

**The  
Council  
Constitution**

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Our Vision for Barking and Dagenham

## **ONE BOROUGH; ONE COMMUNITY; NO-ONE LEFT BEHIND**

Our Priorities

### **Participation and Engagement**

- To collaboratively build the foundations, platforms and networks that enable greater participation by:
  - Building capacity in and with the social sector to improve cross-sector collaboration
  - Developing opportunities to meaningfully participate across the Borough to improve individual agency and social networks
  - Facilitating democratic participation to create a more engaged, trusted and responsive democracy
- To design relational practices into the Council's activity and to focus that activity on the root causes of poverty and deprivation by:
  - Embedding our participatory principles across the Council's activity
  - Focusing our participatory activity on some of the root causes of poverty

### **Prevention, Independence and Resilience**

- Working together with partners to deliver improved outcomes for children, families and adults
- Providing safe, innovative, strength-based and sustainable practice in all preventative and statutory services
- Every child gets the best start in life
- All children can attend and achieve in inclusive, good quality local schools
- More young people are supported to achieve success in adulthood through higher, further education and access to employment
- More children and young people in care find permanent, safe and stable homes
- All care leavers can access a good, enhanced local offer that meets their health, education, housing and employment needs
- Young people and vulnerable adults are safeguarded in the context of their families, peers, schools and communities

- Our children, young people, and their communities' benefit from a whole systems approach to tackling the impact of knife crime
- Zero tolerance to domestic abuse drives local action that tackles underlying causes, challenges perpetrators and empowers survivors
- All residents with a disability can access from birth, transition to, and in adulthood support that is seamless, personalised and enables them to thrive and contribute to their communities. Families with children who have Special Educational Needs or Disabilities (SEND) can access a good local offer in their communities that enables them independence and to live their lives to the full
- Children, young people and adults can better access social, emotional and mental wellbeing support - including loneliness reduction - in their communities
- All vulnerable adults are supported to access good quality, sustainable care that enables safety, independence, choice and control
- All vulnerable older people can access timely, purposeful integrated care in their communities that helps keep them safe and independent for longer, and in their own homes
- Effective use of public health interventions to reduce health inequalities

## **Inclusive Growth**

- Homes: For local people and other working Londoners
- Jobs: A thriving and inclusive local economy
- Places: Aspirational and resilient places
- Environment: Becoming the green capital of the capital

## **Well Run Organisation**

- Delivers value for money for the taxpayer
- Employs capable and values-driven staff, demonstrating excellent people management
- Enables democratic participation, works relationally and is transparent
- Puts the customer at the heart of what it does
- Is equipped and has the capability to deliver its vision

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# **Part 1**

## **Summary and Explanation**

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## **Part 1 - Summary and Explanation**

### **1. Purpose of the Constitution**

- 1.1 This Constitution provides a single point of reference as to how the London Borough of Barking and Dagenham (“the Council”) operates. The Council is a Local Authority which means that it provides government at a local level.
- 1.2 The contents of this Constitution derive from:
  - a) Statute – Acts of Parliament and Regulations
  - b) Decisions of the Assembly (full Council)
  - c) Decisions of the Council’s Cabinet
- 1.3 The Constitution is divided into chapters which set out the basic rules governing the Council’s business.

### **2. How the Council operates**

- 2.1 The Council is comprised of 51 Councillors, also referred to as Members, who are elected for a four-year term of office. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to represent the whole community, although they have a special duty to represent their constituents including those who did not vote for them.
- 2.2 The Council has adopted the strengthened Leader model and, under this model, the Council’s executive functions are discharged by the Cabinet as a collective body, by the Leader of the Council or delegated to officers.
- 2.3 All Councils have to adopt a Councillors’ Code of Conduct and all Councillors have to agree to comply with this Code to ensure high standards in the way they undertake their duties. The Audit and Standards Committee is responsible for overseeing training and advising Councillors on the Code of Conduct and for dealing with complaints of breach of the Code.

### **3. How decisions are made**

- 3.1 The Assembly, which comprises all 51 members of the Council, is responsible for setting the annual budget, for the main policy framework within which the Council operates, for regulatory functions and for appointing very senior staff.
- 3.2 The Assembly also elects a Councillor to be the Leader of the Council, who in turn appoints up to nine other Councillors to make up the Cabinet, one (or more) of whom is appointed as the Deputy Leader. Each of the Cabinet Members are allocated areas of responsibility (known as “portfolios”) by the Leader.
- 3.3 The Cabinet is responsible for the Council’s main executive decision-making powers and the overall delivery of Council services. The Health and Wellbeing Board also has executive decision-making powers in relation to certain public health matters.

- 3.4 When major decisions, known as “key decisions”, are to be made they are published in advance in the Council’s Forward Plan. The meetings at which the decisions are to be made will generally be open for the public to attend, except where confidential or exempt matters are being discussed.
- 3.5 The Cabinet and Health and Wellbeing Board must make key decisions in line with the Council’s overall policies and budget. If the Cabinet or Health and Wellbeing Board wish to make a key decision which is not in line with the Budget or Policy Framework, this must be referred to the Assembly to decide.
- 3.6 The Council’s executive arrangements are described later in the Constitution.

#### **4. Overview and Scrutiny**

- 4.1 The Council's Overview and Scrutiny functions are fulfilled by the Overview and Scrutiny Committee, except for health-related matters which are the responsibility of the Health Scrutiny Committee. These Committees have a number of specific functions including:
- a) Supporting the work of the Cabinet and the Council as a whole by considering and making recommendations through the scrutiny review process,
  - b) Scrutinising key decisions made by the Cabinet and other decision-makers and holding them to account. They have the power to consider key decisions made, but not yet implemented, by the Cabinet and other decision-makers and can ask the decision-maker, through the process of "Call-In", to reconsider those decisions. The Overview and Scrutiny Committee and/or Health Scrutiny Committee may also refer matters direct to the Assembly if they consider that a decision may be contrary to the Budget or Policy Frameworks.
  - c) Reviewing matters relating to a wide range of partner organisations, including those relating to health, education and to law and order, to ensure that the public authorities that operate in Barking and Dagenham are acting in an effective and co-ordinated manner and in the public interest.

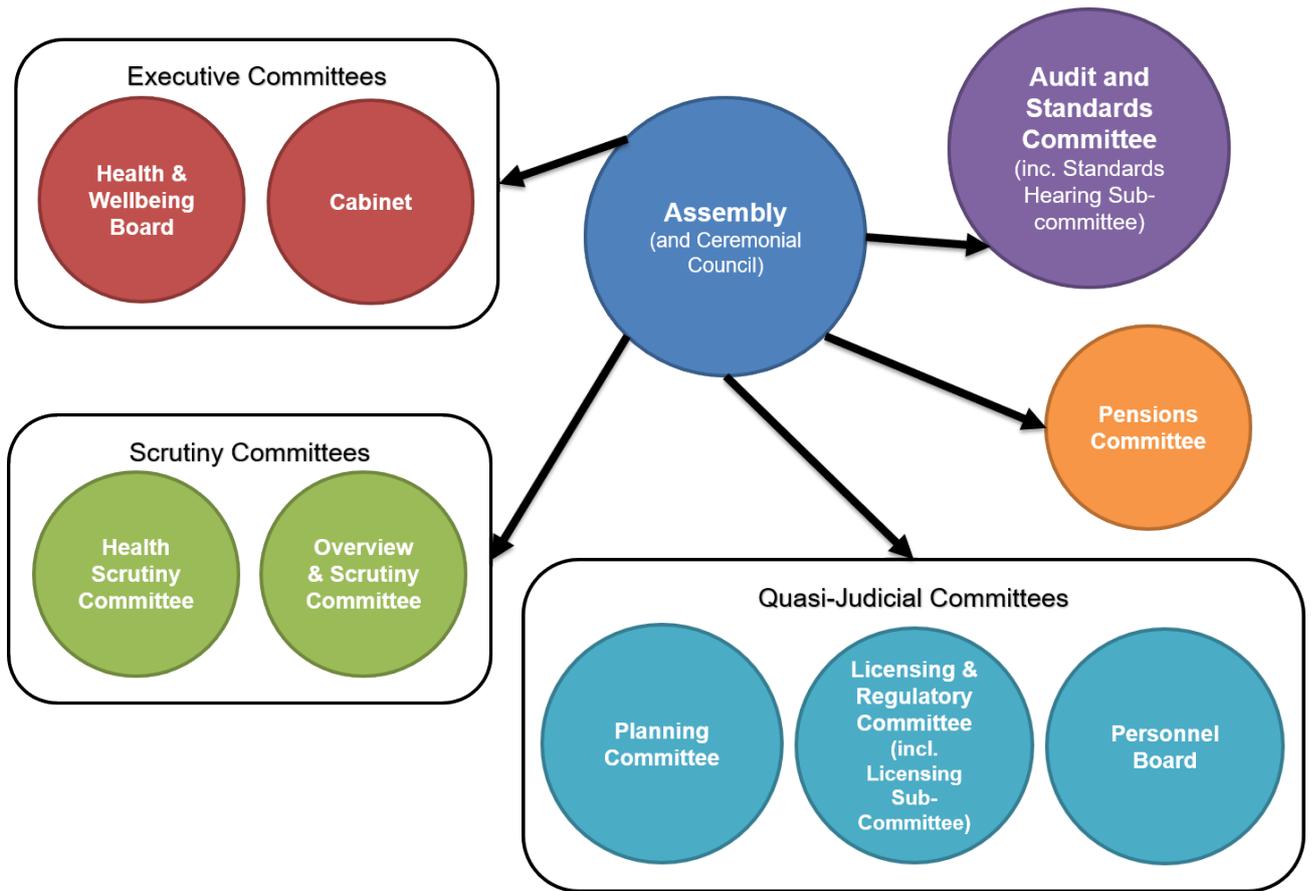
#### **5. The Council’s Staff**

- 5.1 The Council has people working for it (called ‘officers’) to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A protocol governs the relationship between officers and Members of the Council which can be found in Part 5, Chapter 5 of this Constitution.

#### **6. Resident’s Rights**

- 6.1 For the purposes of this Constitution, the term ‘residents’ includes (where appropriate) those people who live, study, work or have businesses in the borough or who receive services for which the Council is responsible.

- 6.2 Barking and Dagenham's residents have a number of rights in their dealings with the Council. Some of these are legal rights, whilst others depend on the Council's own processes. Where members of the public use specific Council services, for example as a parent of a school pupil or as a Council tenant, they have additional rights. These are not covered in this Constitution.
- 6.3 The Council welcomes participation by residents in its work. The Constitution sets out the public's rights of access to the Council's agenda papers, to reports that are to be considered at meetings and to background papers relating to those reports. The Access to Information rules governing these are contained in Part 2, Chapter 17 of this Constitution. The Council's Meeting Rules (Part 2, Chapter 3) also set out public participation arrangements in Council meetings.
- 6.4 Residents also have separate rights of access to documents held by the Council under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 6.5 Residents also have the right to:
- a) vote at local elections if they are registered;
  - b) contact their local Councillor about any matters of concern to them;
  - c) obtain a copy of the Constitution (for a reasonable fee);
  - d) petition to request a referendum on a mayoral form of executive (i.e. a directly elected Mayor);
  - e) attend meetings of the Council and its committees except where, for example, personal / exempt or confidential matters are being discussed;
  - f) participate in Council meetings in line with the procedures for the meeting (the procedures for the various Council meetings are, where relevant, set out in more detail in this Constitution);
  - g) find out via the Council's Forward Plan what major decisions are to be discussed, when and by whom;
  - h) complain to the Council about its services and receive a timely response;
  - i) complain to the Ombudsman if they think that the Council has not followed its procedures properly. However, this should only be done after using the Council's own complaints process;
  - j) complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct; and
  - k) inspect the Council's accounts and make their views known to the external auditor.



# **Part 2**

## **The Articles**

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## **Part 2 – Articles**

### **Chapter 1 - General**

#### **1. Powers of the Council**

- 1.1 The Council will exercise all its powers and duties in accordance with the law and this Constitution.
- 1.2 This Constitution, and all of its appendices, is the Constitution of the London Borough of Barking and Dagenham.

#### **2. Purpose of the Constitution**

- 2.1 The Constitution is based on the following principles:

<b>Principle</b>	<b>What it means in this Constitution</b>
Enhancing service performance	Making sure that decision-making leads to improvements in the quality of services to local people
Accountability	Ensuring mechanisms for those responsible for decisions to be held to account for them
Transparency	Having streamlined and simplified clear decision-making and accountabilities
Community representation	Enabling Councillors to represent local communities effectively
Increasing community involvement and engagement	Including and involving the public in the decisions that affect their lives and enabling the development of effective partnership working with other public, private and voluntary bodies
Corporate working	Encouraging a partnership approach between the Cabinet and Overview and Scrutiny Committees, Officers and Councillors and better corporate working on cross cutting issues

#### **3. Amendment of the Constitution**

- 3.1 Subject to any provisions contained within Part 7 (Review, Revision, Suspension, Interpretation and Publication of the Constitution), the Constitution may only be amended by a resolution of the Assembly.

#### **4. Meanings within the Constitution**

- 4.1 In this Constitution, the following words and phrases have the following meanings, unless the context dictates otherwise:

Assembly	means the Members of the Council meeting as a body.
Be First	means the limited company wholly owned by the Council with the primary objectives of accelerating the regeneration of the borough through bringing forward construction and delivery of housing, commercial space and infrastructure, providing more effective services and attracting external investment to the borough.
Budget	means the Council's Budget to be approved by the Assembly as defined in the Local Government Finance Act 1992, which includes the allocation of financial resources to different services and projects, proposed contingency funds, the level of Council Tax and decisions relating to the control of the Council's borrowing requirement and capital expenditure.
Cabinet	means the Leader and Cabinet Members meeting as the Council's Cabinet established under Section 11 of the Local Government Act 2000.
Cabinet Member	means the Leader or another Councillor appointed by the Leader to be a Cabinet Member.
Chief Executive	means the Officer appointed by the Assembly to that post and the Head of Paid Service. References to the Chief Executive shall also mean the Acting Chief Executive.
Chief Financial Officer	means the Officer appointed by the Assembly to be responsible for the proper administration of the Authority's financial affairs in accordance with section 151 of the Local Government Act 1972 which, in Barking and Dagenham's case, is the Strategic Director, Finance and Investment.
Chief Officer	means the Chief Executive, Statutory Chief Officers, the Executive Management Team and any other Officer designated by the Chief Executive to be a Chief Officer.
Council / Authority	means the legal entity of the London Borough of Barking and Dagenham.
Councillor	means an elected Member of the Council.

Council owned company	means any company or organisation owned or controlled wholly or partly by the Council. The Cabinet will act as shareholder on behalf of the Council and will oversee the strategic direction and performance of the company.
Decision-Maker	means the body or person, whether a committee, councillor or an officer, who would be responsible for making the proposed decision.
Departure Decision	means a decision which is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the Authority's approved Budget.
Deputy Leader	means the Cabinet Member(s) appointed by the Leader to hold that office.
Director	means an Officer who reports directly to the Chief Executive or an Executive Management Team Director and is designated by them to be a Director, Commercial Director or Operational Director.
Executive Function	means any function of the Authority which is to be discharged by the Cabinet by virtue of section 13 of the Local Government 2000, the Local Authority (Functions and Responsibilities) (England) Regulations 2000 as amended, by the Health and Wellbeing Board under section 196(2) of the Health and Social Care Act 2012 or any resolution of the Assembly.
Executive Management Team	means those Officers who are designated by the Chief Executive (and Strategic Director, Law and Governance) as members of the Executive Management Team, namely the Strategic Director, Children and Adults, the Strategic Director, Inclusive Growth, the Strategic Director, Community Solutions, the Strategic Director, My Place, the Strategic Director, Finance and Investment, the Director of Strategy and the Chief Legal Officer. Any reference to 'Executive Management Team' shall also include the Chief Executive.
Forward Plan	is the statement of proposed executive key decisions to be taken, prepared in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Head of Paid Service	means the Officer appointed by the Assembly to be the Authority's Head of Paid Service in accordance with section 4 of the Local Government and Housing Act 1989 which, in Barking and Dagenham's case, is the Acting Chief Executive.
Independent Person(s)	means a person appointed by the Council under section 28(7) of the Localism Act 2011.
Key Decision	means an executive decision which is likely: <ul style="list-style-type: none"><li>(a) to involve expenditure or savings of £200,000 or above - this includes proposals phased over more than one year and match/grant aided funding or</li><li>(b) to have a significant impact on the local community in one or more wards.</li></ul> <p>A decision-maker may only make a key decision in accordance with the requirements of the procedure set out in Part 2, Chapter 16 of this Constitution.</p>
Leader	means the Councillor for the time being elected by the Assembly to be the Leader of the Council.
Leader of the Opposition	means the Leader of the largest opposition political group on the Council.
Monitoring Officer	means the Officer designated by Assembly to be the Authority's Monitoring Officer in accordance with section 5 of the Local Government and Housing Act 1989 which, in Barking and Dagenham's case, is the Chief Legal Officer.
Non-Executive Function	means any function of the Authority which is to be discharged by any part of the Authority other than the Cabinet by virtue of section 13 of the Local Government Act 2000, the Local Authority (Functions and Responsibilities) (England) Regulations 2000 as amended, and any resolution of the Assembly.
Officer	means all employees engaged by the Authority to carry out its functions. This covers those engaged under short term, agency, contract or other non-employed situations to carry out such functions, to the extent that the Council has included conditions to that effect in any contractual arrangements under which they are

	working, as well as those employed by the Council on a permanent basis.
Policy Framework	means the high-level plans and strategies which have been approved by the Assembly to comprise the Policy Framework, as set out in Part 2, Chapter 4, paragraph 2.1(ii).
Portfolio Holder	means a Member of the Cabinet with an assigned portfolio in defined areas of Council activity.
Proper Officer	means an Officer appointed by the Council to discharge a particular function as set out in section 270(3) of the Local Government Act 1972.
Statutory Chief Officer	means the Head of Paid Service, the Chief Financial Officer, the Monitoring Officer, the Director of Children’s Services, the Director of Adult Social Services and the Director of Public Health.

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## **Part 2 – The Articles**

### **Chapter 2 – Members of the Council**

#### **1. Composition and eligibility**

##### **Composition**

- 1.1 The Council comprises 51 directly elected Members, known as Councillors. The area of the Council is divided into 19 wards in accordance with a scheme drawn up by the Local Government Boundary Commission and approved by the Secretary of State. Elections are then held on the basis of those wards.

##### **Eligibility**

- 1.2 Any person may stand for election and be elected as a Councillor if he/she is on the electoral register or if he/she has lived, worked or occupied property in the borough for 12 months prior to the election. There are certain provisions preventing a person from becoming or continuing as a Councillor as set out in Sections 80 and 81A of the Local Government Act 1972 (as amended). Those provisions include if the person is an employee of the Council, is subject to a bankruptcy restrictions order, has received a custodial sentence (suspended or not) of three months or more within the past five years, has been disqualified from being a Councillor under Part III of the Representation of the People Act 1983 or is subject to any relevant notification requirements or order in relation to sexual offences).

