to do so. The purpose of their attendance will be to present the decision and the basis for it and to answer questions of fact. The following procedure will take place where call-ins are being considered:
- i. One of the Members who called in the decision will speak first.
 - ii. The Chair will invite the Cabinet Member (decision maker) to respond.

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- iii. The Committee will then ask questions of the decision maker, who may ask a relevant officer to supply further information if necessary.
 - iv. The Committee debates the issue and votes on the outcome.

14. Councillor Call to Action

- 14.1 Cabinet Members will be invited and expected to attend any meetings of Overview & Scrutiny Committees at which a call to action request in relation to their area of responsibility is being considered. A similar process will apply as outlined for Call-In decisions referred to earlier.
- 14.2 Overview & Scrutiny Committee members are not entitled to draft materials while policy is being developed unless the Cabinet consults the relevant Overview and Resources Committee through the formulation of policy. This is to ensure resources are used in an efficient manner. Cabinet Members and Officers are expected to ensure the Schedule of Forthcoming Decisions is up to date and accurate to assist with this for work programming purposes.

15. Ensuring Compliance with the Protocol

- 15.1 The Head of Democratic Services & Elections (in his role as the designated Scrutiny Officer) and the Assistant Director of Governance (in their role as Monitoring Officer) will be responsible for overseeing compliance with the Cabinet/Overview & Scrutiny Protocol which should be used by Members to support the wider aim of supporting and promoting a culture of overview & scrutiny. The success of the protocol will be determined by:
 - Recognition of the value of overview & scrutiny;
 - A clear record of constructive challenge;
 - Valuable Overview & Scrutiny reviews that achieve outcomes;
 - An open and accountable decision making process.
- 15.2 With due regard to the Council's Statement on Council development, training will be made available for those on Overview & Scrutiny Committees and those in the Cabinet on this protocol and elements referenced in it including work planning, budget scrutiny, using performance data and key lines of enquiry.
- 15.3 In the Overview & Scrutiny Annual Report submitted to Full Council each year there will be a section demonstrating the impact of Overview & Scrutiny and effectiveness of the Protocol.
- 15.4 All Members have agreed to adhere to the Council's Policies and Procedures through the Members' Code of Conduct. Any Member who considers the principles of this Protocol had been compromised will raise the issue with the Leader or relevant Chairman of the Overview & Scrutiny to seek resolution in the first instance. Where appropriate, the Group Leader will be notified. In circumstances, where a suitable resolution has not been reached between Members, the matter can be raised with the Monitoring Officer.
- 15.5 Any concerns regarding the behaviours between Members and Officers will be dealt with in accordance with the Member Officer Relationship Protocol.



PROTOCOL FOR WEBCASTING OF FORMAL COUNCIL MEETINGS AND FOR PUBLIC FILMING AND RECORDING OF MEETINGS

This protocol is provided to assist the conduct of webcasting and other filming/recording of meetings and to ensure compliance with its obligations under the Openness of Local Government Bodies Regulations 2014, Data Protection Act 2018 and the Human Rights Act 1998.

Webcasting of public council and committee meetings

Introduction

Tendring District Council is committed to being open and transparent in the way it conducts its business. Most formal meetings of the Council are open to the public to attend and there are schemes covering the submission of petitions and questions to the Council meetings as well as schemes for public speaking at meetings of the Planning Committee. However, some residents may not be able to attend the meetings they are interested in. To ensure that those residents can still engage in the democratic process, the Council films and streams, live, many of its meetings ('webcasting'). These can then be watched online as the meeting happens or up to four years after the meeting (the Council retains three full years of recordings and the relevant proportion of the current Municipal Year). In addition to the webcasting service provided by the Council, there are additional legal rights for the public to attend all of our formal public meetings and film, photograph, audio record or report from the meeting using social media or any other means (subject to it not being disruptive). These rights are explained below.

Which meetings are webcast?