#### **2. Election and terms of office of Councillors**

- 2.1 Elections are held every four years and will normally be held on the first Thursday in May of the election year. Elections can be deferred by an order of the Secretary of State, for example where appropriate to coincide with other elections / referendums.
- 2.2 By-elections are held when a casual vacancy arises for any seat, unless the vacancy arises within six months of the ordinary elections for that seat.
- 2.3 The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

#### **3. Roles and functions of all Councillors**

- 3.1 Councillors have five main roles:
- a) community leadership and representation;
  - b) executive decision-making;
  - c) policy development and review;
  - d) overview and scrutiny;
  - e) quasi-judicial and regulatory.
- 3.2 Taken together these roles enable Councillors to:

- a) collectively, in meetings of the Council, be the ultimate policy makers and carry out a number of strategic and corporate management functions;
- b) represent the communities of their electoral ward, bring their views into the Council's decision-making process and represent the Council to those communities – i.e. become an advocate of, and for, their communities;
- c) respond to constituents' enquiries and representations fairly and impartially, deal with individual casework and otherwise effectively represent the interests of their electoral ward and of individual constituents;
- d) balance the different interests identified within the electoral ward, represent the ward as a whole and act as a point of mediation between the Council and the communities of their ward;
- e) be involved in decision-making in any of the five roles set out above (subject to the proviso that there is no overlap between those Councillors who perform Cabinet and Overview & Scrutiny functions);
- f) represent the Council on other bodies;
- g) adopt and maintain the highest standards of conduct.

#### **4. Rights and Duties**

- 4.1 Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law. However, this may not include certain confidential or exempt information.
- 4.2 Councillors will not make public any information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.
- 4.3 For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules within this Constitution.

#### **5. Conduct**

- 5.1 Councillors will at all times observe the Councillors' Code of Conduct and the Protocol for Councillor / Employee Relations set out in Part 5 of the Constitution.

#### **6. Allowances**

- 6.1 Councillors are entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of the Constitution.

#### **7. Requirement to Attend Meetings**

- 7.1 In accordance with Section 85 of the Local Government Act 1972 (as amended) and subject to any exemptions under subsection 3 of Section 85, any Councillor who fails, throughout a period of six consecutive months from the date of his/her last attendance, to attend any qualifying meeting of the

Council shall, unless the failure was due to some reason approved by the Assembly before the expiry of that period, cease to be a Councillor.

- 7.2 A 'qualifying meeting' means a committee or other body, including any sub-committee, working party etc. thereof, to which the Councillor has been formally appointed as a representative of the Council by the Assembly, the Cabinet or other committee / body responsible for appointments on behalf of the Council.
- 7.3 A Cabinet Member who fails to attend a formal Cabinet meeting (or do any delegated decision-making) in a consecutive six-month period, unless the failure was due to some reason approved by the Assembly before the expiry of that period, shall also cease to be a Councillor even if he/she had attended another 'qualifying meeting'.
- 7.4 The "period of six consecutive months" shall mean that the expiry date is the day after a full six months has elapsed since the last attendance (e.g. last attendance on 1 January would mean an expiry date of 1 July).

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## **Part 2 – The Articles**

### **Chapter 3 – Meeting Rules - General**

#### **1. Introduction**

- 1.1 Unless otherwise stated in the specific rules for the Assembly and other committee meetings, the arrangements below will apply to all meetings of the Council.

#### **2. Programme of Council Meetings**

- 2.1 The Chief Executive shall be responsible for agreeing the programme of Council meetings for the municipal year following consultation with the Leader. The programme of meetings shall follow a similar pattern each year unless changes are agreed by the Chief Executive. The annual programme of meetings may be varied to take account of Parliamentary, Local or other elections occurring during the period covered.
- 2.2 Council meetings shall typically take place at the Town Hall, Barking due to the availability of webcasting facilities and public accessibility issues. Other venues, such as the Barking Learning Centre, may also be used in certain circumstances where meetings are not webcast and/or where there are availability issues at the Town Hall. The Chief Executive shall be responsible for agreeing those arrangements.
- 2.3 As a general rule, meetings shall take place on a Monday, Tuesday or Wednesday, commencing at 7.00pm or such other time as agreed by the majority of the membership of a Committee. Meetings on Thursdays should finish by 5.00 pm (to accommodate councillors' ward surgery commitments) and there are usually no meetings on Fridays, with the exception of the Ceremonial Council.

#### **3. Notice of Summons and Cancellation / Postponement of Meetings**

- 3.1 The Chief Executive will give notice to the public of the date, time and place of any meeting in accordance with the Access to Information Rules.
- 3.2 At least five clear working days before a meeting, the Chief Executive will send a summons to every Member giving the date, time and place of each meeting and specify the business to be transacted, in accordance with the requirements of the Local Government Act 1972. The summons will be accompanied by such reports as are available at that time.
- 3.3 The Chief Executive may cancel or postpone any meeting prior to the issue of public notice of the meeting where, after consultation with the Chair, he/she considers that there is insufficient business to transact or where an event occurs which he/she considers would make it inappropriate to hold the meeting on the intended date.

3.4 The Chief Executive may also cancel or postpone any meeting after the issue of public notice but only in exceptional circumstances and subject to any statutory requirements.

3.5 In all instances where a meeting is cancelled or postponed the Chief Executive shall give appropriate notice to Councillors, the public and local press.

#### **4. Person Presiding**

4.1 In this procedure, reference to the Chair shall include reference to the person presiding at the meeting or part of the meeting where the Chair, and/or the Deputy Chair, is absent or unable to act, and the person presiding shall have all the powers of the Chair for the purpose of the conduct of the meeting or item of business.

4.2 This applies when neither the Chair nor the Deputy Chair are present or able to act in respect of any meeting or particular item of business, and it is necessary to elect a person to preside in their absence.

4.3 The Chief Executive, or in his/her absence an officer on behalf of the Chief Executive, shall exercise the powers of the Chair in respect of the election of a Member to preside (but shall not have a first or casting vote) and shall invite nominations from Members and conduct an election for a person to preside at the meeting or in respect of the particular item, as necessary.

4.4 Where there is an equality of votes on such election, the Chief Executive or his/her representative may adjourn the meeting for up to 15 minutes. If after such adjournment there is still an equality of votes, the matter shall be determined by the drawing of lots.

4.5 The Chair shall be responsible for:

- upholding and promoting the purposes of the Constitution;
- interpreting the Constitution where necessary, having regard to advice from officers as appropriate;
- ensuring that the business is carried out efficiently and with regard to the rights of Councillors and the interests of the community.

#### **5. Quorum**

5.1 A quorum is the number of Members needed to enable a meeting to proceed. Unless specified in the relevant Articles, the quorum shall be one quarter of the membership (rounded up) or a minimum of two Members, whichever is the greater.

5.2 If the meeting is not quorate 15 minutes after the published start time, the business shall be adjourned to the next scheduled meeting or to a date to be arranged.

5.3 If a quorum is lacking at any time after a meeting has started, the meeting shall be suspended for up to 15 minutes, after which time if a quorum is still not achieved, the meeting will end. Any items of business remaining on the agenda for that meeting will be held over to the next scheduled meeting or to a date to be arranged.

5.4 Members present at an inquorate meeting can, if they feel there is any merit in doing so, discuss issues but strictly on an informal basis only. The minutes will make only brief reference to any such discussions.

## **6. Order of Business**

6.1 The Chair may, at his/her discretion, vary the published order of business at a meeting if it is considered to be in the best interests.

## **7. Duration of Meetings**

### **7.1 Termination of Meetings**

7.1.1 If the business of the meeting has not been concluded after two hours of its commencement, the proceedings may be extended for a reasonable further period, with the agreement of a majority of the Members present. Any unfinished business will be referred to the next meeting.

7.1.2 A 'reasonable further period' is suggested as 15 minutes although the Members present may agree to extend the meeting for a maximum of 30 minutes. There is no provision to extend the meeting for a second, further period.

7.1.3 These arrangements do not apply to quasi-judicial meetings such as the Planning Committee, Licensing Sub-Committee and the Personnel Board, although every effort should be made to conclude the business in an efficient manner in order to minimise potential additional costs associated with the late closure of Council buildings.

### **7.2 Disposal of remaining business**

7.2.1 The proceedings of the meeting may be concluded earlier with the agreement of the majority of the Members present. Any unfinished business will be referred to the next meeting.

## **8. Minutes**

### **8.1 Signing the minutes**

8.1.1 The Chair will, at the next suitable meeting, move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy. If approved by the meeting, the Chair will then sign the minutes.

## **8.2 Form of Minutes**

- 8.2.1 Minutes will be a concise and accurate record of the essence of the discussions and the decision, in a form that can be clearly understood by a member of the public.
- 8.2.2 The form of minutes may vary depending on the type of meeting but shall not be a verbatim record, save for motions and amendments which shall be recorded in the exact form in which they are put to the meeting.
- 8.2.3 Minutes will be made available for public inspection in accordance with statutory requirements.
- 8.2.4 The minutes will be the formal record of attendance at meetings by Members.

## **9 Point of Order**

- 9.1 A Member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of the Council Procedure Rules or the law. In relation to a breach of the law, the Member must indicate the Rule or law and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final.

## **10. Voting**

### **10.1 Majority**

- 10.1.1 Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members eligible to vote and present in the room at the time.

### **10.2 Method of Voting**

- 10.2.1 Unless a recorded vote is required under paragraph 10.3 or 10.4 below, voting shall be by the show of hands or, if there is no dissent, by the affirmation of the meeting.
- 10.2.2 At his/her discretion, the Chair may require that any available electronic voting system is used.

### **10.3 Recorded vote**

- 10.3.1 Notwithstanding Rule 10.4, any five Members present at the meeting may require the individual votes on a decision to be recorded in the minutes of the meeting. The procedure for a recorded vote shall be as follows:
- The Chair shall put the motion and the Chief Executive (or his/her representative) shall call out the names of Members and record their votes or abstentions.

- The Chair shall declare the result of the vote and the vote of each Member shall be recorded in the minutes.

10.3.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 require that immediately after any vote on the budget or council tax is taken at a budget decision meeting of an authority, the individual votes on a decision must be recorded in the minutes of the meeting

#### **10.4 Right to require individual vote to be recorded**

10.4.1 This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations 1993 and cannot therefore be waived. Where any Councillor requests it immediately after the vote is taken, his/her vote shall be recorded in the minutes.

#### **10.5 Voting on appointments**

10.5.1 If there are more people nominated for any position(s) than there are position(s) to be filled and there is not a clear majority of votes in favour of the required number of people, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. Where there is an equality of votes for a person to continue in the appointment process, a vote shall be taken between those candidates having an equality of votes to determine which candidate shall continue in the appointment process.

#### **10.6 Chair's casting vote**

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

### **11. Attendance and Speaking at Meetings by Councillors not Formally Appointed to the Meeting**

11.1 A Councillor may attend any Member-level meeting to which they have not been appointed, but they cannot vote at that meeting. Unless otherwise stated or provided for in the rules for particular meetings, a Councillor may speak at the meeting at the discretion of the Chair.

11.2 Similarly a Councillor may stay for the whole meeting, unless asked to leave for specific reasons (ie. consideration of confidential or exempt information) which will be explained by the Chair and recorded in the minutes. Councillors must respect the confidentiality of the discussions in any non-public part of any meeting and of any papers which are restricted from publication.

### **12. Public Participation in Council meetings**

12.1 The public have the right to ask questions and receive answers at meetings of the Council. The arrangements below shall apply to all public meetings of the Council, with the exception of quasi-judicial meetings that relate to planning

and licensing which have their own speaking / public involvement arrangements and any other arrangements as set out in the respective Articles within this Constitution.

### **Arrangements for Submitting Public Questions**

- 12.2 Questions must be submitted to the Chief Executive by no later than midday 3 working days prior to the meeting in question (e.g. for a meeting taking place on a Tuesday, the deadline for the receipt of questions shall be midday on the Thursday before).
- 12.3 Questions must relate to a substantive item on the agenda for that meeting.
- 12.4 An individual may submit only one question per meeting and must include his/her home address when submitting the question (this information will not be disclosed by the Chief Executive).
- 12.5 The Chief Executive may reject a question if in his/her opinion:
- (i) The question has not complied with the requirements of paragraphs 12.2 – 12.4 above;
  - (ii) it is of a vexatious or derogatory nature or otherwise considered improper or inappropriate;
  - (iii) it is contrary to any provision of any code, protocol, legal requirement or rule of the Council; and/or
  - (iv) the same or similar question has already been submitted by another member of the public for the same meeting or been considered in the previous six months.
- 12.6 Prior to the Chief Executive rejecting a written question on any of the above grounds, he/she shall consult with the relevant Chair. The Chief Executive shall inform the member of the public who submitted the question of his/her decision as soon as possible.

### **Procedure for Questions at Council Meetings**

- 12.7 Where the member of the public who submitted the question is present at the meeting, he/she shall be invited to introduce the question (as submitted) or it shall be read out on his/her behalf.
- 12.8 The relevant Cabinet Member under whose name the report is presented or the relevant Chair (as appropriate) shall provide a verbal response to the question without discussion (which may include an undertaking to provide a more detailed answer in writing).
- 12.9 The Member of the public who submitted the question may ask one supplementary question arising directly out of the initial response, without notice, and the relevant Cabinet Member / Chair shall respond to the supplementary question wherever possible, without discussion. Where the relevant Cabinet Member / Chair is unable to respond to the supplementary question, an undertaking may be given to provide a response in writing. A supplementary question may only be asked by the original questioner and not by a substitute.

- 12.10 Where the member of the public who submitted the question is not present at the meeting, the relevant Cabinet Member / Chair may, at his/her discretion, provide a written response to the question which shall be published.
- 12.11 A period of up to 30 minutes in total shall be available for public questions.
- 12.12 Questions will be asked in the order in which they are received by the Chief Executive. This order will be presented to the meeting and those in attendance at the start of the meeting. At the Chair's discretion, this order may be varied by a simple majority vote of the Members present. Questions and supplementary questions will be asked in accordance with this order, until all contributions have been made or 30 minutes elapsed. Any question not raised and answered within the allotted 30 minutes will receive a written answer, which shall also be published on the Council's website.
- 12.13 The Chair may, at his/her discretion, allow a member of the public who has not submitted a valid question to speak at a meeting (subject to any overriding provisions in relation to quasi-judicial meetings) but that shall not extend to asking a question.

### **13. Conduct / Disturbance at Meetings**

- 13.1 It is the responsibility of the Chair to keep order at meetings.
- 13.2 Councillors are expected to behave in a professional manner and to respect the ruling of the Chair.
- 13.3 If a Councillor persistently misconducts him or herself by behaving irregularly, offensively or improperly, or using inappropriate language, or by disregarding the Chair and knowingly or deliberately obstructing the business, in breach of the Councillors' Code of Conduct, the Chair, or any other Councillor, may move that the Councillor be no longer heard. If seconded, the matter will be put to the vote and determined without discussion. The Councillor concerned cannot vote in these circumstances.
- 13.4 If the Councillor concerned continues his/her misconduct, the Chair may either move that the Councillor leaves the meeting or that the meeting be adjourned for a period which the Chair feels will be appropriate to contain the problem. Such motions must be seconded and determined as above.
- 13.5 If a member of the public interrupts a meeting, the Chair will ask them not to do so and warn them that if the interruption continues, the person will be required to leave. If the person continues to interrupt, the Chair can order him/her to leave the meeting. If necessary, the assistance of staff will be sought to escort the person out of the building.
- 13.6 Where there is a general disturbance in any part of the room where a meeting is being held, the Chair may, at his/her discretion, order that it be cleared. If the general disturbance is considered by the Chair to be such that the meeting cannot reasonably continue, he/she shall adjourn the meeting for a certain period or until another day, whichever is felt to be most appropriate in the circumstances.

13.7 The Council's security staff and/or the Police will be called to assist in any situation if necessary.

#### **14. Exclusion of the Public and Press**

14.1 Members of the public and press may only be excluded from a public meeting in accordance with the Access to Information Rules at Part 2, Chapter 17 of this Constitution and/or Rule 13 above.

#### **15. Filming, Photography and the Use of Social Media at Council Meetings**

15.1 The Council welcomes the filming, photography and the use of social media at its meetings as a means of reporting on its proceedings because this helps to make the Council more transparent and accountable to the local community.

15.2 The overriding principle is that the proceedings of any meetings should not be disrupted by filming, photography or the use of media tools by members of the press and public, or by Councillors.

15.3 Chapter 6 of Part 5 of the Constitution sets out the procedures in respect of filming, photography and the use of social media at Council meetings.

#### **16. Delegation of functions to sub-committees and officers**

16.1 Committees may arrange for the discharge of any of their functions by a sub-committee or an officer, and a sub-committee may delegate any of its functions to an officer, subject to any overriding provisions.

16.2 Committees may also consider any matter which has been delegated to a sub-committee or to officers, subject to any overriding provisions.

## **Part 2 – The Articles**

### **Chapter 4 – The Assembly**

#### **1. Status and Membership**

- 1.1 The Assembly is a meeting of the full Council and comprises the 51 directly elected Councillors meeting as a body (or as many of those Councillors who are in office at the time concerned).

#### **2. Responsibility for Functions**

- 2.1 The Assembly has responsibility for the following functions:
- (i) Approving and amending the Constitution and its component parts, except in so far as this function has been delegated to the Monitoring Officer.
  - (ii) Approving which plans and strategies shall form the Council's Policy Framework, requesting the Cabinet to prepare a draft (or draft amended) plan or strategy, and approving (or approving amendments to) the plans and strategies contained within the Policy Framework. The Assembly has resolved that the following plans and strategies shall comprise the Policy Framework (**Note:** (a) to (f) are required by law):
    - (a) Crime and Disorder Reduction Strategy;
    - (b) Local Implementation Plan (Transport);
    - (c) Statement of Licensing Policy;
    - (d) Local Plan;
    - (e) Community Strategy;
    - (f) Youth Justice Plan;
    - (g) Corporate Plan;
    - (h) Housing Strategy;
    - (i) Any Plan or Strategy that must be approved by the Authority and submitted to the Secretary of State or a Minister of the Crown for approval.
  - (iii) Approving the Budget, including the level of Council Tax, Revenue Budget and Capital Programme.
  - (iv) Approving the Treasury Policy Statement, Annual Strategy Statement and the Annual Report as well as any related Treasury documents.
  - (v) Approving any application to the Secretary of State in respect of any Housing Land Transfer.
  - (vi) Subject to any urgency procedures, making decisions about the discharge of an executive function where the decision-maker is minded to take action which would be contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget.

- (vii) Appointing and removing the Leader of the Council, subject to the relevant procedures.
- (viii) Agreeing and/or amending the overall political structure of meetings, the terms of reference of committees, their composition and making appointments to them, unless the appointment is an executive function or has been delegated by the Assembly.
- (ix) Making appointments to outside bodies, unless the appointment is an executive function or has been delegated by the Assembly.
- (x) Adopting a Members' Allowances Scheme in accordance with the Local Authorities' (Members' Allowances) (England) Regulations 2003.
- (xi) Appointing the following sub-committees of the Assembly:

**JNC Appointments, Salaries and Structures Panel** - consisting of the Leader or Deputy Leader (who shall be Chair), up to three additional Cabinet Members (nominated by the Leader or Deputy Leader) and two non-Cabinet councillors (selected by the Chief Executive or Monitoring Officer from a pool of six non-Cabinet councillors appointed by the Assembly), to:

- (a) shortlist and interview candidates for the position of Chief Executive (Head of Paid Service) and Strategic Directors and make recommendations to the Assembly in respect of the appointment;
- (b) make decisions in respect of acting/interim appointments to the positions of Chief Executive and Strategic Directors, as well as the permanent / acting / interim appointment and/or assimilation of all other JNC Officers.
- (c) make decisions in respect of the salaries and conditions of all JNC officers (including the Chief Executive);
- (d) make decisions in respect of the grading of any new JNC posts in line with Council policy; and
- (e) make decisions in respect of senior management (JNC) structures / reorganisations.

**JNC Investigation and Disciplinary Panel** - consisting of the Leader or Deputy Leader (who shall be Chair), up to three additional Cabinet Members (nominated by the Leader or Deputy Leader) and two non-Cabinet councillors (selected by the Chief Executive or Monitoring Officer from the pool of six non-Cabinet councillors appointed by the Assembly), to:

- (a) make decisions in respect of the suspension of the Chief Executive in accordance with paragraph 5, Chapter 3, Part 4 of the Constitution for the purposes of investigating alleged misconduct;
- (b) make decisions in respect of disciplinary action, including dismissal, in respect of all JNC Officers with the exception of the

- Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer;
- (c) make decisions in respect of disciplinary action, excluding dismissal, in respect of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer, subject to the provisions below; and
  - (d) make recommendations to the Assembly in relation to the dismissal of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer, subject to the provisions below.

In respect of (c) and (d) above, the JNC Investigation and Disciplinary Panel shall first decide whether the issue requires no formal action or it shall make an appointment of an Independent Investigator from a list held by the JNC Joint Secretaries for the purpose of evidence collection and investigation, to be presented by the Independent Investigator to the JNC Investigation and Disciplinary Panel as a report.

When determining a report of an Independent Investigator, in the event that the JNC Investigation and Disciplinary Panel considers that dismissal is the appropriate reasonable recommendation to make to the Assembly, the JNC Investigation and Disciplinary Panel must first refer the matter for consideration to a JNC Independent Persons Committee, as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and section 102(4) of the Local Government Act 1972. The JNC Independent Persons Committee shall consist of at least two Independent Persons appointed under the Localism Act 2011 with priority to an Independent Person(s) appointed by the Council who is a local elector, followed by an Independent Person(s) appointed by the Council who is not a local elector and finally an Independent Person(s) appointed by another Authority. The JNC Independent Persons Committee shall consider the evidence as presented to the JNC Investigation and Disciplinary Panel, its reasoning for its decision and determine such advice, views or recommendations as it considers reasonable for the Assembly to take into account in its consideration of the recommendation to dismiss presented to the Assembly by the JNC Investigation and Disciplinary Panel.

**JNC Appeals Panel** - consisting of at least two Members of the Cabinet, one of whom shall be appointed as Chair, and two non-Cabinet councillors (selected by the Chief Executive or Monitoring Officer from the pool of six non-Cabinet councillors appointed by the Assembly), subject to none having participated in any previously appointed Panel relating to the case in question, to:

- (a) consider appeals in respect of dismissal, disciplinary action, redundancy and grievances of all JNC Officers with the exception of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer, and to take a decision either to

- confirm the action or to impose no sanction or a lesser sanction;  
and
- (b) consider appeals, with the involvement of an Independent Person, in respect of disciplinary action (short of dismissal), redundancy and grievances relating to the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer and to take a decision either to confirm the action or to impose no sanction or a lesser sanction.
- (xii) To consider a recommendation from the JNC Investigation and Disciplinary Panel, taking into account any views or recommendations of the JNC Independent Persons Committee and any representations from the officer concerned, regarding the dismissal of either the Chief Executive (Head of Paid Service), Monitoring Officer or Chief Financial Officer and to take a decision either to confirm the recommendation to dismiss or to impose no sanction or a lesser sanction (Note: Those representations from the officer concerned shall constitute the appeals process).
  - (xiii) Submitting proposals to the Secretary of State under the Representation of the People Act 2000.
  - (xiv) Making, amending, revoking, re-enacting or adopting byelaws, or promoting or opposing the making of local legislation or personal Bills.
  - (xv) Changing the name of the area.
  - (xvi) Receiving reports and recommendations from the Council's External Auditors, the Ombudsman and Government or other Inspectorates relating to Council-wide issues and determining matters where required.
  - (xvii) Receiving annual reports of committees, as appropriate, and an annual report from the Council's External Auditor.
  - (xviii) Making decisions in respect of any change to the electoral arrangements for the Authority.
  - (xix) Exercising any function under a local Act specified or referred to in Regulation 2 or Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
  - (xx) Approving the annual Pay Policy of the Council.
  - (xxi) All other matters which, by law, must be reserved to the Assembly.
  - (xxii) Such other functions which the Assembly may lawfully decide to reserve to itself.

### **3. Responsibility and delegation of functions**

- 3.1 The Assembly may arrange for the discharge of any of its functions by a Committee of the Council, a Sub-Committee of the Council or by an officer, with the exception of those functions reserved to the Assembly by statute or where a process has been prescribed by statutory Standing Orders. Similarly,

a Committee may delegate any of its functions to a Sub-Committee or an officer, and a Sub-Committee may delegate any of its functions to an officer.

#### **4. Types of Assembly Meeting**

4.1 There may be three types of Assembly meeting:

- (a) Annual Meeting
- (b) Ordinary meeting
- (c) Extraordinary meeting

4.2 The Assembly shall hold one annual meeting and five ordinary meetings each municipal year. Extraordinary meetings shall take place as and when required, in accordance with the provisions of paragraph 7 below.

#### **5. Business at Annual Meetings**

5.1 In a year when there is an ordinary election of Councillors, the Annual Meeting shall take place within 21 days of the retirement of the outgoing Councillors. In any other year, the Annual Meeting shall take place in May.

5.2 The Annual Meeting will:

- a) elect the Chair and Deputy Chair of the Assembly;
- b) receive any apologies for absence;
- c) receive any declarations of interest;
- d) approve the minutes of the last meeting;
- e) elect the Leader to serve for a four-year term or until the next annual meeting after ordinary whole Council elections;
- f) decide which Member-level bodies to establish for the municipal year;
- g) decide the size and terms of reference of those bodies;
- h) decide the allocation of seats to political groups in accordance with the political balance rules;
- i) receive nominations of councillors to serve on those council bodies and outside bodies;
- j) appoint to those council bodies and outside bodies except where appointment to those council bodies has been delegated by the Assembly or is exercisable only by the Cabinet;
- k) appoint such Chairs and Deputy Chairs of Committees as it falls to Assembly to appoint;
- l) receive the minutes of meetings of JNC committees, sub-committees and panels;
- m) receive the Leader's Statement;

- n) approve the annual Members' Allowances Scheme;
- o) consider Motions and/or Questions With Notice, as submitted in line with the procedures for the meeting;
- p) consider any other business set out in the notice convening the meeting;
- q) consider urgent business with the permission of the Chair.

Note: Rule (e) above will apply only at the Annual Meeting following Local Elections, or following the removal, death or resignation of the Leader.

## **6. Business at Ordinary Meetings**

6.1 Business at ordinary meetings will be to:

- (a) appoint a person to preside if neither the Chair nor the Deputy Chair is present or able to act;
- (b) receive any apologies for absence;
- (c) receive any declarations of interest;
- (d) approve as a correct record the minutes of the last meeting;
- (e) receive the minutes of meetings of JNC committees, sub-committees and panels;
- (f) receive the Leader's Statement;
- (g) make any appointments that fall to be made to Committees, outside bodies, statutory and other panels;
- (h) consider Motions and/or Questions submitted in line with the procedures for the meeting;
- (i) consider any other business set out in the notice convening the meeting;
- (j) consider urgent business with the permission of the Chair.

## **7. Extraordinary Meetings**

### **Calling extraordinary meetings**

7.1 Those listed below may require the Chief Executive to call an extraordinary Assembly meeting:

- (a) The Assembly by resolution;
- (b) The Chair of the Assembly;
- (c) A Statutory Officer of the Authority to consider such matters that fall under their statutory responsibilities;
- (d) Any five Councillors provided they have together signed a requisition

specifying the business to be considered at the meeting and presented the requisition to the Chair and he/she has refused to call a meeting or has failed within seven days of the presentation of the requisition to call a meeting.

- 7.2 Upon receipt of such requirement, the Chief Executive shall, subject to the conditions in (d) above, arrange a meeting of the Assembly to be held within 20 working days of receipt by her/him of the request.

### **Business**

- 7.3 Business at extraordinary meetings of the Assembly shall be restricted to the following:
- (a) appoint a Member to preside at the meeting if neither the Chair nor the Deputy Chair is present or able to preside;
  - (b) receive apologies for absence;
  - (c) receive any declarations of interest from Members and officers;
  - (d) consider any business set out in the notice convening the meeting;
  - (e) consider urgent business with the permission of the Chair.

## **8. Election of the Leader of the Council**

- 8.1 The Monitoring Officer (MO) will invite nominations from the floor for the position of the Leader of the Council. Nominations will be permitted only from constituted political groups having ten or more Councillors at the time of the meeting.
- 8.2 The MO will record and read out in alphabetical order the names of the persons nominated and the political group they represent.
- 8.3 The MO will conduct the vote for the election of the Leader of the Council in accordance with the following procedure:
- (i) Each Councillor present at the time will have one vote.
  - (ii) The vote will be taken by way of a roll call and recorded in the Minutes.
  - (iii) The MO will call out the name of each nominated person in alphabetical order and invite Councillors to vote according to their preference; alternatively they may, if they wish, abstain.
  - (iv) At the conclusion of the vote the MO will announce the number of votes cast for each nominated person. If any one nominated person receives an overall majority of the votes cast (abstentions will not be counted), he/she will be declared the winner and be elected as the Leader of the Council.
  - (v) If no one nominated person receives an overall majority of the votes cast, then the nominated person receiving the least number of votes will be eliminated.

- (vi) The MO will then invite further round(s) of voting as necessary in accordance with the procedures set out in (i) to (iii) above until one nominated person receives an overall majority, for which any abstentions will not be counted.
- (vii) Any Councillor not present at the start of the first vote will not be entitled to a vote at a later round even if they have joined the meeting by that stage.

8.4 Paragraphs 8.2 and 8.3 shall be waived if only one nomination is made. Voting shall then be by a show of hands.

## **9. Members' Questions**

### **Questions without notice**

9.1 Any Member may ask the Leader, a Cabinet Member or the Chair of a Committee any question without notice upon an item of report or recommendation of the Cabinet or Committee concerned, immediately following the presentation of that matter.

### **Questions With Notice**

9.2 Written notice of any questions relating to matters not on the agenda must be received by the Chief Executive by no later than 5.00pm on the Wednesday of the week before the Assembly meeting. A Councillor may submit a maximum of two questions, either directly him/herself or via the Group Secretary.

9.3 The Chief Executive may reject a written question if, in his/her opinion:

- (a) it is of a vexatious or derogatory nature or otherwise considered improper or inappropriate;
- (b) is contrary to any provision of any code, protocol, legal requirement or rule of the Council;
- (c) it does not relate to the business of the Council;
- (d) it is substantially the same as another written question previously submitted under this process and considered at the Assembly within the previous twelve months.

9.4 Where the Chief Executive rejects a written question on any of the above grounds, he/she shall inform the Chair and the Councillor who submitted the question as soon as possible. Prior to determining whether to accept or reject a question, the Chief Executive may seek clarification or propose alternative wording to the Councillor who submitted the question.

9.5 Wherever possible, answers will be given at the meeting by the appropriate Councillor (usually the relevant Cabinet Member or Leader). In the event that it is not possible to do so, a written response will be sent to all Councillors as soon as possible.

9.6 In the event that the Councillor who submitted the question is not present at

the Assembly meeting, the question will be withdrawn.

- 9.7 Any questions withdrawn as indicated above, or withdrawn at the request of the Councillor who submitted the question, either before or during the meeting, may not be resubmitted to the Assembly within a period of six months. This condition will be waived where the Councillor, or a colleague on their behalf, has notified the Chief Executive by 5.00pm on the day of the meeting of their inability to attend due to their ill health or other reason accepted by the Chief Executive.
- 9.8 Where a Councillor wishes to exercise the right under Section 71(5) of the Local Government and Housing Act 1989 to ask a question of Councillors or officers involved (as Member, Director or Council's representative) in connection with Local Authorities' Interest in Companies, he/she should give notice in writing to the Chief Executive at least seven clear working days before the Assembly meeting at which this matter is to be submitted to enable a response to be given at the meeting.
- 9.9 After the initial answer, the Councillor who submitted the question may ask one supplementary question arising directly out of the initial question or answer, without notice, and the person who answered the initial question shall respond to the supplementary question wherever possible. There shall be no further debate on the issue.
- 9.10 Any questions which are not dealt with by the close of the meeting will be responded to in writing by the appropriate Councillor before the next meeting.

## **10. Motions With Notice**

- 10.1 Written notice of any motions must be received by the Chief Executive by no later than 4.00pm on the Wednesday two weeks before the meeting, except in respect of a vote of no confidence in the Leader of the Council for which the process in paragraph 13 applies.
- 10.2 A notice of motion must relate to a matter which affects the Council or its area and must relate to a matter in respect of which the Council has a relevant function. There is no limit on the number of motions that a Councillor may submit but the notice of motion must be submitted either by the Councillor who is proposing the motion or via the Group Secretary.
- 10.3 A notice of motion may be in more than one part and contain more than one recommendation, but must all relate to the same subject matter.
- 10.4 The Chief Executive may reject a notice of motion if, in his/her opinion:
- (a) it is of a vexatious or derogatory nature or otherwise considered improper or inappropriate;
  - (b) is contrary to any provision of any code, protocol, legal requirement or rule of the Council;
  - (c) it does not relate to the business of the Council;
  - (d) is substantially the same as another motion already considered at the

Assembly within the previous twelve months.

- 10.5 Where the Chief Executive rejects a notice of motion on any of the above grounds, he/she shall inform the Chair and the Councillor who submitted the notice of motion as soon as possible. Prior to determining whether to accept or reject a motion, the Chief Executive may seek clarification or propose alternative wording to the Councillor who submitted the motion.
- 10.6 In the event that the Councillor who is proposing the motion is not present at the Assembly meeting, the motion will be withdrawn.
- 10.7 Any motions withdrawn as indicated above or withdrawn at the request of the Councillor who proposed the motion, either before or during the meeting, may not be resubmitted to the Assembly within a period of six months. This condition will be waived where the Councillor, or a colleague on their behalf, has notified the Chief Executive by 5.00 pm on the day of the meeting of their inability to attend due to their ill health or other reason accepted by the Chief Executive.
- 10.8 Motions will be listed on the agenda in the order in which they are received, save that:
  - (a) where two or more notices of motion are received from a particular Councillor for the same meeting, that Councillor's second notice of motion shall be included after all other Councillors' first notices of motion, that Councillor's third notice of motion shall be included after all other Councillors' second notices of motion, and so on.
  - (b) where the Chief Executive considers that the notice of motion, statement or consideration of the notice of motion is likely to result in the disclosure of confidential or exempt information, in which case he/she may group such notices of motion together with other items of business which are, in his/her opinion, likely to involve the exclusion of press and public during their consideration.
- 10.9 Written notice of any amendments to motions must be received by the Chief Executive by no later than 12 noon on the Friday before the meeting. The same criteria and actions as described in paragraphs 10.2 - 10.8 will apply in relation to any amendments received.
- 10.10 Any amendments proposed after the time specified in paragraph 10.9 will only be considered for exceptional reasons such as a change in circumstances appertaining to the original motion, in which case the consent of the Chair will be required.
- 10.11 The Assembly shall not debate any motion which could give rise to a significant change to the income or expenditure of the Council or to contract terms unless, in the opinion of the Chief Executive acting on advice from the Chief Financial Officer and Chief Legal Officer as appropriate, the motion is accompanied by a report from the Chief Financial Officer or the Chief Legal Officer, as appropriate, setting out the financial or legal effect of the motion.
- 10.12 Where a motion which would require an accompanying report under Rule

10.11 falls to be moved without such accompanying report being made available to all Councillors, the motion shall stand adjourned without debate to the next available meeting of the Assembly.

10.13 Subject to Rule 10.14, if there are other motions or recommendations on the agenda that have not been dealt with by the close of the meeting, they are deemed formally moved and seconded and shall be put to the vote by the Chair without debate.

10.14 Where a notice of motion submitted under Rule 10 falls to be dealt with under Rule 10.13, the Councillor giving the notice may either:

- (a) speak to the motion for not more than three minutes before the motion is put by the Chair without debate; or
- (b) require that the motion is deferred to the next available meeting.

## **11. Motion to rescind a previous decision**

11.1 A motion or amendment to rescind, or which has the effect of rescinding, a decision made at a meeting of the Assembly within the past six months, may not be moved except upon a recommendation from the Cabinet for a variation of the approved Budget or Policy Framework, or where the Monitoring Officer confirms that it is appropriate for the Assembly to reconsider the matter to comply with law, as a result of a change of law or material change of circumstances.

## **12. Rules of Debate**

12.1 The following order / rules of debate shall apply:

- (a) Except with the Chair's consent, the debate on each motion shall last no longer than 10 minutes and no individual speech shall exceed two minutes.
- (b) The mover will move the motion and explain its purpose.
- (c) The Chair will invite another Councillor to second the motion.
- (d) If any amendment(s) has been accepted in accordance with paragraphs 10.9 or 10.10, the Chair will invite the relevant Councillor to move the amendment(s) and explain the purpose.
- (e) The Chair will invite another Councillor(s) to second the amendment(s).
- (f) The Chair will then invite Councillors to speak on the motion and any amendments.
- (g) Once all Councillors who wish to speak have done so, or the time limit has elapsed, the Chair will allow the mover(s) of the amendment(s) a right of reply followed by the mover of the original motion.
- (h) At the end of the debate, any amendments will be voted on in the order in which they were proposed.

- (i) If an amendment is carried, the motion as amended becomes the substantive motion to which any further amendments are moved and voted upon.
- (j) After an amendment has been carried, the Chair will read out the new substantive motion before accepting any further amendments or, if there are none, put it to the vote.
- (k) If all amendments are lost, a vote will be taken on the original motion.

### **13. Motion to remove the Leader of the Council from office**

- 13.1 The Leader may be removed from office by resolution of the Assembly following notice of a motion signed by at least half of the full membership of the Council. Any such motion must be delivered to the Chief Executive in writing at least 10 working days before the meeting, giving reasons.
- 13.2 The motion will be listed first on the agenda. No amendments to a motion calling for the removal of the Leader of the Council will be allowed.
- 13.3 In order to carry the motion, at least two-thirds overall majority of those Councillors present at the meeting will be required.
- 13.4 If the Assembly passes such a resolution, a new Leader is to be elected either:
  - (a) at the meeting at which the Leader is removed from office; or
  - (b) at a subsequent meeting.
- 13.5 In the event that the Leader no longer holds office, the Deputy Leader will carry out the role and duties of the Leader until the new Leader is elected by the Assembly.

### **14. Closure motions**

- 14.1 A Councillor may move, without comment, any one of the following motions at the end of a speech of another Councillor:
  - (a) to proceed to the next business;
  - (b) that the question / motion be now put;
  - (c) to adjourn a debate;
  - (d) to adjourn a meeting.
- 14.2 If a motion to proceed to next business is seconded the Chair will put this to the vote without further discussion on the original motion. If the procedural motion is carried the meeting will proceed to the next item of business.
- 14.3 If a motion that the matter be now put is seconded, the Chair will put the procedural motion to the vote. If the procedural motion is passed the Chair will put the original motion to the vote.
- 14.4 If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chair considers that the item has not been sufficiently discussed and

cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without further debate.