The Council aims to webcast all its formal meetings to which the public have a right to attend. This includes meetings of its Council, Cabinet, Audit Committee, Community Leadership Overview & Scrutiny Committee, Human Resources & Council Tax Committee, Licensing & Registration Committee, Planning Committee, Planning Policy & Local Plan Committee, Resources and Services Overview & Scrutiny Committee, Standards Committee, Tendring/Colchester Borders Garden Community Joint Committee and the Premises/Personal Licences Sub-Committee. Meetings of the Miscellaneous Licensing Sub-Committee are not normally webcast as the substantive items on its agenda are usually considered in private session. Meetings of Working Parties and Task and Finish Groups are not webcast.

How do we webcast and how long will the recording be available?

Cameras will be located in the Council's Committee Room at the Town Hall/Princes Theatre to provide the webcasting facility. The Council may also hold hybrid meetings, where some participants join the meeting remotely through a video link. The webcast of meetings will be available on the Council's website for a period of up to four years (the Council retains three full year of recordings and the relevant proportion of the current Municipal Year) and, after that, the recordings will be deleted.

In so far as individuals can be identified visually on a webcast or they can be heard in a recording, Tendring District Council will use that personal information as part of its official authority/public task and in order to promote engagement, service delivery and democratic responsibilities.

When individuals partake in a meeting that is webcast, the Council may share their information with Elected Members, other Tendring District Council Services, other individuals involved in the meeting and the public through its webcast service. We may also provide your information to our suppliers to enable us to deliver this service.

Anyone who does not give their consent to be filmed/recorded as part of a meeting to which this protocol applies must specifically request the Council's Monitoring Officer for an exception to be made

in advance of the meeting. The Monitoring Officer will take a view on a case-by-case basis on whether there is sufficient justification for making an exemption.

In relation to these matters, the Council will normally not show camera footage of members of the public who address the formal meeting of Council, Cabinet or a Committee when presenting petitions, asking questions or as part of a public speaking scheme of the Council.

Audio of their contributions will be webcast and recorded. However, the camera will, during such public involvement in meetings record either a wide angle view of the Councillors attending or of the Chairman of the meeting. A statement to the effect that a member of the public is speaking shall be displayed on the webcast/recording where this is possible by way of explanation of the audio and video element of the webcast/recording at that time.

In addition to the above, the webcast/recording shall normally not show camera footage of the press and public gallery and those there. It cannot be guaranteed that no footage will be webcast or recorded, however, efforts will be made to minimise or avoid entirely that footage.

Are there any meetings or parts of meetings which the Council may not webcast?

Tendring District Council wants to make sure meetings are webcast as far as possible to ensure full engagement with the public. However there are instances where it may not be appropriate to webcast a meeting or parts thereof, for example:

- **When an individual, who is presenting at a public meeting, specifically requests not to appear on the public webcast, and we agree with the request.** We will always seek to accommodate such requests and work with that individual to agree an approach that is satisfactory to all parties. Any such part of a meeting that has not been broadcast will not appear online or be available following the meeting. If you are watching from home you will see a notice appearing on the screen to let viewers know what is happening. If you object to appearing in the webcast, you should make this known in writing prior to the meeting by emailing democraticservices@tendringdc.gov.uk and we will contact you to discuss further.
- **In considering whether or not to record contributions by children at meetings** the Council will, for those aged 16 or over check with the young people themselves that they are content to be filmed and, subject to that, record and broadcast them. For children younger than 16, or those who are otherwise thought vulnerable, we will record only with the consent of the appropriate parent or guardian. If we are in any doubt we will stop the webcast whilst children are speaking. If the children are attending as part of an event involving stakeholder(s) (for example, a school or schools), the Council will expect the stakeholder(s) to have procured the necessary parents' consents.
- **When Councillors at a meeting pass a resolution to exclude the press and public because there is likely to be disclosure of exempt or confidential information.** The Council will always try to conduct its business in public, however from time to time the press and public may be excluded from meetings in accordance with the rules set out in legislation and the Council's Constitution. You will be notified if watching from home that the webcasting has ceased for this part of the meeting and why. The Chairman of the meeting will be asked to confirm that webcasting has stopped before starting to discuss exempt or confidential information.