## **15. Appointment of Councillors to Committees**

### **Allocation of seats to Political Groups**

- 15.1 Whenever the Council is required to undertake a review of the allocation of seats to political groups, the Chief Executive shall conduct such review and report to the next appropriate meeting of the Assembly setting out the number of seats on each Committee and outside body which are allocated to each political group, in line with political proportionality requirements, and the number of seats which remain unallocated, in accordance with the requirements of the Local Government and Housing Act 1989. The Chief Executive shall send a copy of the report to the Group Secretary of each political group and to any Councillors who are not members of any political group.
- 15.2 Following receipt of such report, each Group Secretary shall make nomination of Councillors for appointment to those seats on each Committee which are allocated to his/her political group. Such nomination may be made in writing to the Chief Executive in advance of the meeting or may be made verbally at the meeting at which such appointments are to be made.

### **Appointments**

- 15.3 At the meeting of the Assembly where an item of business relating to the appointment of Committees is included on the agenda, the Assembly shall appoint Councillors to each Committee in accordance with the nominations made by each Group Leader.
- 15.4 The Assembly will then appoint Councillors to those seats on Committees which have not been allocated to any political group from amongst those Councillors who are not members of any political group.
- 15.5 A Group Secretary may, at any time, notify the Chief Executive in writing that a named Councillor has been removed from a seat on a particular Committee or outside body which has been allocated to his/her political group. The appointment of another Councillor to fill the vacant seat shall be dealt with at the next appropriate meeting of the Assembly.

### **Appointment of Co-opted Members of Committees**

- 15.6 Where the Assembly determines that a committee or sub-committee shall include one or more co-opted Member, it shall also specify whether such Member shall be a voting or a non-voting Member, the dates and term of office of any such appointment and the procedure for selection of such co-opted Member(s), which may include advertisement and competition or invitation for nomination from specified bodies.
- 15.7 Co-opted Membership of any committee shall not be subject to proportionality.
- 15.8 The Assembly shall have the power to remove such co-opted Members from a committee or sub-committee by simple majority.

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## **Part 2 – The Articles**

### **Chapter 5 – Ceremonial Council and The Mayor**

#### **1. Status and Membership**

1.1 The Ceremonial Council is a committee established under Section 101 of the Local Government Act 1972 and comprises the 51 directly elected Councillors meeting as a body (or as many of those Councillors who are in office at the time concerned). While it comprises all Members of the Council, it is not a meeting of the Council as defined in Section 8 and Schedule 12 to the 1972 Act and, as such, its role should not be confused with that of the Assembly.

#### **2. Functions of the Ceremonial Council**

2.1 The Ceremonial Council has the following functions:

- (i) Election of the Mayor;
- (ii) Awarding the Freedom of the Borough;
- (iii) Awarding the status of Honorary Alderman / Alderwoman;
- (iv) Making any other special awards.

2.2 The awarding of the Freedom of the Borough and status of Honorary Alderman / Alderwoman shall take place at an extraordinary meeting of the Ceremonial Council, called for that specific purpose and in accordance with approved protocols. To carry a motion in respect of the awarding of the Freedom of the Borough and the status of Honorary Alderman / Alderwoman, at least two-thirds overall majority of those Councillors present and voting at the extraordinary meeting must agree in order for the motion to be passed.

#### **3. The Mayor and the Mayor's Term of Office**

3.1 The Ceremonial Council shall elect a Mayor from the membership of the Council at its annual meeting.

3.2 The Mayor shall remain in office until:

- (a) the election of his/her successor at the next Annual Ceremonial Council meeting, notwithstanding that he/she may cease to be a Councillor by reason of not being re-elected;
- (b) his/her ceasing to be a Councillor by virtue of being disqualified from office; or
- (c) his/her removal from office by a resolution of the Assembly. The process to be followed for the removal from office of the Mayor shall be the same process as set out in Part 2, Chapter 4 in respect of a motion to remove the Leader of the Council from office.

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## **Part 2 – The Articles**

### **Chapter 6 – The Cabinet**

#### **1. Role and Legal Status**

- 1.1 The Cabinet is a committee established under Section 11 of the Local Government Act 2000, as amended by the Public Involvement in Health Act 2007. The political balance requirements of Section 15 of the Local Government and Housing Act 1989 do not apply when determining membership.
- 1.2 The legislation allows for executive functions to be discharged by:
  - (a) The Leader;
  - (b) The Cabinet as a body;
  - (c) A Committee of the Cabinet;
  - (d) An individual Member of the Cabinet;
  - (e) An Officer;
  - (f) Joint arrangements, partnership boards and other such bodies;
  - (g) Another local authority;
  - (h) Area Committees.
- 1.3 Under the Council’s strengthened Leader model of executive governance, all executive decisions are taken by the collective Cabinet or delegated to other committees of the Council or to officers.
- 1.4 The Cabinet will carry out all of the Council’s functions which are not the responsibility of any other part of the Authority, whether by law or under the Constitution.
- 1.5 All executive functions not expressed to be within the remit of the Cabinet or another committee shall be deemed to be delegated to officers.

#### **2. Responsibility for Functions**

- 2.1 The Cabinet has responsibility for the following functions:
  - (i) All “key decisions” and other major issues affecting the Council, particularly strategic, financial, policy related and corporate management matters, within the overall policy framework set by the Assembly.
  - (ii) Setting the Council Tax Base.
  - (iii) Setting rents in respect of Council dwellings and related properties.
  - (iv) Assessing and determining charges and fees.

- (v) Making policy regarding all employees in respect of pay and conditions of service and disciplinary matters, subject to the provisions of the respective National Conditions of Service and any appropriate legislation.
- (vi) Making Compulsory Purchase Orders (CPOs) and confirming unopposed CPOs.
- (vii) Considering recommendations from other Member meetings, on issues which are the Cabinet's responsibility.
- (viii) Determining the scope and programme and agreeing the outcomes of all Best Value Reviews.
- (ix) Making appointments to any committees, sub-committees, joint committees and other bodies within the remit of the Cabinet.
- (x) Resolving and determining, on advice from the Chief Executive, any disputes of Chief Officers in respect of any delegated authority.
- (xi) Naming of buildings and roads for which the Council is responsible, in accordance with the policy approved by Cabinet on 21 March 2023 (Minute 98).
- (xii) Receiving reports on corporate performance monitoring information.
- (xiii) Approving procurements and awarding of contracts in accordance with the Contract Rules set out in this Constitution.
- (xiv) Approving financial matters in accordance with the Financial Rules set out in this Constitution.
- (xv) Approving land matters in accordance with the Land Acquisition and Disposal Rules set out in this Constitution.
- (xvi) Reviewing corporate policies and strategies as appropriate.
- (xvii) Appointing the Discretionary Business Rate Relief Appeal Panel which shall consist of three Cabinet Members, one of whom shall be the Cabinet Member with portfolio responsibility for finance, to determine appeals against decisions in respect of applications for Discretionary Business Rate Relief.
- (xviii) To approve business plans and other strategic plans and strategies for council owned companies.
- (xix) Receiving reports on the performance of council owned companies.
- (xx) Considering recommendations from the Shareholder Panel and Investment Panel on other strategic matters pertaining to council owned companies, which are the Cabinet's responsibility.
- (xxi) Receive periodic reports on the Council's Investment and Acquisition Strategy, and to approve investment programme and schemes, which are the Cabinet's responsibility.

- (xxii) Approving the investment budget and the land and property acquisition budget to support the delivery of the Investment and Acquisition Strategy.

### **3. Form and composition of the Cabinet**

- 3.1 The Leader will appoint the Cabinet Members (at least one of whom shall be his/her deputy) and the Cabinet will total between 3 and 10 Councillors, inclusive of the Leader and Deputy Leader(s).
- 3.2 Cabinet Members may not hold the office of Mayor or be members of the Overview and Scrutiny Committee.
- 3.3 The quorum shall be three Members.

### **4. Leader**

- 4.1 The Leader shall be elected at the Annual Meeting of the Assembly following the four-yearly whole Council elections. The Leader will be elected for the full four-year term, with the term of office expiring at the Annual Meeting of the Assembly following the next whole Council elections, subject to the following provisions:
  - (a) He/she resigns from the office; or
  - (b) He/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
  - (c) He/she is no longer a Councillor, except where the Leader fails to be returned as a Councillor following an election. Unless the Leader resigns, is disqualified or is otherwise removed from office he/she shall continue as Leader until the day of the Annual Meeting of the Assembly following the election; or
  - (d) He/she is removed from office by a resolution of the Assembly on a notice of motion of no confidence in accordance with the provisions set out Part 2, Chapter 4 of this Constitution.

### **5. Deputy Leader(s) and Other Cabinet Members**

- 5.1 The Leader shall appoint his/her Cabinet Members, at least one of whom shall also be appointed as Deputy Leader, by notifying the Chief Executive in writing of such appointment. Only Councillors may be appointed to the Cabinet. Cabinet members appointed by the Leader shall hold office until the next whole Council elections unless:
  - (a) They resign from office, by notification in writing to the Leader who shall, in turn, notify the Chief Executive. The resignation shall take effect immediately after receipt of the notice by the Leader;
  - (b) They are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension);

- (c) They are no longer a Councillor; or
  - (d) They are removed from office by the Leader, by notification of removal made in writing by the Leader to the Chief Executive and to the Cabinet Member concerned. The removal shall take effect immediately after receipt of the notice by the Chief Executive.
- 5.2 The Leader shall assign portfolios in defined areas of Council activity to the individual members of the Cabinet.
- 5.3 If for any reason the Leader is unable to act or the office of the Leader is vacant the Deputy Leader must act in his place.
- 5.4 If for any reason the Leader is unable to act or the office of the Leader is vacant and the Deputy Leader is unable to act or the office of the Deputy Leader is vacant, the Cabinet must act in the Leader's place or must arrange for a member of the Cabinet to act in his/her place.
- 5.5 In the event that the Leader appoints two or more Cabinet Members to the position of Deputy Leader, the Leader shall provide the Chief Executive with details of which Deputy Leader shall be nominated to act on his/her behalf in any given situation stipulated in this Constitution.
- 5.6 In the event that it is unclear which Deputy Leader has been nominated to act on the Leader's behalf in any given situation and it is not possible to seek clarification from the Leader, the Chief Executive shall nominate the Deputy Leader to act.
- 5.7 In the event that the 'nominated' Deputy Leader is unable to act on behalf of the Leader, the other shall automatically assume that responsibility.
- 5.8 For the avoidance of doubt, the appointment of Cabinet Members following four-yearly whole Council elections shall take effect from the Annual Meeting of the Assembly at which the Leader is appointed.
- 6. Vacancies in the Cabinet**
- 6.1 If at any time a Councillor ceases to be a Member of the Cabinet, the portfolio responsibilities of that Member shall be carried out by the Cabinet collectively in so far as permitted by law until such time as the Leader shall have appointed a replacement or, where appropriate, re-appointed the Member concerned.
- 6.2 In the event of there being no Leader, Deputy Leader or Cabinet Members, executive functions shall in the interim be carried out by the Chief Executive in so far as is permitted by law.
- 7. Removal from Office of the Leader**
- 7.1 The Leader may only be removed from office by resolution of the Assembly in accordance with the provisions set out in section 13 of Part 2, Chapter 4 of this Constitution.

## **8. Policy Task Groups**

- 8.1 The Leader in consultation with the Chief Executive will appoint Policy Task Groups to examine policies and make recommendations to the Cabinet.
- 8.2 The Policy Task Group will be made up of a minimum of 6 and no more than 10 non-executive Members.
- 8.3 Policy Task Groups are advisory bodies to the Cabinet. Their role will be to:
- (a) Assist and advise the Leader and the Cabinet in the development of policy;
  - (b) Consider reviews of any existing policies, strategies or plans of the Council;
  - (c) Consider existing policies in the light of changes to legislation or national guidance;
  - (d) Consider proposals for new Council policy;
  - (e) Provide advice on policy direction.
- 8.4 The terms of reference of each Policy Task Group will be determined by the Leader in consultation with the Chief Executive.

## **9. Deputy Cabinet Members**

- 9.1 The Leader may appoint up to three Deputy Cabinet Members to support the work of the Cabinet.
- 9.2 Deputy Cabinet Members will work alongside and support relevant Cabinet Member(s) in developing and implementing policies within their portfolio.
- 9.3 Deputy Cabinet Members shall be invited to attend Cabinet in a non-voting capacity.
- 9.4 Deputy Cabinet Members may not hold the office of Mayor or be a member of the Overview and Scrutiny Committee or the Health Scrutiny Committee.
- 9.5 The Leader may remove a Deputy Cabinet Member at any time by notification of removal made in writing by the Leader to the Chief Executive and to the Deputy Cabinet Member concerned. The removal shall take effect immediately after receipt of the notice by the Chief Executive.

## **10. Spokespersons and Lead Members**

- 10.1 The Leader (or in his/her absence the Deputy Leader) is the overall spokesperson for Cabinet issues at appropriate times (for example at the Assembly), but each Cabinet Member may speak on behalf of the Cabinet in a collective, as opposed to a personal, capacity.

## **11. Cabinet Decisions and Minutes**

- 11.1 Details of decisions made by Cabinet shall be circulated within two working days of the meeting in order to facilitate the call-in process detailed in Part 2, Chapter 8 of the Constitution.
- 11.2 The minutes of Cabinet meetings shall be published in draft form on the Council's website as soon as practicable after the meeting.

## **12. Cabinet and Shareholder Panel**

- 12.1 The Cabinet undertakes a shareholder role, acting on behalf of the Council. The Cabinet will exercise the strategic oversight of any companies owned wholly or partly by the Council. The Cabinet will in turn be advised by the Shareholder Panel. The statutory relationship is between the council owned companies and the Cabinet, as advised by the Shareholder Panel.
- 12.2 The Chief Executive in consultation with the Leader will appoint a Shareholder Panel comprising a membership of Cabinet members and key officers who will be responsible for reviewing the strategic business plans and performance of the council owned companies, and make recommendations to the Cabinet, where appropriate. The Chief Executive, in consultation with the Leader, may amend the membership of the Panel.
- 12.3 The Shareholder Panel is an advisory body to the Cabinet. Its role will be to:
  - (a) Review, monitor and consider amendments to the long-term strategic objectives via company business plans
  - (b) Review and monitor the financial performance, legal compliance and trading risks for each company.
  - (c) To consider all proposed significant capital or revenue investments by the Council and make recommendations to the Cabinet.
  - (d) To receive regular updates on all other matters covered by the business plans of the council owned companies.
  - (e) To give prior consideration and make recommendations to the Cabinet for approval, in respect of those matters which are the Cabinet's responsibility
- 12.4 The terms of reference of the Shareholder Panel will be determined by the Leader, on advice from the Chief Executive and the Monitoring Officer.

## **Part 2 – The Articles**

### **Chapter 7 – The Health and Wellbeing Board**

#### **1. Role and Legal Status**

- 1.1 The Health and Wellbeing Board is established under Section 194 of the Health and Social Care Act 2012. The political balance requirements of Section 15 of the Local Government and Housing Act 1989 do not apply when determining membership.
- 1.2 The Act specifies that the Health and Wellbeing Board is to be treated as an executive committee under Section 102 of the Local Government Act 1972. However, regulations have disapplied or modified some of the enactments relating to Section 102 committees, as they apply to Health and Wellbeing Boards.
- 1.3 The primary duty of the Health and Wellbeing Board is to encourage those who arrange for the provision of health or social care services to work in an integrated manner. This is further extended to include encouraging integrated working with those who arrange for the provision of health-related services (defined as services that may have an effect on the health of individuals but are not health services or social care services).
- 1.4 When the Council enters into joint arrangements with National Health Service bodies, it does so under Section 75 of the National Health Service Act 2006. The Health and Wellbeing Board must also provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of such joint arrangements.
- 1.5 The Health and Wellbeing Board should also ensure the development, authorisation and publication of a Joint Strategic Needs Assessment and Health and Wellbeing Strategy, with joint involvement and authority of the Council and the Clinical Commissioning Group. Section 116B of the Local Government and Public Involvement in Health Act 2007 then places a duty on the Council, the Clinical Commissioning Group and the National Health Service Clinical Commissioning Board (where it is relevant) to have regard to these documents when exercising its functions.

#### **2. Membership**

- 2.1 Membership of the Board is set out below. Members of the Board prescribed in the Health and Social Care Act 2012 are appointed by virtue of the position they hold and are marked \* below. Additional members are appointed by the Assembly.
  - Cabinet Member for Social Care & Health Integration, Chair \*
  - The Strategic Director, Children & Adults \* (as both the Director of Adult Social Services and the Director of Children's Services)
  - Four other Cabinet Members, to be appointed by the Leader of the Council (the representation shall revert to three other Cabinet Members in the event of the statutory Director of Adult Social Services and the Director of Children's Services posts being held by separate officers)

- The Director of Public Health \*
- A member appointed by local Healthwatch \*
- Chair of the Clinical Commissioning Group \*
- Further Board-level GP appointment from the Clinical Commissioning Group
- Accountable Officer for the Clinical Commissioning Group
- Executive Director level appointment from Barking, Havering & Redbridge University Hospitals NHS Trust
- Executive Director level appointment from North East London Foundation NHS Trust
- Borough Commander, Metropolitan Police Service

The Act requires that one councillor and one Clinical Commissioning Group representative are appointed to the Board; the identification of specific posts, as outlined above, is a local decision.

- 2.2 In addition, a representative of the NHS National Commissioning Board is entitled to attend to participate in discussions and can be required to attend by the Board. Invitations will be sent to them as standard. They will not be a voting member of the Board.
- 2.3 In accordance with the 'Protocol Outlining Barking and Dagenham Safeguarding Partnership Arrangements' adopted by the Health and Wellbeing Board (Minute 58, October 2014), the Chair of the Barking and Dagenham Safeguarding Adults Board shall have a standing invited guest status on the Board. In order to maintain the Safeguarding Chair's independence, the individual shall not be a Member of the Board.
- 2.4 Upon establishment, the Act provides the power to the Health and Wellbeing Board to amend its membership. Such amendments will be reported to the next meeting of the Assembly. On approval of Assembly, the Council may appoint further members to the Health and Wellbeing Board but must have consulted the Board prior to making the appointments.
- 2.5 All Members of the Health and Wellbeing Board outlined in this section, including those who are not Members of the Council, have a vote at Board meetings in line with the procedures set out in Article 1.
- 2.6 Those Members who are not Councillors and have a vote are co-opted Members for the purposes of the Localism Act 2011 and are bound by the Councillors' Code of Conduct and the requirement to declare any disclosable pecuniary interests.
- 2.7 Amendments to the membership of the Board determined by the Health and Wellbeing Board will require a 75% majority of members present and voting.
- 2.8 The Health and Social Care Act 2012 requires the Council to consult the Board when varying its membership. Where the Council, through resolution of Assembly, seeks to amend the membership of the Health and Wellbeing Board, a discussion of the proposal will be scheduled at the Health and Wellbeing Board, with the views of the Board recorded in its minutes and reported to Assembly.

### **3. Quorum**

3.1 Five members of the Board, one of whom must be a Councillor.

### **4. Chair and Deputy Chair**

4.1 The Cabinet Member for Social Care and Health Integration shall be the Chair of the Board, as nominated by the Leader of the Council.

4.2 The Deputy Chair shall be appointed from amongst the membership at the first meeting of the municipal year.

### **5. Responsibility for Functions**

5.1 The Health and Wellbeing Board has responsibility for the following functions:

- (i) To promote and advance the health and wellbeing of the people of Barking and Dagenham, and work to secure improvements in the health, social care and health-related services available to them.
- (ii) To encourage all agencies who arrange the provision of health and social care services, or who provide those services, to do so in an integrated manner.
- (iii) To encourage and support the making of arrangements under Section 75 of the National Health Service Act 2006 for the joint commissioning and provision of health and social care services between relevant bodies. To authorise the signing of those agreements on behalf of the Council, where the resources have already been allocated by Cabinet or Assembly for the purposes described in the agreement.
- (iv) In order to facilitate the widest view of health and wellbeing, to work with those agencies who provide, or arrange provision of, health-related services (being those services that are not directly health services, but which may impact on health, to include housing, environmental services and education, amongst others.)
- (v) To approve the Joint Strategic Needs Assessment on behalf of the Council and to authorise its publication on behalf of the Council and partnership.
- (vi) To approve the Health and Wellbeing Strategy on behalf of the Council and to authorise its publication on behalf of the Council and partnership, and to receive reports on performance and work with responsible agencies to ensure delivery of the Strategy.
- (vii) To ensure that the commissioning and policy priorities of the member agencies of the Board, in particular the Council and the Clinical Commissioning Group, have due regard to the Health and Wellbeing Strategy, the Joint Strategic Needs Assessment and prior decisions of the Board.

- (viii) To approve the Council's tender documents for the provision of local Healthwatch and to receive reports on its performance as deemed appropriate.
- (ix) To approve contracts as delegated to Cabinet where the funding streams are principally the Public Health Grant or from within social care budgets, as determined by the relevant Chief Officer in consultation with the relevant Cabinet Member(s), to include the Chair of the Health and Wellbeing Board.
- (x) To approve the Council's Local Account for Adult Social Care, and any related annual reports to the local community on performance.
- (xi) To report annually to Assembly on progress against established priorities and objectives and on the discharge of these terms of reference.
- (xii) To be responsible for overseeing the local delivery of the NHS Test and Trace Service and the Borough response to the COVID-19 pandemic, including acting on advice from the COVID-19 Health Protection Board.

## **6. Accountability**

- 6.1 The Health and Wellbeing Board is accountable to the Assembly and the Board will report to the Assembly on matters requiring the latter's approval.
- 6.2 As an executive committee of the Council that includes representatives of partner agencies, the Health and Wellbeing Board will also provide such reports as are required to ensure that partnership activity on health and wellbeing is adequately accounted for.

## **7. Decisions and Minutes**

- 7.1 Details of decisions made by the Health and Wellbeing Board shall be circulated within two working days of the meeting in order to facilitate the call-in process detailed in Part 2, Chapter 8 of the Constitution. Any key decision called in with respect to the Health and Wellbeing Board will be referred to the Health Scrutiny Committee.
- 7.2 The minutes of meetings shall be published in draft form on the Council's website as soon as practicable after the meeting.

## **Part 2 - The Articles**

### **Chapter 8 – Overview and Scrutiny Committee and Call-in**

#### **1. Status, Membership, Quorum and Meeting Frequency**

- 1.1 The Overview and Scrutiny Committee is a committee established under Section 21 of the Local Government Act 2000, as amended by the Localism Act 2011.
- 1.2 The membership of the Committee shall be 10 Councillors and the quorum shall be three.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.4 The Assembly shall also appoint four Co-opted Members to the Overview and Scrutiny Committee, representing the bodies listed below, to scrutinise education matters only. The Co-opted Members shall have voting rights in respect of educational matters, and non-voting rights in respect of all other matters:
  - i) One Church of England Diocesan Board of Schools representative;
  - ii) One Roman Catholic Brentwood Diocesan Schools Commission representative;
  - iii) One secondary school parent governor representative;
  - iv) One primary school parent governor representative.
- 1.5 The Committee may also co-opt a representative(s) of the BAD Youth Forum, in a non-voting capacity.
- 1.6 The Overview and Scrutiny Committee shall meet approximately every four weeks. Additional meetings may be arranged to deal with specific matters such as the Cabinet's budget proposals, Call-in's etc. if considered necessary.
- 1.7 Informal meetings of the Overview and Scrutiny Committee, such as task and finish groups and site visits, may be arranged as appropriate; however, only one group may be in place at any one time.

#### **2. Functions and Responsibilities**

- 2.1 The Overview and Scrutiny Committee has the following functions and responsibilities:

##### **(a) Statutory Functions**

- i) **Call-in** - The Overview and Scrutiny Committee will be responsible for addressing any Call-in that is received, unless the subject primarily relates to health matters in which case it will be dealt with by the Health Scrutiny Committee. The Call-in Procedure is detailed in paragraph 6 of this Article.

- ii) **Councillor Call for Action** - The Overview and Scrutiny Committee will be responsible for considering Councillor Calls for Action (CCfA) (section 119, Local Government Act 2000), unless the subject primarily relates to health matters in which case it will be dealt with by the Health Scrutiny Committee. A CCfA shall be dealt with in accordance with the relevant best practice guidance jointly issued by the Centre for Public Scrutiny and the Improvement & Development Agency. The CCfA procedure is detailed in paragraph 7 of this Article.
  - iii) **Crime and Disorder scrutiny** - The Overview and Scrutiny Committee shall:
    - a. Act as the Crime and Disorder Committee within the meaning of Section 19 of the Police and Justice Act 2006;
    - b. Review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
    - c. Make reports or recommendations to the local authority with respect to the discharge of those functions;
    - d. Make recommendations to the Cabinet and/or Assembly with respect to any matter which is a local crime and disorder matter in relation to a Member of the authority; and
    - e. Consider any crime and disorder matters referred by any Member of the Council.
  - iv) **Education** - The Council shall, in accordance with Section 499 of the Education Act 1996 and Section 9F of the Local Government Act 2000, appoint co-opted members to the Overview and Scrutiny Committee to scrutinise education matters only.
  - v) **Flood risk management** - In accordance with the Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011, the Overview and Scrutiny Committee has the power to request information and scrutinise the local flood risk authority's plans to mitigate flooding.
- (b) Functions Determined by the Assembly**
- (i) Scrutiny of matters relating to the provision of services to children and young people living or using services within the borough;
  - (ii) Working with the Council and other partners to secure the continuous improvement of services for children and young people and assisting in improving outcomes for the borough's young people;
  - (iii) Scrutiny of the provision, planning, management and performance of services relating to adult social care;

- (iv) Scrutiny of the provision, planning, management and performance of housing, regeneration, economic development, public realm and transport matters;
- (v) Scrutiny of matters relating to the provision of business, jobs and skills within the Borough;
- (vi) Scrutiny of the provision, planning, management and performance of public services related to culture, libraries, heritage, arts and community safety; and
- (vii) Scrutiny of issues relating to social inclusion, equalities, cohesion and faith; engaging with the community and voluntary services operating in the Borough and, where appropriate, holding them to account for their performance.

**(c) General Role**

- (i) Review and scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) Assist the Assembly and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues, as required;
- (iii) Review and scrutinise the performance of the Council, other public bodies and partner organisations in the area, invite them to address the Overview and Scrutiny Committee, and prepare reports about their initiatives and performance;
- (iv) Conduct pre-decision scrutiny to test the robustness and impact of budget savings and other key decisions to be considered by the Cabinet;
- (v) Engage with and represent local people and create opportunities to involve them in the scrutiny process;
- (vi) In all of the above, make reports and recommendations to the Cabinet and/or Assembly and/or any Committee in connection with the discharge of any functions; and
- (vii) Produce an annual report which the Chair of the Overview and Scrutiny Committee shall present to the Assembly.

**3. Petitions**

- 3.1 The Overview and Scrutiny Committee will be responsible for receiving and debating petitions, unless the subject relates primarily to health scrutiny matters, in which case they will be dealt with by the Health Scrutiny Committee. Petitions shall be dealt with in accordance with the Council's Petition Scheme which can be found on the Council's website <http://www.lbbd.gov.uk/petitions>

#### **4. Overview and Scrutiny Sub Committee**

- 4.1 The Overview and Scrutiny Committee shall appoint a Sub-Committee which shall be convened as necessary to consider Call-Ins and petitions, upon receipt and validation.
- 4.2 The Sub-Committee shall consist of the Chair of the Committee and four other Members of the Committee. The quorum shall be two Members.

#### **5. Scrutiny Procedure Rules**

(Note: These provisions shall apply to both the Overview and Scrutiny Committee and the Health Scrutiny Committee.)

##### **5.1 Work Programme**

5.1.1 The Committee shall be responsible for setting and maintaining the work programme, which will be agreed at the start of the municipal year in consultation with the Council's Statutory Scrutiny Officer.

5.1.2 The Committee may receive suggestions from the following for particular topics to be scrutinised:

- Members of the public
- Relevant partner organisations
- Officers of the Council
- Co-optees
- Cabinet
- Individual Members of the Council

5.1.3 The Committee shall typically go through a topic selection process in order to shortlist the areas for review.

##### **5.2 Scrutiny Reviews**

5.2.1 A Scrutiny Review is an in-depth investigation into local policy and performance issues. Topics chosen for in-depth investigation are developed in consultation with Councillors, officers, partners and members of the public with a view to making recommendations to improve a particular service area. The Committee may undertake scrutiny reviews on any matter that is consistent with its functions and responsibilities.

5.2.2 Before conducting a scrutiny review, The Committee will ensure the topic selected meets the **PAPER** criteria:

- Public Interest;
- Ability to Change;
- Performance;
- Extent of the Issue; and
- Replication.

5.2.3 The Committee shall not undertake a scrutiny review on any matter directly or indirectly linked to work being undertaken by the Cabinet or a Policy Task Group.

5.2.4 The Committee may take all reasonable steps to assist or inform its deliberations, including a general call for evidence, commission research, site visits, public surveys, public meetings and the involvement of the local community.

5.2.5 The Committee may appoint advisers and call witnesses to assist in its work and pay reasonable fees and expenses for such assistance within available budgets.

5.2.6 Scrutiny reviews and reports will follow the process below, subject to any variation agreed with the Chair in consultation with the Statutory Scrutiny Officer:

- Gather evidence from Council officers, Members, statutory authorities and other consultees;
- Identify where processes, policies or services could be improved;
- Develop formal draft recommendations to deliver these improvements and discuss them with the relevant portfolio holder(s) and, if appropriate, relevant statutory authorities either at a committee meeting or in writing;
- Submit the draft final report, with recommendations, to the relevant portfolio holder(s) and, if appropriate, relevant statutory authorities for comment;
- Present the final report (including portfolio holder comments) to the Committee for approval;
- Publish the approved report on the Council's website and circulate to relevant stakeholders, including those who gave evidence to the Committee;
- Present an action plan to the Committee for approval, allocating the recommendations to the decision-maker (as determined by the Scheme of Delegation) and agree a timeframe for their implementation;
- Decision-maker reports back to the Committee within six months with a progress update on the implementation of the recommendations; and
- Further follow-up reports requested, if the Committee deems it necessary.

5.2.7 Where the Overview and Scrutiny Committee produces a report and/or makes recommendations on matters relating to local crime and disorder it will provide a copy of the report to the relevant responsible authorities, notifying them of their duty (under section of the Police and Justice Act 2006) to:

- i) consider the report or recommendations;
- ii) respond to the Overview and Scrutiny Committee in writing within 28 days indicating what (if any) action it proposes to take, and;
- iii) have regard to the report or recommendations in exercising its functions.

### **5.3 Public Participation**

5.3.1 In relation to Scrutiny Reviews which include members of the public, the general public participation rules (Part 2, Chapter 3, Paragraph 12) shall not apply and the following rules shall apply instead.

5.3.2 Residents of the London Borough of Barking and Dagenham and those working, studying or with a business interest in the area are able to participate in the scrutiny review process by:

- a) Suggesting topics for review by the Scrutiny Committees;
- b) Attending meetings;
- c) Presenting petitions;
- d) Asking a question;
- e) Making a statement or forming a deputation (lobbying) to the Scrutiny Committee;
- f) Being involved in a scrutiny investigation;
- g) Responding to surveys.

5.3.3 When there is a scrutiny investigation that would benefit from public participation, the officer supporting the investigation will ensure such participation is facilitated.

5.3.4 Those interested in participating in a particular scrutiny investigation can do so by contacting staff in Governance Services or the Chair directly.

#### **5.4 Accountability and Attendance**

5.4.1 The Committee may scrutinise and review any decisions made or actions taken in connection with the discharge of any Council function or other matter that is within their respective terms of reference. As well as reviewing documentation, the Committee in fulfilling the scrutiny role, may require any Member of the Cabinet, Chief Officer and/or senior Officer to attend (only when invited) before them to explain, in relation to matters within their remit:

- a) Any particular decision or series of decisions;
- b) The extent to which the actions taken implement Council policy;
- c) The performance of relevant services.

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

5.4.2 The Committee may also require any Council Member to attend before them to answer questions on any function which the Member has power to exercise.

5.4.3 Any Councillor or member of the public shall be entitled to attend meetings of the Committee and to speak on any agenda item at the discretion of the Chair.

5.4.4 Where any Cabinet Member, Ward Member or Officer is required to attend a Committee meeting, Scrutiny Officers will, within reasonable time, inform that Member or Officer in writing of the Committee meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee.

- 5.4.5 Where the account to be given to the Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 5.4.6 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then a substitute may be asked to attend or the Committee may, in consultation with the Member or Officer, arrange an alternative date for attendance, which shall be no later than the next scheduled meeting.
- 5.4.7 The Committee may invite people other than those people referred to above to address it, to discuss issues of local concern and/or answer questions. For example, it may wish to hear from residents; other interested parties, officers in other parts of the public sector, or experts.
- 5.4.8 In undertaking its respective functions, the Committee may invite representatives of local organisations to address them, discuss the issues of local concern and/or answer questions. Representatives of such organisations must attend meetings to provide information needed by the Committee to discharge its functions. However, reasonable notice must be given.

## **5.5 Rights to Information**

- 5.5.1 The Committee will have access to the Forward Plan of key decisions of the Cabinet / Health and Wellbeing Board and the timetable for decisions and intentions for consultation.
- 5.5.2 In addition to their rights as Councillors, Members of the Committee have the additional right to documents and to notice of meetings as set out in the Access to Information rules (Part 2, Chapter 17) and in line with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 5.5.3 Nothing in this paragraph shall prevent more detailed liaison between the Cabinet / Health and Wellbeing Board and the Committee if considered appropriate for the particular matter under consideration.

## **6. Call-in**

- 6.1 Call-in is the exercise of the Committee's statutory powers under Sections 9F(2)(a) and 9F(4) of the Local Government Act 2000 (as amended by the Localism Act 2011) to review an executive key decision that has been made but not yet implemented. Where a decision is called-in and the Committee decides to refer it back to the relevant decision-maker for reconsideration, it cannot be implemented until the Call-in Procedure is complete.
- 6.2 Any key decision is subject to Call-in (subject to the exclusions in paragraph 6.15 below). A decision may be called-in only once. A recommendation to the Assembly may not be called-in.
- 6.3 The powers to call-in a decision and to refer a decision back for reconsideration shall be exercised by the relevant Scrutiny Committee whose

terms of reference most closely relate to the subject matter of the decision being called-in.

- 6.4 Requests for Call-in will only be accepted as valid if there is evidence that the decision maker did not take the decision in accordance with the principles of decision making as set out in Part 2, Chapter 16, paragraph 2 of this Constitution.
- 6.5 Call-in of decisions which may be contrary to the Budget and Policy Framework shall be governed by the provisions of the Budget and Policy Framework Procedure Rules in Part 2, Chapter 18, paragraph 6 of this Constitution.
- 6.6 Call-in should be regarded as a measure that is only needed in exceptional circumstances.

### **The Call-In Procedure**

- 6.7 Once made, an executive decision shall be published in the form of a Decision Notice and sent to all Members of the Council within two working days.
- 6.8 The Decision Notice will specify that the decision will be effective on the expiry of five clear working days after the publication of the decision and may then be implemented, unless called-in under this provision within that five working day period.
- 6.9 Any two (or more) Councillors (excluding Cabinet Members), or statutory co-opted Members where the matter relates to education, individually or collectively, may call-in a key decision by submitting a written notification to the Chief Executive within the five-working day period. A call-in form is available on the Council's website <https://www.lbbd.gov.uk/scrutiny>. Any Councillor who has a prejudicial and/or pecuniary interest in a particular issue should not instigate or take part in any Call-In related to that issue.
- 6.10 The form must include:
  - i) the names of the Members requesting the Call-in (at least two are required), one of whom should be identified as the lead;
  - ii) the subject matter being called-in;
  - iii) the decision including, where relevant, whether all or part of the decision is being called-in; and
  - iv) clear reasons for the Call-in, with reference to any evidence that the decision-maker did not take the decision in accordance with the principles set out in Part 2, Chapter 16, paragraph 2 of this Constitution.
- 6.11 The Call-in request will be deemed valid unless either:
  - i) the procedures set out in paragraphs 6.8 to 6.10 have not been properly followed;

- ii) the grounds for Call-in as referred to in paragraph 6.4 above have not been met;
  - iii) the decision has been recorded as urgent in accordance with paragraphs 6.15 to 6.18 below;
  - iv) the Call-in is considered to be frivolous, vexatious or not a proper use of the Call-in provisions taking into account the following factors:
    - a. Whether the matter has been considered as part of pre-decision scrutiny by the Committee or any sub-committee, task group or panel.
    - b. Whether there has been any substantive change in the nature of the decisions being made since any pre-decision scrutiny of the proposals.
    - c. Whether the recommendations or alternative course of action identified in the Call-in request have been previously considered and rejected, in whole or part, as part of pre-decision scrutiny.
    - d. Whether the Call-in request can be dealt with through the clarification of matters.
    - e. Any other relevant factor.
  - v) The Call-in would, in the opinion of the Monitoring Officer, result in the Council failing to discharge its legal duties.
- 6.12 Before deciding on (a) to (e) above, the Chief Executive may seek clarification of the Call-in request from the Member(s) concerned. The Chief Executive shall also consult with the Chair of the Committee prior to making a determination on the validity of the Call-in. The decision of the Chief Executive shall be final and there is no right of appeal.
- 6.13 Upon deciding on its validity, the Chief Executive shall forthwith notify the Member(s) concerned, the Leader and Portfolio Holder, the Chair and Deputy Chair of the Committee, the relevant Strategic and other Directors, and the Council's Statutory Scrutiny Officer.
- 6.14 In the absence of the Chief Executive, the Monitoring Officer shall exercise the Chief Executive's functions in respect of the Call-in.

#### **Decisions not subject to Call-In**

- 6.15 The following categories of decision are not subject to Call-in:
- i) recommendations from the Cabinet to the Assembly for final determination, such as the Budget and Policy Framework;
  - ii) decisions for urgent implementation under the Urgent Action provisions set out in Part 2, Chapter 16, paragraph 4 of the Constitution;
  - iii) urgent decisions outside the Budget or Policy Framework taken in accordance with paragraph 4 of the Budget and Policy Framework Rules in Part 2, Chapter 18 of the Constitution; and

iv) decisions to award a contract following a lawful procurement process.

### **Call-In and Urgency**

- 6.16 The Call-in procedure set out above shall not apply where the decision being taken is urgent. A decision is urgent if:
- i) A Call-in would prevent the Council reaching a decision that is required by statute or otherwise within a specified timescale;
  - ii) Any delay likely to be caused by the Call-in process would seriously prejudice the Council's or the public's interests and the reasons for urgency are reported to the decision-making body or person before the decision is taken;
  - iii) Any delay likely to be caused by the Call-in process may expose the Council, its Members or its constituents to a significant level of risk, loss, damage or disadvantage.
- 6.17 In the case of the above, the Decision Notice shall state whether a decision is an urgent one, and therefore not subject to Call-in. The consent of the Chair of the relevant Scrutiny Committee is required before a decision is treated as urgent.
- 6.18 Where the Cabinet / Health and Wellbeing Board has recorded a decision as urgent, the Committee may retrospectively review actions arising from that decision but cannot delay its implementation.