- **Rights of the public to film, record and photograph at any meeting**

In addition to the webcasting of meetings hosted by the Council, by law the public also has a right to (subject to it not being disruptive):

- Film, photograph or audio record a meeting or any part thereof
- Use any other means (e.g. tweeting, blogging etc.) to enable those not present to see or hear proceedings as they happen or later
- Report or provide commentary of the proceedings so that the reporting or commentary is available as the meeting takes place or later

Why does the Council allow the public and press to film, record and photograph its meetings?

In 2014, the Openness of Local Government Regulations came into force. This enabled the public to report from all local authority public meetings, in a bid to increase transparency and openness in local decision making.

The provisions only apply to meetings of the Council held in public. You may not film, record or use social media to report from any of the Council's meetings which are private or not open to the public.

Full details of the right of the public to film, record and use social media to report from a meeting, including the exemptions mentioned above, can be found in the [guide](#) issued to accompany these regulations.

Are there any other restrictions if I want to report from a meeting?

You do not have to ask us permission in advance to film, record, photograph or report from the meeting using social media. However, we do ask that you respect the following when recording and otherwise reporting from a meeting of the Council:

- Please do not film, photograph or report the views of children, young people, vulnerable people and other members of the public who actively object to being filmed or photographed
- Beware that the common law applies – for example laws on public order offences and defamation
- Please exercise your right to freedom of speech with responsibility – this means respecting the views of others when reporting from a meeting and not disrupting the proceedings
- Please do not edit your filming or recording of the proceedings in a way which may lead to misinterpretation
- Please show respect for those that you are filming or reporting on
- Remember you are only permitted to film, record, photograph or report from the public meeting itself (i.e. from the time it is called to order to the time it concludes). Activity and discussion before or afterwards does not fall within the scope of the regulations
- Filming, recording, photographing or reporting is only permitted of the meeting, not of the public gallery

Signage of webcasting and other filming and recording at meetings

Agendas relating to meetings that may be webcast will include a statement to alert the public to the webcast as well as the rights of the public generally to film, record, photograph and use social media to report from the proceedings, as follows:

WEBCASTING NOTICE

This meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be filmed, except where there are confidential or exempt items, and the footage will be on the website for up to four years (the Council retains three full years of recordings and the relevant proportion of the current Municipal Year). A copy of it will also be retained in accordance with the Council's data retention policy.

The Council will seek to avoid/minimise footage of members of the public in attendance at, or participating in the meeting.

In addition, the Council is obliged by law to allow members of the public to take photographs, film, audio-record, and report on the proceedings at public meetings. The Council will only seek to prevent this should it be undertaken in a disruptive or otherwise inappropriate manner.

If you have any queries regarding webcasting or the recording of meetings by the public, please contact Democratic Services on democraticservices@tendringdc.gov.uk

The Chairman of the meeting will also make an announcement at the beginning of the meeting to make sure everyone understands that the meeting will be webcast and that they may also be filmed by others in the Chamber.

Social Media comments during webcasting

The Council may use generally available platforms to show its webcast footage. When it does so, and if the platform allows for comments to be made by viewers, the Council will provide a message to make it clear that it does not monitor comments and there is no facility to pass those comments on to the attendees of the meeting.

Other provisions**Webcasting**

The Chairman of the meeting has the discretion to request the termination or suspension of the webcast if continuing to webcast would prejudice the proceedings of the meeting.

This would include:

- (i) Public disturbance or other suspension of the meeting;
- (ii) Exclusion of public and press being moved and supported;
- (iii) Any other reason supported by the Council/Committee.

Archived webcasts or parts of webcasts shall only be removed from the Council's website if the Monitoring Officer considers that it is necessary because all or part of the content of the webcast is, or is likely to be, in breach of any statutory provision or common law rule, for example Data Protection and/or Human Rights legislation or provisions relating to confidential or exempt information. There may also need to be a temporary removal of webcasts while allegations of breaches are investigated. It is anticipated, however, that meetings will be conducted lawfully and that the need to exercise this power will occur only on an exceptional basis.

Any elected Member who is concerned about any webcast should raise their concerns with the Head of Democratic Services and Elections.