### **Consideration of the Call-In**

- 6.19 The Chief Executive will ensure that any valid Call-in is reported to the appropriate meeting.
- 6.20 At least one of the Members submitting the request for Call-in will be expected to attend the meeting to explain their reasons for the Call-in and the alternative course of action or recommendations they wish to propose. Appropriate representation from the Cabinet / Health and Wellbeing Board will be required to explain the reasons for the Cabinet / Health and Wellbeing Board's decision and to answer any questions. Similarly, the relevant Chief Officer shall attend to clarify any aspects associated with the issue in question.
- 6.21 Having considered the Call-in and the reasons given, the Committee (or convened Sub-Committee) may either:
- i) Refer it back to the decision-making person or body for reconsideration, normally in time for its next scheduled meeting, setting out in writing the nature of its concerns and any alternative recommendations;
  - ii) If it considers that the decision is outside the Council's Budget and Policy Framework, refer the matter to the Assembly after seeking the advice of the Monitoring Officer and/or Chief Financial Officer; or
  - iii) Decide to take no further action, in which case the original Cabinet / Health and Wellbeing Board decision will be effective immediately.

### **Decisions referred back to the Decision-Maker**

- 6.22 If a decision is referred back to the original decision maker, that person or body shall then reconsider the matter, taking into account any concerns and recommendations of the Committee (or convened Sub-Committee), and make a final decision, amending the decision or not, and give reasons for the decision.
- 6.23 If a decision relates to an executive function, only the Cabinet / Health and Wellbeing Board can ultimately decide the matter, provided that it is in accordance with the Council's Budget and Policy Framework.

### **7. Councillor Call for Action**

- 7.1 A Councillor Call for Action (CCfA) allows councillors to refer matters of concern within the community to scrutiny. The aim of this measure is to provide councillors with additional powers that enable them to respond to local community concerns which have proved difficult to resolve.
- 7.2 CCfA should relate to matters:
- That are of a genuine and persistent local concern;
  - That are not subject to ongoing legal processes, and
  - Where other courses of action have failed to resolve the matter.
- 7.3 Any Councillor may request the Chief Executive to include a Councillor Call for Action on the agenda of a scrutiny Committee meeting. A Councillor Call for Action request must be made to the Chief Executive. A form is available on the Council's website which sets out the requirements for a Councillor Call for Action request to be considered valid by the Chief Executive.
- 7.4 Upon receipt of a valid Councillor Call for Action, the Chief Executive shall ensure that the item is included on the agenda of the next appropriate meeting of the relevant scrutiny committee, and ensure that the Chair of the committee, relevant Cabinet / Health and Wellbeing Board Members, senior officers and any other members from the ward(s) in question, are informed that a valid Call for Action has been received.
- 7.5 Any Councillor who submits a valid Call for Action will have the right to attend the meeting at which the item is to be considered, to explain the reasons for the Call for Action and to have the item discussed. The Committee will decide either:
- i) To request officers to prepare a report for the next meeting;
  - ii) To request the Councillor submitting the Call for Action to provide further evidence or information to a future meeting;
  - iii) To set up a task and finish group to investigate the matter and report back to the Committee or to agree to undertake a scrutiny review on the matter at the appropriate time;

- iv) To refer the matter to the appropriate person or body be it a senior Officer, another committee such as the Cabinet / Health and Wellbeing Board or an external body, either for information or calling for specific action;
  - v) To take no further action on the request, for stated reasons.
- 7.6 A Councillor Call for Action will be deemed invalid in the following circumstances, and shall not be taken forward:
- i) The procedures set out in paragraphs 7.3 and 7.4 have not been properly followed;
  - ii) It does not affect all or part of the ward for which the referring Member is elected, or any person who lives or works in that ward;
  - iii) It is a matter that has been excluded by Order of the Secretary of State (e.g. planning or licensing appeals and other quasi-judicial matters); or
  - iv) The Chief Executive, in consultation with the Statutory Scrutiny Officer, considers it to be vexatious, not reasonable, discriminatory or outside the Councillor Call for Action provisions.
- 7.7 Before deciding on its validity, the Chief Executive may seek clarification of the Call for Action from the Councillor concerned.

## **Part 2 - The Articles**

### **Chapter 8a – Health Scrutiny Committee**

#### **1. Status, Membership, Quorum and Meeting Frequency**

- 1.1 The Health Scrutiny Committee is a committee established under Section 21 of the Local Government Act 2000, as amended by the Localism Act 2011.
- 1.2 The membership of the Committee shall be six Councillors and the quorum shall be two.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.4 The Health Scrutiny Committee shall meet six times a year. Additional meetings may be arranged to deal with specific matters such as the Cabinet's budget proposals, Call-in's etc. if considered necessary.
- 1.5 Informal meetings of the Health Scrutiny Committee, such as task and finish groups and site visits, may be arranged as appropriate, however only one group may be in place at any one time.

#### **2. Functions and Responsibilities**

- 2.1 The Health Scrutiny Committee has the following functions and responsibilities:

##### **(a) Statutory Functions**

- i) The Health Scrutiny Committee shall carry out health scrutiny in accordance with Section 244 (and Regulations under that section) of the National Health Services Act 2006 as amended by the Local Government and Public Involvement in Health Act 2007 relating to local health service matters. Where a proposal to substantially vary a health service relates to more than one local authority area, it must be considered by a Joint Health Overview and Scrutiny Committee appointed by each of the local authorities in question (in accordance with Part 2, Chapter 14, paragraph 2).
- ii) The Health Scrutiny Committee shall have all the powers of an Overview and Scrutiny Committee as set out in section 9F of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Social Care Act 2001 (including associated Regulations and Guidance).

##### **(b) Functions as determined by Assembly**

- (i) Scrutiny of the work of the NHS bodies serving Barking and Dagenham in accordance with the Health and Social Care Act 2001 and associated Regulations and Guidance.

- (ii) Scrutiny of the planning, provision and operation of the health service in the borough or accessed by Barking and Dagenham residents.
- (iii) Requesting information from NHS bodies and any health service provider. Exempt from this power are requests for information that are confidential (i.e. information that identifies a living person or is prohibited under any enactment) or relate to NHS Trusts in special administration (this function may be carried out by the Joint Health Overview and Scrutiny Committee in accordance with Part 2, Chapter 14, paragraph 2).
- (iv) Requesting attendance from any member or employee of a relevant NHS body or health service provider to attend before it to answer any questions; provided those questions do not relate to confidential information or information that they would be entitled to refuse to provide in a court of law. The request for attendance may also be refused if reasonable notice has not been given (this function may be carried out by the Joint Health Overview and Scrutiny Committee in accordance with Part 2, Chapter 14, paragraph 2).
- (v) Acting on behalf of the Council as the statutory consultee where NHS bodies propose substantial developments or variations in the provision of services and thus have a duty to consult with the local authority before taking a decision. When being consulted with, the Health Scrutiny Committee must notify the relevant NHS body of its response to the consultation and any intention to refer the matter to the Secretary of State within the timescales agreed by both parties (this function may be carried out by the Joint Health Overview and Scrutiny Committee in accordance with Part 2, Chapter 14, paragraph 2).
- (vi) Exercising the Council's right of referral to the Secretary of State on substantial variations to local health services. The Health Scrutiny Committee will have regard to the criteria and process for making a referral to the Secretary of State which are prescribed in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- (vii) Acting on behalf of the Council to make all arrangements for establishing and participating in Joint Health Overview and Scrutiny Committees, including the appointment of three Members to the membership of the JHOSC. Any such JHOSC shall have such terms of reference and shall exist for so long as the appointing authorities may agree.
- (viii) Receiving referrals from the local Healthwatch on matters relating to the planning, provision, and operation of health services in the borough, acknowledging receipt within five working days. Further to the regulations, Healthwatch can expect a referral to be discussed at the next formal meeting of Health Scrutiny Committee, or at a formal meeting within three months (whichever is most timely). In accordance with the regulations the Health Scrutiny Committee is obligated to keep the referrer informed of any action taken in relation to the matter.

- (ix) Holding to account the Health and Wellbeing Board for the delivery of its functions, and in doing so, having particular regard to the robustness of the Joint Strategic Needs Assessment and Health and Wellbeing Strategy as effective documents to ensure commissioning of health and social care services is reflective of local need.
- (x) Monitoring progress of implementation of recommendations in accordance with the Council's agreed processes, ensuring that decision-makers have due regard to findings and recommendations arising from scrutiny investigations.
- (xi) Representing local people and bringing local concerns and feedback about health and social care services to the attention of leaders within the local health and social care economy, and formally advising the Health and Wellbeing Board of any such concerns in the process.
- (xii) Monitoring of performance indicators that fall within the remit of the Health Scrutiny Committee.
- (xiii) Addressing any Call-ins as allocated by the Statutory Scrutiny Officer (to be carried out in accordance with Part 2, Chapter 8, paragraph 6). Where the decision called-in is owned by the Health and Wellbeing Board the Health Scrutiny Committee will, by default, be the receiving Committee of that Call-in regardless of the subject of the decision.

**(c) General Role**

- (i) Review and scrutinise decisions made or actions taken in connection with the discharge of the Council's functions in relation to health;
- (ii) Assist the Assembly and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues, as required;
- (iii) Review and scrutinise the performance of the Council, other public bodies and partner organisations in the area, invite them to address the Health Scrutiny Committee, and prepare reports about their initiatives and performance;
- (iv) Conduct pre-decision scrutiny to test the robustness and impact of health-related key decisions to be considered by the Cabinet;
- (v) Engage with, and represent local people and create opportunities to involve them in the scrutiny process;
- (vi) In all of the above, make reports and recommendations to the Cabinet and/or Assembly and/or any Committee in connection with the discharge of any functions;
- (vii) Produce an annual report which the Chair of the Health Scrutiny Committee shall present to the Assembly.

2.2 Where the Health Scrutiny Committee produces a report and/or makes recommendations on health services, it will provide a copy of the report to the

relevant responsible authorities, notifying them of their duty (under the Local Government and Public Involvement in Health Act 2007) to:

- i) consider the report or recommendations;
- ii) respond to the Health Scrutiny Committee in writing within 28 days indicating what (if any) action it proposes to take, and;
- iii) have regard to the report or recommendations in exercising its functions.

### **3. Petitions**

- 3.1 The Health Scrutiny Committee will be responsible for receiving and debating petitions relating to health matters in accordance with the Council's Petition Scheme which can be found on the Council's website <http://www.lbbd.gov.uk/petitions>

### **4. Scrutiny Procedure Rules**

- 4.1 The Scrutiny Procedure rules in Part 2, Chapter 8, paragraph 5 shall apply to the Health Scrutiny Committee.

### **5. Call-in**

- 5.1 The Call-in rules in Part 2, Chapter 8, paragraph 6 shall apply to the Health Scrutiny Committee.

### **6. Councillor Call for Action**

- 6.1 The Councillor Call for Action rules in Part 2, Chapter 8, paragraph 7 shall apply to the Health Scrutiny Committee.

### **7. Health Scrutiny Sub Committee**

- 7.1 The Health Scrutiny Committee shall appoint a Sub-Committee which shall be convened as necessary to consider relevant Call-Ins, petitions, and Councillor Calls for Action upon receipt and validation.
- 7.2 The Sub-Committee shall consist of the Chair of the Committee and two other Members of the Committee. The quorum shall be two Members.

## **Part 2 – The Articles**

### **Chapter 9 – Planning Committee**

#### **1. Status and Membership**

- 1.1 The Planning Committee is a committee established under Section 102 of the Local Government Act 1972.
- 1.2 The membership of the Committee shall be 10, two of whom shall be ex-officio voting members by virtue of their portfolio responsibilities, namely the Cabinet Members for Regeneration and Economic Development and for Finance, Performance and Core Services. The quorum shall be three Members.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.

#### **2. Responsibility for Functions**

- 2.1 The Planning Committee has responsibility for determining the following functions of the Council as the Local Planning Authority:
  - (i) Any application recommended for approval with five or more objections from local residents other than an application for prior approval which may be agreed by the Strategic Director, Inclusive Growth in consultation with the Chair and Deputy Chair.
  - (ii) All major applications from the Council or a council owned company.
  - (iii) Applications which are recommended for approval and are considered by the Strategic Director, Inclusive Growth to be contrary to any material aspect of the Local Plan.
  - (iv) Applications for the mining and working of minerals or the use of land for mineral working deposits.
  - (v) Applications which are recommended for refusal and are considered by the Strategic Director, Inclusive Growth not to be contrary to any material aspect of the Local Plan.
  - (vi) Applications submitted by or on behalf of a Councillor or by any employee (or their spouse/partner) of the Council's Inclusive Growth section and Be First.
  - (vii) Applications which any Councillor requests in writing to the Strategic Director, Inclusive Growth within 21 days from the date of validation of the application subject to agreement of the Chair.
  - (viii) Any other application or issue which, on advice from the Strategic Director, Inclusive Growth, the Chair decides should be determined by the Planning Committee, by reason of its scale, impacts upon the environment or the level of public or likely Councillor interest;

- (ix) Appointing sub-committees, including the following:

**Visiting Sub-Committee** - consisting of the Chair and Deputy Chair and three other Members of the Committee, to be appointed at the first meeting in the municipal year to undertake inspections of buildings and sites as directed by the Committee and to make recommendations to the Committee arising from these inspections, unless otherwise empowered to act by the Committee. The relevant Ward Councillors shall also be invited to attend meetings in a non-voting capacity.

**Performance Review Sub-Committee** - consisting of the Chair and Deputy Chair and three other Members of the Committee, to be appointed at the first meeting in the municipal year, to consider and report back to the Committee on an annual basis in respect of:

- a random sample of up to 20 delegated decisions on a range of applications and examine and evaluate between 5 and 10 of them to assess whether relevant planning policies and criteria were applied in each case;
  - planning appeal performance; and
  - scrutiny of overturned decisions.
- (x) Reports on new, or amendments to existing, statutory provisions and guidance covering planning matters.
- (xi) Revoking and hearing opposed Tree Preservation Orders.
- (xii) All other functions set out in column (1), paragraph A of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, and all legislation appertaining to planning contained in the Planning Acts. This includes changes introduced by the Localism Act 2011 and the Growth and Infrastructure Act 2013 and any delegated legislation made pursuant to the Planning Acts.

### **3. Frequency of Meetings**

- 3.1 The Planning Committee shall meet approximately every four weeks in order to consider planning applications and other matters within statutory timescales.

### **4. Speaking by Members of the Public and Other Interested Parties at Meetings**

- 4.1 Members of the public who have raised a valid representation in relation to a planning application may be permitted to address the Committee as an objector subject to notice having been given to the Council's Governance Services team by 12.00 noon on the last working day before the meeting. In normal circumstances, a maximum of three members of the public will be allowed to speak at the meeting, each with a target time limit of three minutes. In the event that more than three members of the public wish to speak, subject to the Chair's discretion, priority will be given to those who made representations during the consultation period for the application.

4.2 Elected representatives acting on behalf of their constituents within the relevant ward are also permitted to speak at meetings without having to give prior notice, with a target time limit of three minutes each.

4.3 The Chair has discretion to extend the time limit of speakers or limit the number of speakers to ensure the efficient running of the meeting, in line with the procedures for the meeting.

## **5. Speaking by the applicant (or their representative) and responsible authorities**

5.1 The applicant (or their representative) and responsible authorities (e.g. the Police, Fire Brigade, relevant Council services etc.) will be entitled to address the Committee in line with the procedures for the meeting. The Chair has discretion to restrict the time allowed to such speakers to ensure the efficient running of the meeting.

5.2 In normal circumstances, it will not be necessary for the applicant (or their representative) to address the Committee unless either (i) the application is recommended for refusal; (ii) objectors have raised additional issues at the meeting to which the applicant (or their representative) wishes to respond to; and/or (iii) the application is recommended for approval but with conditions to which the applicant (or their representative) objects to.

5.3 Copies of the relevant procedures are available on the Council's website or by contacting Governance Services.

## **6. Councillors' Code of Conduct for Planning Matters**

6.1 The Councillors' Code of Conduct for Planning Matters is set out in Part 5, Chapter 2 of this Constitution.

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## **Part 2 - The Articles**

### **Chapter 10 - Licensing and Regulatory Committee**

#### **1. Status and Membership**

- 1.1 The Licensing and Regulatory Committee is a committee established under Section 102 of the Local Government Act 1972 and Section 6 of the Licensing Act 2003.
- 1.2 The membership of the Committee shall be 10 Councillors and the quorum shall be three.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 shall apply when determining membership.
- 1.4 The Committee shall meet on a quarterly basis.

#### **2. Responsibility for Functions**

- 2.1 The Licensing and Regulatory Committee is responsible for:
  - (a) exercising all of the Council's licensing and regulatory duties, functions and powers permitted under the Licensing Act 2003 and the Gambling Act 2005, except those which are the responsibility of the Assembly, the Cabinet or other committee or those delegated to officers;
  - (b) appointing a Licensing Sub-Committee to deal with the functions which are the responsibility of the Committee as referred to in (a) above;
  - (c) monitoring and reviewing the discharge of the Council's functions as a Licensing Authority.
- 2.2 The Licensing and Regulatory Committee may consider any matter which has been delegated to the Licensing Sub-Committee or to officers.

#### **3. Licensing Sub-Committee**

- 3.1 In line with amended guidance issued under Section 182 of the Licensing Act 2003, the Licensing and Regulatory Committee shall appoint a Licensing Sub-Committee to undertake its functions, including its determinations, except where the function has been delegated to an officer or where the matter has been referred to the Committee for a decision.
- 3.2 The Licensing Sub-Committee shall consist of three Members of the Committee, one of whom shall, in most cases, be the Chair or Deputy Chair (or both) of the Committee. The Chair or Deputy Chair of the Committee shall be the Chair of the sub-committee. In the absence of both, a chair shall be appointed at the beginning of the meeting.
- 3.3 Subject to paragraph 3.4 below, the remaining membership of the Licensing Sub-Committee shall be drawn from the Members of the Licensing and Regulatory Committee on a rota basis. Whilst the political balance

requirements of Section 15 of the Local Government and Housing Act 1989 shall not apply to the Sub-Committee, due regard shall be given to the political balance principles when drawing the membership from the Members of the Committee.

- 3.4 A Member who is also a Ward Councillor for an application shall not be appointed to serve on that Sub-Committee.
- 3.5 The quorum shall be three Members.
- 3.6 The Licensing Sub-Committee shall meet as and when required.
- 3.7 In respect of Summary (Expedited) Review applications made by the Police which have to be heard by a Licensing Sub-Committee within 48 hours (excluding non-working days) it shall, in exceptional circumstances agreed by the Chief Executive, be permissible for the Sub-Committee to consider the matter and reach a decision outside of a formal meeting setting. In such circumstances, a formal record of the matters discussed and decisions made shall be kept in line with the arrangements made for minutes of meetings, as described in Part 2, Chapter 3, paragraph 8.2 of the Constitution.
- 4. Speaking by the Applicant, Responsible Authorities and Other Persons (or their representatives) at Meetings**
  - 4.1 Applicants, Responsible Authorities (e.g. the Police, Fire Brigade, relevant Council services etc.) and any other interested parties (for example: elected representatives acting on behalf of their constituents; local residents; interested organisations etc) who have made relevant representations during the consultation period for an application will be entitled to present their case to the Licensing Sub-Committee in line with the procedures for the hearing.
  - 4.2 Any party wishing to address the Sub-Committee should give notice to the Council's Licensing Officer in advance of the hearing. In cases where an individual, including a councillor, has been asked to address the Sub-Committee on behalf of a person / organisation that has made a relevant representation, confirmation of the authority to speak on that person / organisation's behalf should be submitted to the Licensing Officer in advance of the hearing.
  - 4.3 In normal circumstances, there will be no restriction on the number of speakers per application or time limit set for presentation of cases. However, the Chair may, at his/her discretion, restrict the number of speakers or impose a time limit on speakers to avoid repetition and to ensure the efficient running of the hearing.
  - 4.4 Copies of the relevant procedures are available on the Council's website or by contacting Governance Services.
- 5. Councillors' Code of Conduct for Licensing Matters**
  - 5.1 The Councillors' Code of Conduct for Licensing Matters is set out in Part 5, Chapter 3 of this Constitution.

## **Part 2 - The Articles**

### **Chapter 11 - Pensions Committee**

#### **1. Status, Membership, Quorum and Meeting Frequency**

1.1 The London Borough of Barking and Dagenham Pension Fund (“the Fund”) is part of the Local Government Pension Scheme (LGPS). It is a statutory scheme operated under the following regulations:

- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended);
- The Local Government Pension Scheme (Administration) Regulations 2008;
- The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (as amended); and
- The Local Government (Management and Investment of Funds) Regulations 1998 and subsequent amendments.

1.2 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting for a two-year term. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.

1.3 The membership of the Committee shall be as follows:

- Voting Members – Seven Councillors.
- Non-Voting – The Committee may appoint representatives of interested parties (Trade Unions, Admitted Bodies, pensioners etc.).

1.4 The Committee may also appoint an Independent Adviser to provide appropriate advice to the Committee in a non-voting capacity.

1.5 The quorum shall be two voting Members.

1.6 The Committee shall meet on a quarterly basis.

#### **2. Responsibility for Functions**

2.1 To exercise on behalf of the Council all the powers and duties of the Council in relation to its functions as Administering Authority of the London Borough of Barking and Dagenham Pension Fund, and in particular the following:

- (i) To approve all policy statements required or prepared under the LGPS Regulations;
- (ii) To be responsible for the overall investment policy, strategy and operation of the Fund and its overall performance, including taking into account the profile of Fund liabilities;

- (iii) To appoint and terminate the appointments of the Fund Actuary, Custodian, professional advisors to, and external managers of, the Fund and agree the basis of their remuneration;
- (iv) To monitor and review the performance of the Fund's investments including receiving a quarterly report from the Strategic Director, Finance and Investment;
- (v) To receive actuarial valuations of the Fund;
- (vi) To monitor the LGPS Regulations, Codes of Practice or guidance issued by the Pensions Regulator and the National Scheme Advisory Board as they apply to pension benefits and the payment of pensions and their day to day administration and to be responsible for any policy decisions relating to the administration of the scheme;
- (vii) Selection, appointment and termination of external Additional Voluntary Contribution (AVC) providers and reviewing performance;
- (viii) To consider any recommendations made or views expressed by the London Borough of Barking and Dagenham Pension Board.

### **3. Rights and Responsibilities of Non-Voting Members and Advisers**

- 3.1 The non-voting Members shall be entitled to receive confidential or exempt papers and be present at meetings when these are discussed, unless determined in advance by the Monitoring Officer in consultation with the Chair. This arrangement will also apply to the Independent Adviser although a separate determination will be made.
- 3.2 Non-Voting Members and Advisers are expected to declare any interests and to respect confidentiality when necessary. They are expected to observe the Council's Procedures, Codes and Protocols while serving on the Committee.

### **4. Local Pension Board**

- 4.1 The London Borough of Barking and Dagenham Pension Board ("Local Pension Board") was established in accordance with Section 5 of the Public Service Pensions Act 2013, effective from 1 April 2015.
- 4.2 The role of the Board is defined by regulation 106 (1) of the LGPS regulations as:
  - 1) to secure compliance with the LGPS Regulations and any other legislation relating to the governance and administration of the Scheme and requirements imposed in relation to the LGPS by the Pensions Regulator ("the PR");
  - 2) to ensure the effective and efficient governance and administration of the Fund.
- 4.3 The Board is not a decision-making body in relation to the management of the Pension Fund and is not a committee constituted under Section 101 of the Local Government Act 1972. The Board's main role will be that of having oversight over whether the aims and objectives outlined within the Fund's

Governance and Administration strategies are being achieved; and having regard to any overriding requirements included within guidance from DCLG and the Scheme Advisory Board.

- 4.4 The Board will consist of up to six members made up of an equal number (three) from the following categories:
- (a) **Member Representatives:** preferably members of the Fund (active, deferred or pensioner). Where the member representative is not a member of the Fund, they must have the requisite knowledge and skills to be able to represent the interests of the scheme members.
  - (b) **Employer Representatives:** At least one of the employer representatives shall be an employee of the Council and at least one shall be from one of the Fund's scheduled bodies.
- 4.5 The Board shall meet twice a year.
- 4.6 The full terms of reference of the Board and its relationship with the Pensions Committee can be found at [Pension Board details](#).

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## **Part 2 - The Articles**

### **Chapter 12 - Personnel Board**

#### **1. Status, Membership, Quorum and Meeting Frequency**

- 1.1 The Personnel Board is a committee established under Section 102 of the Local Government Act 1972.
- 1.2 The Assembly shall appoint a total membership of nine Councillors, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.3 Personnel Board hearings shall consist of three Members of the Board, one of whom shall be the Chair or Deputy Chair (or both) of the Board. The Chair or Deputy Chair of the Board shall be the Chair at each meeting. In the absence of both, a chair shall be appointed at the beginning of the meeting.
- 1.4 The remaining membership for each meeting shall be drawn from the Members of the Board on a rota basis. Due regard shall be given to the political balance principles when drawing the membership from the Members of the Board.
- 1.5 The membership of the Board should remain constant when considering the same issue over more than one meeting.
- 1.6 No Member may sit on the relevant Board if they have worked particularly closely with a member of staff who is the subject of a report to the Board. In the event that a Member finds him / herself in such a position following appointment to the Board, he/she must declare an interest and withdraw from the membership. If this is in advance of the hearing, a replacement Member shall be drawn from the remaining membership.
- 1.7 The quorum shall be two Members.
- 1.8 The Board shall meet as and when required.

#### **2. Responsibility for Functions**

- 2.1 The Personnel Board is responsible for the following in respect of all staff except JNC officers:
  - (i) Appeals against the following decisions taken in respect of employment matters, other than those matters which are either reserved to other Member meetings or Executive Management Team Directors (or their nominees):
    - a. dismissal on the grounds of redundancy, gross misconduct, capability and sickness absence, and
    - b. final written warnings on the grounds of misconduct.
- 2.2 In determining an appeal against a decision made at a disciplinary hearing, the Board may reduce, but not increase, any sanction imposed.

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## **Part 2 - The Articles**

### **Chapter 13 – Audit and Standards Committee**

#### **1. Status, Membership, Quorum and Meeting Frequency**

- 1.1 The Audit and Standards Committee is a committee established under Section 102 of the Local Government Act 1972 and Section 28 of the Localism Act 2011.
- 1.2 The membership of the Committee shall be eight Councillors and an Independent Member (in respect of audit matters only). The quorum shall be at least three Council Members.
- 1.3 The Assembly shall appoint the Council membership, including the Chair and Deputy Chair, at its Annual Meeting. Cabinet Members and the Chairs of the Overview and Scrutiny Committee and the Health Scrutiny Committee shall not be members of the Audit and Standards Committee. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining the Council membership.
- 1.4 The Assembly shall also appoint up to three Independent Persons, pursuant to the Localism Act 2011 requirement, to give a view to the Committee or Sub-Committee on issues relating to complaints made regarding alleged breach of the Councillors' Code of Conduct.
- 1.5 The Committee shall appoint an Independent Member, with relevant technical experience, in respect of the Council's audit functions and responsibilities. The Independent Member shall have voting rights in respect of audit matters only.
- 1.6 The Committee shall meet on a quarterly basis with an additional meeting held, if necessary, to approve the publication of the Council's Statement of Accounts prior to 31 July each year.

#### **2. Responsibility for Functions:**

- 2.1 The Audit and Standards Committee shall have the following roles and functions:

##### **2.1.1 Audit functions**

###### **Internal Audit**

- i) Considering regular update reports concerning the work of Internal Audit, including progress on delivering the annual programme of work, emerging themes, risks and issues, and officer responsiveness in implementing recommendations and responding to Internal Audit.
- ii) Considering and agreeing an Annual Audit Report from the Chief Financial Officer and a summary of Internal Audit activity (actual and proposed), and the level of assurance it can give over the Council's corporate governance, internal control, and risk management arrangements.

- iii) Considering summaries of specific Internal Audit reports as requested.
- iv) Considering reports dealing with the management and performance of the providers of Internal Audit services.

### **External Audit**

- v) Considering the Annual Governance Report (both main and pension) and other relevant reports.
- vi) Considering the Annual Audit Letter, and other relevant reports.
- vii) Considering the Summary of Grant Certifications.
- viii) Considering the Annual Report of the External Auditor prior to its submission to the Assembly.
- ix) Considering other specific reports as agreed with the external auditor.

### **Governance**

- x) Receiving reports and making appropriate recommendations concerning corporate governance, risk management, decision-making and information governance and ensuring compliance with best practice.
- xi) Receiving reports and making appropriate recommendations concerning customer complaints and Local Government Ombudsman enquiries.
- xii) Considering regular updates concerning Council policies relating to internal governance (including whistle-blowing, bribery and anti-fraud) and ensuring the implementation of relevant legislation relating to governance, fraud and corruption.
- xiii) Considering proposed changes to the Council's Financial Regulations and Rules, as they relate to audit functions.
- xiv) Approving the Council's Annual Governance Statement which accompanies the Annual Statement of Accounts.
- xv) Preparing an Annual Report on the work of the Committee, to be presented to the Assembly.

### **Finance**

- xvi) Considering and approving the Annual Statement of Accounts and all related documents.

#### **2.1.2 Standards functions**

- i) Promoting and maintaining high standards of conduct by Councillors and Co-Opted Members of the Authority;

- ii) Appointment of a Hearing Sub-Committee to hear and make recommendations to the Monitoring Officer concerning complaints about Councillors and Co-opted Members referred to it by the Monitoring Officer (the composition, Terms of Reference and responsibility of functions for the Sub-Committee are referred to in paragraphs 3 and 4 below);
- iii) Receiving periodic reports from the Monitoring Officer on dispensations granted / refused, complaints received against Councillors, complaints resolved informally, complaints resolved after an investigation by the Hearing Sub-Committee and assessing the operation and effectiveness of the Councillors' Code of Conduct;
- iv) Advising on training or arranging to train Councillors and Co-opted Members on matters relating to the Councillors' Code of Conduct;
- v) Assisting Councillors and Co-opted Members to observe the Councillors' Code of Conduct;
- vi) Receiving referrals from the Monitoring Officer into allegations of misconduct, in accordance with the Council's assessment criteria;
- vii) Advising on the contents of and requirements for codes / protocols / other procedures relating to standards of conduct throughout the Council;
- viii) Maintaining oversight of the Council's arrangements for dealing with complaints;
- ix) Informing the Assembly and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;
- x) On referral by the Monitoring Officer, granting dispensations pursuant to S33(2) (b), (c) and (e) of the Localism Act 2011 to enable a Councillor or Co-opted Member to participate in a meeting of the Authority;
- xi) Hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to S33(2)(a) and (d) of the Localism Act 2011.

### **3. Hearing Sub-Committee**

- 3.1 In accordance with Section 28(6) and (7) of the Localism Act 2011, the Audit and Standards Committee shall appoint a Hearing Sub-Committee to conduct hearings and determine complaints.
- 3.2 The Hearing Sub-Committee shall consist of three Members, drawn from the membership of the Committee on a rota basis by the Chief Executive. The Chair shall be elected by the Sub-Committee at each meeting. Due regard shall be given to the political balance principles when drawing the membership of a Sub-Committee.

3.3 The quorum shall be two Members.

3.4 The Hearing Sub-Committee shall meet as and when required.

#### **4. Responsibility for Functions of the Hearing Sub-Committee**

4.1 The Hearing Sub-Committee shall be responsible for:

(i) Hearing allegations that a Councillor or Co-opted Member has breached the Councillors' Code of Conduct.

(ii) Following a hearing, making one of the following findings:

(a) that the individual has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the hearing;

(b) that the individual has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the hearing;

(c) that the individual has failed to comply with the Code of Conduct and that a sanction and/or an informal resolution should be imposed.

(iii) Imposing any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.

(iv) After making a finding, providing written notice of its findings and the reasons for its decision to the individual and complainant.

4.2 Following a finding of the Hearing Sub-Committee that the Code of Conduct has been breached by a Councillor or Co-opted Member, a decision notice shall be published as soon as reasonably possible on the Council's website. The decision notice shall include a summary of facts as found by the Hearing Sub-Committee, the provisions of the Code of Conduct engaged by the allegations, the view of the Independent Person, the reasoning of the Hearing Sub-Committee to uphold the complaint and any sanction applied by the Hearing Sub-Committee.

#### **5. Management of Complaints**

5.1 The management of complaints shall be the responsibility of the Monitoring Officer in accordance with the procedure set out in Part 5, Chapter 1, paragraph 15 of this Constitution.

#### **6. Rights and Responsibilities of Independent Persons (for Standards functions)**

6.1 The role of an Independent Person is wholly advisory, providing advice to the Council on any allegation being considering of a failure of a Councillor or Co-opted Member, and to such a Councillor facing an allegation who has sought the views of the Independent Person.

- 6.2 An Independent Person may attend meetings of the Audit and Standards Committee and act in an advisory capacity only, with no voting rights.
  - 6.3 An Independent Person shall have an advisory role in the decision-making process regarding complaints against Councillors and Co-opted Members in that his/her views must be sought and taken into account before decisions are made on allegations which the Monitoring Officer has decided to investigate.
  - 6.4 An Independent Person may be consulted by the Monitoring Officer before a decision has been taken to investigate.
  - 6.5 An Independent Person shall have an advisory role in any meeting of the Hearing Sub-Committees' decision-making process regarding complaints against Councillors and Co-opted Members. The views of an Independent Person must be sought and taken into account before decisions are made by the Hearing Sub-Committee.
  - 6.6 An Independent Person may be consulted by a Councillor or Co-opted Member who is the subject of an allegation.
  - 6.7 An Independent Person shall declare any interests, respect confidentiality and observe the Council's Procedures, Codes and Protocols in his/her workings with the Council.
- 7. Rights and Responsibilities of Independent Member (for Audit functions)**
- 7.1 The role of the Independent Member is to provide advice and guidance to, and contribute to the discussions of, the Committee in respect of the audit functions described in paragraph 2.1.1 above.
  - 7.2 The Independent Member shall be invited to attend all meetings of the Audit and Standards Committee and shall have voting rights in respect of audit matters only.
  - 7.3 The Independent Member shall declare any interests, respect confidentiality and observe the Council's Procedures, Codes and Protocols in his/her workings with the Council.

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## **Part 2 - The Articles**

### **Chapter 14 - Joint Arrangements**

#### **1. Arrangements to promote well being**

1.1 The Local Government Acts 1972 and 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 enable local authorities to make both use of joint arrangements with other authorities and to delegate to other local authorities. Section 2 of the 2000 Act also creates further flexibility for partnership arrangements in the promotion of economic, social and environmental well being. In this respect authorities can:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; or
- (c) exercise on behalf of that person or body any functions of that person or body

#### **Joint arrangements**

1.2 The Assembly may establish joint arrangements with one or more local authority and/or their executives to exercise functions which are not executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a Joint Committee or Board with these other local authorities. The Council may, where the legislation allows, also establish other joint arrangements with, for example, health service organisations.

1.3 The Cabinet may establish joint arrangements with one or more local authorities or other organisations to exercise functions which are executive functions or to advise the Cabinet. Such arrangements may involve the appointment of joint Committees or Boards with these other local authorities or bodies. The Cabinet may, where the legislation allows, also establish other joint arrangements with, for example, health service organisations.

1.4 Except as set out in paragraph 1.5 below, the Cabinet may only appoint Cabinet Members to a Joint Committee or Board under paragraph 1.3 above and those Members need not reflect the political composition of the Council as a whole.

1.5 The Cabinet may appoint Members to a Joint Committee from outside the Cabinet if the Joint Committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the Joint Committee any Councillor who is a Member of a ward which is wholly or partly contained within the area.

1.6 Where both executive and non-executive functions are delegated to a Joint Committee or Board, appointments to the joint Committee or Board will be made by the Assembly.

### **Delegation to and from other local authorities**

- 1.7 The Assembly may delegate non-executive functions to another local authority or, in certain circumstances, the Executive/Cabinet of another local authority.
- 1.8 The Cabinet may delegate executive functions to another local authority or, in certain circumstances, the Executive/Cabinet of another local authority.
- 1.9 The decision whether or not to accept such a delegation from another local authority shall be reserved to the Assembly.

### **Delegation to and from other organisations**

- 1.10 The Assembly may delegate non-executive functions to other organisations or Boards where legislation allows.
- 1.11 The Cabinet may delegate executive functions to other organisations or Boards where legislation allows.
- 1.12 The decision whether or not to accept such a delegation from another organisation or Board shall be reserved to the Assembly.

## **2. Joint Health Overview and Scrutiny Committees**

- 2.1 Local authorities are required to establish a mandatory joint health overview and scrutiny committee to consider any proposal for substantial variation of existing health service provision or substantial development of a service where such a proposal affects more than one local authority area. Discretionary joint committees may also be formed to carry out a health scrutiny review or consider issues which cut across boundaries of more than one local authority. All such joint arrangements will be established and conducted in accordance with the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

## **3. East London Waste Authority (ELWA)**

- 3.1 The East London Waste Authority (“ELWA”) was established on 1 January 1986 as a London Waste Disposal Authority pursuant to the Waste Regulation and Disposal (Authorities) Order 1985 and has the powers and obligations of waste disposal authorities contained in the Environmental Protection Act 1990.
- 3.2 In particular ELWA is established for the following purposes:
  - a) To make arrangements for the disposal of waste collected by the London Boroughs of Barking and Dagenham, Havering, Newham, and Redbridge (“Constituent Councils”) within their areas;
  - b) To arrange for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited;
  - c) To make arrangements for the disposal of waste from civic amenity sites in the Constituent Councils.

3.3 Each of the four Constituent Councils appoint two Councillors each municipal year to serve on ELWA. The appointments for Barking and Dagenham are the responsibility of the Assembly.

#### **4. Local London Joint Committee**

4.1 The Local London Joint Committee was established in April 2016 to provide a forum for participating London Boroughs (Barking and Dagenham, Bexley, Bromley, Enfield, Greenwich, Havering, Newham, Redbridge and Waltham Forest) to work in partnership with the aim of delivering growth and to identify opportunities for devolution to the sub-London region.

4.2 The Local London Joint Committee replaced the North East London Strategic Alliance (NELSA) and the Growth Boroughs Joint Committee as the primary partnership for the area.