Other filming, recording, photographing or the use of social media for reporting from the meeting

The Chairman of the meeting has the absolute discretion to terminate or suspend filming, recording and use of social media by members of the public during a meeting if, in their opinion, the activity:

- is disrupting the meeting and impeding good decision making;
- is infringing the rights of any members of the public;
- is in danger of repeating a defamatory statement that has been made.

INTRODUCTION

1.1 The Scheme and Title

In exercise of the powers conferred on Tendring District Council under the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) the following Scheme of Allowances ("the Scheme") has been approved by the Council, having taken due account of the recommendations of its Independent Remuneration Panel.

The Scheme may be cited as the "Tendring District Council Members' Allowances Scheme", and will be effective from 1st May each year until subsequently amended by the Council.

1.2 Annual Review

In accordance with the above regulations the Scheme payments will be reviewed annually. The review process will involve:-

- Scrutiny by the Independent Remuneration Panel (IRP) of the ongoing and future role and workload of Members and review of the allowances and amounts paid to Members;

OR

- Application of an appropriate agreed indexation allowance for up to a maximum of 4 years
- The IRP will then make recommendations to the Council in respect of payments considered to be appropriate for subsequent years.

See Appendix 1 for the current scheme and most recent decision by Annual Council.

1.3 Definitions

In the Scheme:-

"Councillor" or "Member" means an elected Member of Tendring District Council

"Year" means the year (or part year) ending at the annual Full Council meeting

2.0 THE STRUCTURE OF THE SCHEME

2.1 Member Involvement

This Scheme has been established in a way that reflects the responsibility and time commitment required from Members in the discharge of their duties. It acknowledges their duties to ward constituents, fellow councillors, the population as a whole and to organisations outside the

Council. The extent of these responsibilities, and the commitment they require, is reflected in the extent to which a Councillor is remunerated.

These duties also include undertaking development/training opportunities provided.

2.2 Basic Members' Allowance

Basic Allowance is a flat rate payment made to all Councillors in recognition of their time commitments, including such inevitable calls on their time as meetings with officers and constituents and attendance at political group meetings. It also covers incidental costs such as the use of their homes, telephone costs and peripheral costs such as paper, printer cartridges etc. except that headed paper and business cards will be provided by Tendring District Council on request. The same level of Basic Allowance is paid to all councillors.

This Allowance seeks to ensure that the time and effort taken by Councillors to participate in general core training is recompensed.

2.3 Special Responsibility Allowance

Special Responsibility Allowances will be payable to those councillors who hold positions with additional special responsibility.

Payment to the Leader(s) of Group(s) will also be considered.

The amount of Special Responsibility Allowance (SRA) payable will vary according to the position held, duties undertaken and the level of responsibility involved.

The Allowances seek to also reflect participation in Mandatory Training for particular roles and encourage others to participate in training (e.g. a Committee Chairman).

2.4 Childcare and Dependant Carers' Allowance

The Regulations make provision for the Scheme to include payment of a Childcare and Dependant Carers' Allowance to those councillors who incur expenditure for the care of children or dependant relatives whilst undertaking official duties.

Allowances are also made available to Members who have an express need. The express need shall be in the form of a written declaration by a Member that needs to be lodged with the Head of Democratic Services & Elections.

2.5 Travel and Subsistence Allowance

Travel and Subsistence Allowances are also approved by the Council following consideration of recommendations made by the Independent Remuneration Panel in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003.

Travel and Subsistence payments will be made in accordance with the laid down rates in respect of councillors' duties and in respect of approved attendance on approved outside bodies. Rates approved by the Council, following consideration of the recommendations of the Independent Remuneration Panel are set out in Appendix 2 to this Scheme.

Claims for travel and subsistence costs incurred by Councillors to undertake designated official duties in the District shall be remunerated only in respect of travel (and travel/duty time) within the District.

Claims for travel and subsistence submitted to Democratic Services & Elections by the 2nd working day of each month will be paid in that month otherwise they will be paid the following month. Members should aim to submit claims the month after the mileage etc has been incurred in order to assist effective budgetary control and ensure proper treatment within the correct tax year (in compliance with HMRC requirements). Members will be reminded before the end of the tax year to submit claims relating to that year.

2.6 Attendance at Meetings and Conferences

This allowance is paid in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003. As with travel and subsistence, claims submitted to Democratic Services & Elections by the 2nd working day of each month and will be paid in that month otherwise they will be paid the following month.

2.7 Pensionability of Posts

The Local Government Pension Scheme does not allow councillor posts to be pensionable.

2.8 Allowances for the Chairman and Vice-Chairman

Payment of Allowances to the Council's Chairman and Vice-Chairman are permitted by virtue of Sections 3 and 5 of the Local Government Act 1972 (as opposed to the Local Authorities (Members' Allowances) (England) Regulations 2003). For completeness, in respect of Allowances for Councillors, the Allowances for the Chairman and Vice-Chairman are included in this Scheme for reference.

3.0 CLAIMS AND PAYMENTS

The Scheme will be administered in a way that meets the need for both simplicity and transparency. The following procedures are intended to achieve such objectives.

- 3.1** There is an expectation that no Councillor will be eligible to claim more than two separate Special Responsibility Allowances. Where a Councillor is eligible for more than two such allowances they may make the specific case to the Head of Democratic Services and Elections (on behalf of the Chief Executive) to seek the views of the Independent Remuneration Panel as

to whether that further Allowance may be paid. The views of the Panel will then be reported to a meeting of the Council to determine whether the further Allowance shall be paid.

3.2 Documenting Entitlement to Allowances

Following the four yearly local elections and the subsequent Annual Council Meetings at which positions on the Council are filled the annual remuneration entitlement in respect of each Councillor will be calculated and documented. In between these events the entitlement will be adjusted as necessary based on the prevailing rates of allowances and appointment to roles identified as eligible for an allowance.

When so requested, Members will inform the Council of the allowances and entitlements for which they wish to claim remuneration. That information will be retained within the Council and will be used to determine the basis of their monthly payment through the Council's payroll system. Arrangements will be made by Officers to ensure that payments are only made in accordance with this Scheme and an express wish for payment from a Member.

3.3 Payment

Payment of allowances will be paid to each Councillor in arrears in twelve instalments on the 20th of each month (or nearest working day thereto).

3.4 Changes/Part-Year Entitlement

Councillors may, during the course of a year, take up or relinquish a position or role identified within this scheme which alters their entitlement to allowances. In such circumstances their entitlement will be adjusted on a pro-rata basis. Councillors should notify the Head of Democratic Services & Elections of such changes as soon as they are known.

If a Councillor's term of office starts or ends other than at the commencement or end of the normal municipal year, entitlement to such remuneration as their responsibilities and commitments attract will also be calculated on a pro-rata basis.

The revised allowance will apply from the day on which the change occurs.

3.5 Option to Forgo Allowances

A Councillor may decide to forgo all or part of the allowance due to him/her. In such circumstances the Head of Democratic Services & Elections should be notified in writing of such decision.

Once in place, limited or non-payment will continue until revoked in writing by the Councillor concerned (NB such revocation shall not be backdated).

3.6 Verification of Travel and Subsistence

In order to maintain the transparency of the scheme, a list of “approved” duties that attract entitlement to travel and subsistence will be maintained and all claims will be verified against this list before payment is made with non-compliant claims being removed.

3.7 Members Responsibility for Reporting Receipt of Allowances

Members are advised to declare the receipt of a members allowance if **any form** of benefit such as income support or housing benefit is being claimed. The rules on how members' allowances are treated may vary depending on the benefit claimed and advice should be sought from the relevant administering body. For example the rules for those in receipt of Housing Benefit and Council Tax Benefit state that “basic members allowance, special responsibility allowance and conference attendance allowance are treated as earnings except for any expenses which have been wholly, exclusively and necessarily incurred in the performance of their duties”. Members are therefore advised that in order to claim expenses in these circumstances receipts and records to justify the expenses incurred must be kept.

4.0 APPROVED DUTIES

The power “to appoint member representatives to attend meetings of appropriate outside bodies” is delegated in Part 3 of the Constitution to the Leader/Portfolio Holders and to Committees with regard to the functions within their jurisdiction. Otherwise such appointments are made by Council at a meeting.

4.1 Approved Duties for Travel and Subsistence Allowance

- **Attendance at Meetings of the Full Council, the Cabinet, Committees and Sub-Committees or formally constituted panels or working parties.**
 - Attendance at the above meetings;
 - Attendance at informal meetings of any of the above meetings;
 - Formal pre-briefings for any of the above meetings;
 - Formal Portfolio Holder or Committee working parties;
 - Any other reasonable or appropriate informal briefing or meetings with officers to prepare for any of the above meetings or discuss any matter relating to the business of the Council as determined by the Chief Executive.

Expenses are payable to all Members for attendance at Council otherwise it is payable where the Member is appointed to or invited to attend the relevant Cabinet, Committee, Sub-Committee or Working Party. It is not payable where Members choose to attend a meeting and sit in the audience.

Similarly expenses are payable where Members request or are invited to pre organised meetings with officers to discuss Council business.

- **Attendance by Councillors at site or similar meetings, approved in advance**

- Refers to any site meeting or other similar meeting proposed and approved by any of the groups included in 1) above i.e. Full Council, the Cabinet, Committees and Sub-Committees or formally constituted panels or working parties.

Expenses are payable where Members attend site meetings in relation to meetings of Cabinet, Committees, Sub-Committees or Working Parties to which they are appointed or invited to attend.

- **Attendance at meetings of approved external bodies**

- Attendance at meetings with approved external bodies at any venue
- Appointment to an LGA members structure where expenses are not met by the LGA and the appointed member provides feedback.

The relevant external bodies are those which the Leader has made a formal decision to appoint to. The list is on the Members' page of the intranet.

- **Attendance at Authorised Conferences and/or Seminars**

- Attendance at conferences authorised in accordance with delegated powers.
- Attendance at any seminar if reasonable and relevant/appropriate to the responsibilities of individual Members.
- Attendance at any learning and development opportunity if reasonable and relevant/appropriate to the responsibilities of individual Members.

Expenses are payable where the training is relevant to the Members' position on the Council. This will include Council arranged sessions such as the regular Members' Briefings. Where Members attend external training out of personal interest, that will not be payable.

- **Attendance at Civic Events**

- Attendance by the Chairman or Vice Chairman and their consorts at civic events.

Expenses are payable for the Chairman or Vice Chairman and their consorts undertaking civic duties. They will not be payable for other members attending civic events.

- *Exceptional Circumstances*

The Chief Executive may designate as approved duties such events for travel claim purposes where attendance by a Councillor(s) would be in the interests of the

Council and the event otherwise has not been so designated under any of the foregoing provisions.

5.0 APPLICATION OF THE SCHEME

The following principles will apply in the adopted scheme.

5.1 Substitute Members

The scheme does not permit the remuneration for substitute Members, other than in respect of payment for travel and subsistence for substitution at meetings and attendance at any mandatory training. This is on the basis that a Member has been named as a substitute by their Group Leader.

Part 7

MEMBERS' ALLOWANCES SCHEME

DECISION OF COUNCIL – 24 JANUARY 2023

Council on 24th January 2023 agreed the following scheme with effect from that date or otherwise on 1 April 2022 in respect of Travel Mileage, Dependents' Carers' and Subsistence Allowances. And otherwise approved the Basic and Special responsibility Allowances for 2022/23 and until 2027/28 shall be index linked to the Office of National Statistics estimated public sector regular average weekly earnings growth rate and applied to the Scheme from the following April.

SCHEDULE OF ALLOWANCES**Period 1st April 2024 – end of the Municipal Year**

(where a Councillor is entitled to claim three or more Special Responsibility Allowances the expectation is that they will claim only two such Allowances (see para 3.1 above))

Allowances	Annual Amount
Chairman of the Council (see paragraph 2.8 above)	£7,879
Vice-Chairman of the Council (see paragraph 2.8 above)	£2,073
Basic Allowance	£6,911
Special Responsibility Allowances	
Leader of the Council	£23,497
Deputy Leader of the Council	£16,555
Portfolio Holder (Cabinet Member who is not the Leader or Deputy Leader)	£11,265
Chairman – Planning Committee	£7,935
Vice Chairman - Planning Committee	£2,010
Members of Planning Committee	£1,270

Part 7**MEMBERS' ALLOWANCES SCHEME**

Chairman – Planning Policy and Local Plan Committee	£3,454
Chairman – Licensing and Registration Committee	£1,587
Chairman – Miscellaneous Licensing Sub-Committee	£794
Members of Licensing and Registration Committee	£345
Chairman – Audit Committee	£4,837
Chairman – Community Leadership Overview & Scrutiny Committee	£4,837
Chairman – Resources and Services Overview & Scrutiny Committee	£4,837
Chairman – Human Resources and Council Tax Committee	£3,454
Chairman of the Tendring Colchester Borders Garden Community Joint Committee	£4,837
Member of Tendring Colchester Borders Garden Community Joint Committee	£1,587
Director of a Company (e.g. Freeport East)	£4,837

Group Leader Payments

Payment will be made under the Scheme to a Group Leader who is the leader of any group. The “Group” must comprise 2 or more members.

Group Leaders (who meet the “Group Leader” criteria) with two or three Members only	£212
Group Leaders (who meet the “Group Leader” criteria) with four or more members	£1,070 + £111 per group member

That in relation to any new or revised Committee arrangements, the role of Chairman (or other approved special responsibility) be allocated to the following categories by Council

Category	Relevant Allowance
A	£4,837

Part 7**MEMBERS' ALLOWANCES SCHEME**

B	£3,454
C	£1,587
D	£794
E	Zero

Dependants' Carers' Allowance

This allowance is to reimburse costs incurred for care arranged by the Councillor for a dependant (including care for the Councillor's children) to enable the Councillor to attend formal meetings of the Council or other approved official events.

This allowance is set at the prevailing rate as adopted by the Living Wage Foundation as its 'Real Living Wage' for outside of London. The 'Real Living Wage' rate is £12.00 per hour and is payable for care costs to a maximum of 15 hours per week.

In exceptional circumstances a claim for reimbursement of higher costs incurred may be permitted where the care provided is particularly specialist in nature.

Travel Mileage Allowance

The HMRC considers the following mileage rates as not including an element that is taxable. In view of this the Council has adopted the prevailing HMRC rates at this level as the appropriate rates to use in recompense of costs incurred by Councillors in travel to attend formal meetings and for approved official business of the Council. Where the duty is within the District reimbursement shall be limited to travel/duty time within the District (see paragraph 2.5 above).

Vehicle	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
Cars and vans	45p	25p
Motor cycles	24p	24p
Bicycles	20p	20p

Passenger payments - cars and vans - 5p per passenger per business mile for carrying another Councillor/officer in a car or van on journeys which are also official business journeys for them.

Part 7

MEMBERS' ALLOWANCES SCHEME

Subsistence

HMRC subsistence rates (and qualifying conditions) are those adopted by Tendring District Council for its Councillors in this Scheme. The current rates and conditions are as follows (and apply to authorised conferences/events/meetings/visits only):-

Rates are set as follows.

Minimum journey time	Maximum amount of meal allowance
5 hours	£5
10 hours	£10
15 hours (and ongoing at 8pm)	£25

As set out in paragraph 2.5 above claims in respect of duties in the District shall be reimbursed only in relation to the time in the District.

Where a scale rate of £5 or £10 is paid and the qualifying journey in respect of which it is paid lasts beyond 8pm a supplementary rate of £10 can be paid to cover the additional expenses necessarily incurred as a result of working late.

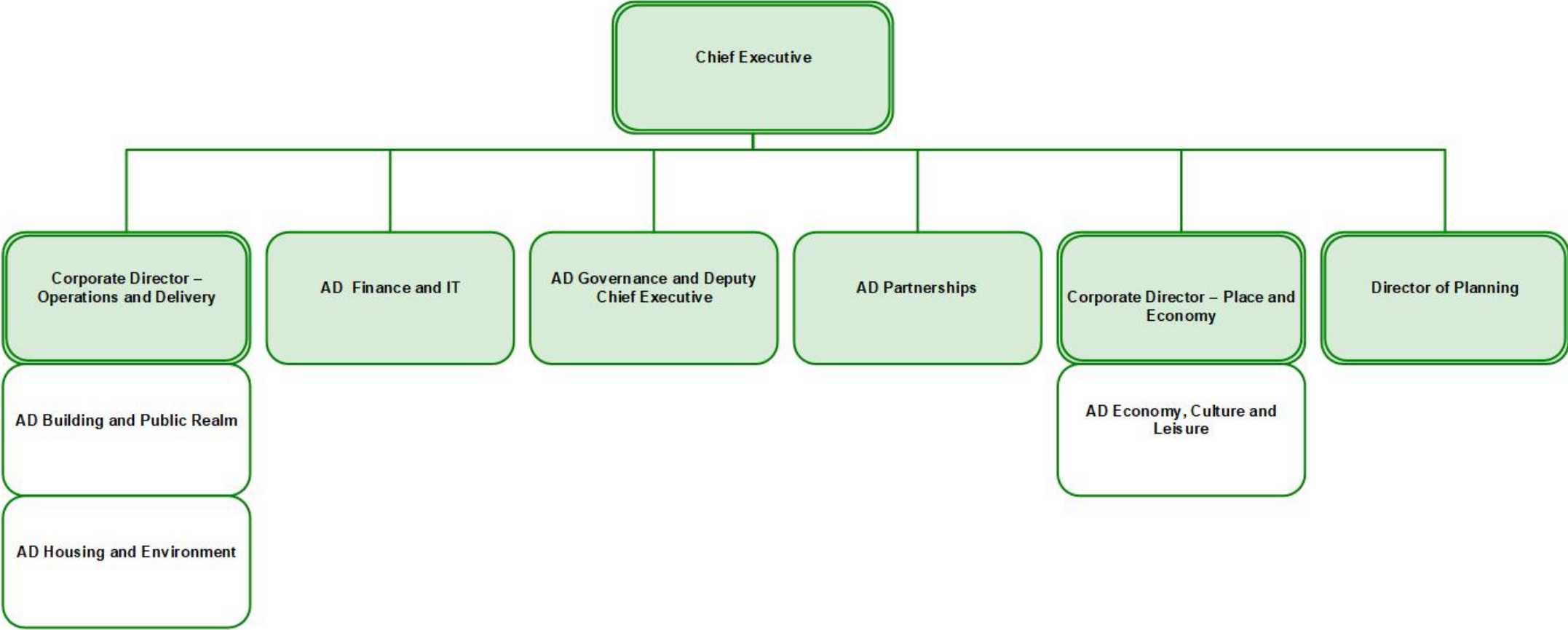
A meal is defined as a combination of food and drink and would take a normal dictionary meaning. Where Councillors are required to start early or finish late on a regular basis, the over 5 hour and 10 hour rate, whichever is applicable, can be paid provided that all the other qualifying conditions are satisfied.

Qualifying conditions - Benchmark scale rates must only be used where all the qualifying conditions are met. The qualifying conditions are:
the travel must be in the performance of a Councillor's duties or to a temporary place of work, on a journey that is not substantially ordinary commuting.
the Councillor should be absent from his normal place of work or home for a continuous period in excess of five hours or ten hours.
the Councillor should have incurred a cost on a meal (food and drink) after starting the journey and retained appropriate evidence of their expenditure.

A Councillor can only be reimbursed for a meal once. If the cost of an evening meal or breakfast is reimbursed on an actual basis, because it is included in the cost of an overnight stay, the Councillor would not also be entitled to a benchmark rate in respect of those meals.

Reimbursement of **ALL** subsistence expenses (including hostel costs) will be based on **actual cost incurred on production of receipts** – maximum amounts will only be paid based on proof of expenditure of that level.

All claims for subsistence must therefore be accompanied by receipts demonstrating expenditure actually incurred. This is to ensure that no National Insurance liability is incurred on payments of such allowances.



Green Boxes - Management Team Members