4.3 The Local London Joint Committee, through the Local London Partnership Programme (LLPP), has the following objectives:

- (a) Securing local benefits and sustainable growth for the geographical areas of the nine Local London Members.
- (b) Securing the long-term benefits for the functions carried out and services provided by the Local London Members, howsoever provided including collectively, individually or in partnership with others.
- (c) Giving strategic and operational coherence to the collaborative work of the Local London Members in relation to securing local benefits.
- (d) Establishing and facilitating the implementation of a programme for the Local London Members which ensures local benefit and sustainable legacy.
- (e) Pooling and sharing costs arising out of this Agreement equally amongst the Local London Members in order for a collaborative programme to be developed and implemented; and
- (f) Such other objectives as the Local London Members jointly agree are conducive to the joint working arrangements as delegated under this Agreement.

4.4 The functions of the LLPP are:

- (i) To discharge executive functions that relate to joint activities or areas of common concern in relation to growth and opportunities for devolution in the sub-region.
- (ii) To collaborate on and coordinate a range of activities and opportunities that arise through greater devolution of powers from central government.
- (iii) To approve the annual business plan.
- (iv) To provide strategic management and oversight of:
  - a) The Annual Budget;

- b) External funding programmes; and
  - c) All other financial resources allocated to the LLPP.
- (v) To secure local benefits and sustainable growth for the geographical areas of the Local London Members.
  - (vi) To secure the long-term benefits for the functions carried out and services undertaken by the Local London Members collectively, individually or in partnership with others.
  - (vii) To provide strategic and operational coherence to the collaborative work of Local London Members in relation to securing local benefits.
  - (viii) To promote and facilitate joint bidding for funding, training and employment programmes to maximise the benefit for Local London Members.
  - (ix) To establish and facilitate the implementation of a programme for Local London Members which ensures local benefits and sustainable long term growth.
  - (x) To receive reports from the Director of Local London on the delivery of the LLPP as required by the Local London Members or the LLPP Joint Committee from time to time.

## **Part 2 - The Articles**

### **Chapter 15 - Outside Bodies**

#### **1. Introduction**

- 1.1 Both the Assembly and the Cabinet have the powers to appoint Members, Officers and others to serve on outside bodies in a variety of capacities.
- 1.2 Broadly speaking, there are three circumstances in which a Member or an Officer might attend an outside body:
  - (a) to manage or play a direct part in the affairs of that body, for example as a trustee or as a member of a management Committee or Board (“manager/trustee”)
  - (b) to offer advice and information on behalf of the Council, for example on Council policy (“adviser”)
  - (c) to observe, perhaps participating in discussion, but taking no part in decision-making or management (“observer”).
- 1.3 In some circumstances, the Council can indemnify both Members and Officers acting responsibly where they attend outside bodies with the approval of the Council. This would not apply to criminal acts or other wrong-doing, recklessness or defamation or where the individual was acting outside the statutory powers of the Council.

#### **2. Types of Representation**

- 2.1 In some cases, the persons appointed will be Council representatives, i.e., they will be expected to represent the Council’s views at meetings and look after the Council’s interests.
- 2.2 On other bodies, Members will be nominees i.e. their main responsibility will be to the organisation to which they have been appointed.
- 2.3 In some cases, there will be a link between the activities of the organisation and those of the Council. In such cases, the Member’s knowledge of Council affairs will be useful but the affairs of the outside body must take priority when the Member is acting as a member of that body.

#### **Manager/Trustees**

- 2.4 By and large, the Member or Officer appointed to an outside body as a manager or trustee owes their duty to that body and not to the Council. Often, the body concerned will be a registered charity or perhaps a company and will have obligations to the Charity Commission and/or under company law. Managers, trustees and Board Members will have personal liabilities to ensure that the body acts lawfully and within its terms of reference.
- 2.5 Other than making the appointment or as a financial contributor, the Council will usually have no legal or other obligations towards an outside body. The body is responsible for its own legal and professional advice and for taking out

its own insurances. In particular, any Member or Officer appointed to such a body should always satisfy themselves that the body carries the necessary insurance cover and that they will be appropriately indemnified in respect of claims. Such cover is unlikely to apply where a person has acted criminally, with improper motive or recklessly.

- 2.6 It follows that the Council will not (and is not able to) indemnify any of its appointees to an outside body where the individual is not exercising a function of the Council and is:
- (a) a voting Member of a management Committee
  - (b) a trustee
  - (c) a company director.
- 2.7 It is likely that the only circumstances in which the Council can indemnify its appointees would be to a body set up solely in pursuance of the Council's statutory powers, the terms of reference of which were laid down by the Council; for example some sort of Joint Committee, partnership or working party. If in doubt, the Council's Monitoring Officer can advise on whether or not an individual is covered in a particular situation.

### **Advisers and Observers**

- 2.8 The Council will indemnify those Members or Officers, appointed as an observer or in an advisory capacity, to attend a body set up solely in connection with the Council's functions or in a statutory capacity.
- 2.9 The appointees should act within the scope of their authority. Members should always consider the need to take professional advice before acting as an adviser, or offering advice, to an outside body, as the indemnity will not apply to a Member acting independently of Officer advice.

### **3. Conflicts of Interest**

- 3.1 In carrying out their role, Members and Officers act both as individuals and as representatives of the Council.
- (a) This entails:
    - (i) acting according to the Rules, Constitution and framework set by the outside body;
    - (ii) making independent and personal judgements in line with their duty of care to the outside body;
    - (iii) reporting back to the Council or relevant panel etc.;
    - (iv) behaving ethically and following as far as applicable the relevant Code of Conduct;
    - (v) taking an active and informed role in the management of the outside body's affairs;

- (b) It does not entail:
  - (i) representing the political party to which Councillors owe their political loyalty, or the Council by which the Officer is employed;
  - (ii) avoiding taking part in the outside body's discussions and decisions;
  - (iii) looking at things simply from the Council's perspective;
  - (iv) being there in name only and merely turning up to meetings.
- 3.2 Both Members and Officers may be asked to attend an outside body in order to protect the Council's interests and report back as appropriate. In the past, the Authority may for that reason have appointed a manager or trustee. If so, there is a clear conflict of interest between the obligations of the appointee to the Council and the obligations to the body to which the individual has been appointed.
- 3.3 In those circumstances, the appointee should take advice from the Monitoring Officer and, if necessary, a decision can be taken to change the nature of the appointment (e.g. from a manager to an observer). For as long as this situation continues, however, the appointee's priority must be to perform their obligations as a manager/trustee, as outlined above.
- 3.4 Where a person is appointed, whether as a manager or trustee or otherwise, to an outside body, they should consider whether the Council's Code of Conduct or other protocol applies when the business of that outside body comes before the Council.

## **Appendix A**

### **A Guide to the Law for Councillors and Officers on Outside Bodies**

#### **1. Introduction**

- 1.1 This advice is for Councillors and Officers who represent the Council on organisations outside the Council, whether as a company director, the trustee of a charity or a representative on a management Committee. It simply sets out some of the most important responsibilities. It is not meant to be a comprehensive guide. If councillors or officers have queries then the Monitoring Officer will advise.

#### **2. General**

- 2.1 There are some general provisions which apply to Councillors and Officers who act in the role of company director, trustee or member of an incorporated body, such as the Committee of management of an unincorporated voluntary organisation.
- 2.2 Councillors are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and officers may have a commitment to representing the Council on the outside organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or officer is taking part in an outside organisation in a representative capacity, he/she must declare that fact to the organisation. There will be a fine line to tread between his/her duty to the organisation and to the Council.

#### **Compliance with the Code on the outside body**

- 2.3 The Code of Conduct requires Councillors acting as the Council's representative on another body to comply with the Council's Code of Conduct, unless it conflicts with any legal obligations arising as a consequence of service on that body.
- 2.4 Some outside bodies may require the Councillor to treat the body's business as confidential. This may conflict with the idea of assisting the public accountability of the body (but accountability may be through some channel other than the Council), but the Councillor will be bound by that confidentiality.

#### **Consultative or advisory bodies**

- 2.5 A Councillors could be appointed to an external committee which advises the Council on various issues. Difficulties have arisen where that Councillors champions a position taken by the external committee and a challenge has succeeded on the grounds of bias and of a closed mind.

#### **Application of the Code of Conduct**

- 2.6 Under the Code a Councillor must declare in his/her Register of Interests membership or position of control or management in any other body to which he/she has been appointed or nominated by the Council. A Councillor will, therefore, have a personal interest in any business considered by the Council

affecting that body. If the interest is personal and arises solely from the membership of, or position of control or management on that body, a Councillor need only declare the interests when speaking on the matter and may remain in the meeting and vote.

- 2.7 If the interest is of a disclosable pecuniary nature, a Councillor must declare it and may only speak at the meeting after being granted a dispensation to speak in accordance with the Code of Conduct. A Councillor must then leave the meeting unless the dispensation allows them to remain and cannot vote on the matter unless with a grant of a dispensation in accordance with the Code of Conduct.
- 2.8 If a Councillor does not have a disclosable pecuniary interest, he/she may stay, speak on the item and vote.

### **Predisposition**

- 2.9 It is not a problem for Councillors to be predisposed. Predisposition is where a councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the Council meeting.
- 2.10 This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.

### **Predetermination or bias**

- 2.11 Predetermination or bias can lead to problems. It is where a Councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.
- 2.12 Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.
- 2.13 Rarely will membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a Councillor is involved in making.
- 2.14 There is an important difference between those Councillors who are involved in making a decision and those Councillors who are seeking to influence it. This is because Councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.
- 2.15 When considering whether there is an appearance of predetermination or bias, Councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the Councillor had predetermined the issue or was biased?

- 2.16 However, when applying this test, they should remember that it is legitimate for a Councillor to be predisposed towards a particular outcome on the basis of their support of a general policy. This is as long as they are prepared to be open-minded and consider the arguments and points made about the specific issue under consideration.
- 2.17 Predetermination or bias may arise:
- (a) Where the Councillor has a close connection to someone affected by the decision
  - (b) Where the Councillor has allowed an improper involvement of someone with an interest in the outcome
  - (c) Prior involvement such as hearing an appeal from their own decision
  - (d) Comments made prior to decision which suggest that the Councillor has already made up their mind.
- 2.18 The Councillor or officer, in acting as a director/trustee or Member of a management Committee of an organisation, must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or officer in breach of the duty to the organisation. It is permissible to take account of the Council's wishes but not to vote simply in accordance with them.
- 2.19 The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.
- 2.20 Councillors and officers must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

### **3. Companies**

- 3.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.
- 3.2 Companies limited by shares are those which have a share capital (e.g. 1000 shares of £1 each). Each Member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each Member agrees that in the event of the company being wound up, they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector, particularly where charitable status is sought.
- 3.3 The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's

Articles of Association (the Rules each company has to govern its internal management). Sometimes even though a company has been incorporated, the directors may be referred to as Members of the Committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

### **Directors' Duties**

- 3.4 A director is an agent of the company. His/her prime duties are as follows:-
- (a) A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the Council Taxpayers of Barking and Dagenham.
  - (b) A general duty of care and skill to the company. So long as the company remains solvent, a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary. But note that if the company become insolvent, the Court may expect that the director brings an appropriate level of skill, competence and experience to the job.
  - (c) Like a Councillor in respect of Council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and treads a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with the Council mandate. To do so would be a breach of duty.
  - (d) No conflict of interests is allowed. There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the only proper way for the conflict to be resolved is for the Councillor or Officer to resign either from the company or from the Council.
  - (e) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.
  - (f) Directors must ensure compliance with the Companies Acts in relation to keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director. They must also ensure compliance with other legislation, e.g. health and safety, if the company employs staff or employs contractors.

## **Directors' Liabilities**

- 3.5 The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear.
- 3.6 A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). Those directors knowingly causing the company to act beyond the activities set out in the Memorandum will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.
- 3.7 A director may also be liable for breach of trust if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- 3.8 In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes a personal profit from his/her position as director, then the director may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- 3.9 If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However, if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- 3.10 If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position, he/she could be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.
- 3.11 A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.
- 3.12 All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company.
- 3.13 A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors

would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.

- 3.14 Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

### **Local Authorities (Companies) Order 1995 (as amended)**

- 3.15 This Order, made under the Secretary of State's powers contained in Part V, Local Government and Housing Act 1989, sets out Rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of Rules apply. [Note: Part V has been repealed; its coming into effect is awaited. This section will be reviewed as soon as the repeal is effective].
- 3.16 "Regulated companies" are so defined if they are controlled or influenced by the local authority. "Influenced companies", under the effective control of the local authority, will be subject to capital finance regime and special propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to or in fact does exercise a dominant influence over the company in question.
- 3.17 The original concept of controlled, influenced and minority interests in companies were introduced by the 1989 Act. "Influenced" means at least 20% local authority interest plus a business relationship with the company accounting for over 50% of the company's turnover and/or the company is located on local authority land leased or sold for less than best consideration. "Controlled" means over 50% local authority interests, and "minority" less than 20% interest. The concept in the 1989 Act stands, but the Order introduces the term "regulated".
- 3.18 Councillors or Officers who are directors of outside companies to which they have been nominated by the Council are under the following obligations:
- (a) (Councillors only) that the remuneration they receive from the company should not exceed that received from the Authority, and should be declared
  - (b) (Officers only) that they shall not receive any fee or reward other than their Council salary, unless so agreed with the Council
  - (c) to give information to Councillors about their activities as required by the local authority (save for confidential information), and
  - (d) to cease to be a director immediately upon disqualification as a Councillor or termination of their employment by the Council.

## **4. Charities**

- 4.1 To be a charity, an organisation must operate for a charitable purpose. There are four charitable purposes:
- (a) the relief of poverty and human suffering

- (b) the advancement of education
  - (c) the advancement of religion
  - (d) another purpose for the benefit of the community
- 4.2 It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.
- 4.3 To register as a charity the organisation must submit its completed Constitution (usually Certificate of Incorporation and the Memorandum and Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable, it will be registered as such.
- 4.4 Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee. Trustees of a charity retain personal liability, and can only delegate to the extent that the Constitution authorises them so to do. There are a number of useful publications produced by the Charity Commission available on [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).

#### **Trustees' Duties**

- 4.5 Trustees must take care to act in accordance with the Constitution and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, and should note the particular requirements of the Acts in respect of land transactions.
- 4.6 Trustees must not make a private profit from their position. They cannot receive remuneration without the sanction of the Charity Commission. They must also perform their duty with the standard of care which an ordinary, prudent businessperson would show. Higher standards are required of professionals and in relation to investment matters.
- 4.7 Charitable trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent.
- 4.8 If charitable income exceeds £10,000, the letters, adverts, cheques, etc., must bear a statement that the organisation is a registered charity.
- 4.9 Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax and land matters).

#### **Trustees' Personal Liability**

- 4.10 If in doubt, always consult the Charity Commissioners. A trustee who does so can avoid personal liability for breach of trust if he/she acts in accordance with the advice given.
- 4.11 Generally though, a trustee incurs personal liability if he/she:

- (a) acts outside the scope of the trust deed
  - (b) falls below the required standard of care
  - (c) acts otherwise than in the best interests of the charity, in a way which causes loss to the charity fund
  - (d) makes a personal profit from the trust assets
- 4.12 In such circumstances the trustee will incur personal liability for losses incurred.
- 4.13 Trustees of a trust can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. The Constitution will normally provide for trustees to be given an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable for their own acts and defaults once they have retired. If they have entered into any ongoing contracts on behalf of the trust, they should seek an indemnity from their successors. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course, but will be personally liable if they commit a breach of trust.
- 4.14 Trustees may be liable to fines if they do not comply with the duty to make returns, etc.

## **5. Committees of Management**

- 5.1 Groups which are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their Members. The Rules governing the Members' duties and liability will be set out in a Constitution, which is simply an agreement between the Members as to how the organisation will operate. Usually the Constitution will provide for a management Committee to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and may register as a charity.
- 5.2 Property will have to be held by individuals as the organisation has no existence of its own.

### **Duties**

- 5.3 Broadly, Management Committee Members must act within the Constitution, and must take reasonable care in exercising their powers.

### **Liabilities**

- 5.4 Generally, the Management Committee Members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee Members are personally liable for the shortfall.

- 5.5 If one person is appointed by the Constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the Members who have joint liability for the agent's actions.
- 5.6 Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute, e.g. the payment of employees' tax, etc.

## **6. Indemnities**

- 6.1 Councillors and Officers who are directors cannot be indemnified by the company against liability arising out of negligence, default or breach of duty or trust. However, the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. Equally, in making the appointment, the Council can offer an indemnity against losses which the Councillor may suffer through acting conscientiously as a director. **But note that it is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, and default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.**
- 6.2 Under the Local Government Act 2000, it is now possible for the Council to provide indemnities for Councillors or Officers when appointing them to act as directors, and to buy insurance to cover any losses which they may suffer through acting conscientiously as a director. However, the first recourse would be to ensure that the company had provided such insurance.
- 6.3 In the case of Councillors and Officers appointed by the Council to be a Trustee of a charity, an indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud, etc. There will no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners first, unless the trust deed allows it.
- 6.4 Councillors and Officers appointed by the Council to Committees of Management ("unincorporated associations"), will be entitled to an indemnity if they act in accordance with the Constitution of the Committee of Management and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium, it must be permitted by the Constitution of the Committee of Management.
- 6.5 The Council will indemnify all Members and officers against any loss or damage suffered by the Member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council.

## **Part 2 – The Articles**

### **Chapter 16 – Decision Making**

#### **1. Responsibility for decision making**

- 1.1 Section 13 of the Local Government Act 2000 provides that all the functions of the Council shall be functions of the Executive (Cabinet) except in so far as they are reserved to the Council by regulations made under the Act (or by subsequent or other legislation). The reservation of functions to the Council is made under The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 1.2 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ('the Regulations') define those functions:
  - a) which must not be discharged by the Cabinet;
  - b) which may be the responsibility of the Cabinet;
  - c) which may not be the sole responsibility of the Cabinet; and
  - d) circumstances in which functions which would otherwise be functions of the Cabinet fall to be discharged other than by the Cabinet.
- 1.3 The Council therefore only has discretion to define the split of functions between the Council ("Council functions") and the Cabinet ("Executive functions") in respect of those which fall within categories (b) and (c) above.
- 1.4 The Council may make arrangements under section 101 of the Local Government Act 1972 for the discharge of any of its functions by:
  - (i) a Committee;
  - (ii) a Sub-Committee;
  - (iii) a Joint Committee;
  - (iv) another local authority;
  - (v) an Officer.

#### **2. Principles of decision-making**

- 2.1 All decisions of the Council are made in accordance with the following principles:
  - a) Proportionality (ie. the action must be proportionate to the desired outcome);
  - b) Due consultation and the taking and paying due regard to professional advice from officers, in particular any advice given by the Monitoring Officer and/or Chief Financial Officer;
  - c) Respect for human rights;

- d) A presumption in favour of openness;
- e) Clarity of aims and desired outcomes (i.e. link between corporate strategy and implementation);
- f) Consistent with the Council's Budget and Policy Framework, Contract, Financial and other Rules, legislative requirements and any other requirements set out in this Constitution.

### **3. Types of Decision**

#### **Decisions reserved to the Assembly**

- 3.1 Decisions relating to the functions listed in Part 2, Chapter 4 will be made by the Assembly and not delegated.

#### **Key Decisions**

- 3.2 A "Key Decision" means an executive decision which is likely to:
- (a) involve expenditure or savings of £200,000 or above - this includes proposals phased over more than one year and match/grant aided funding; and/or
  - (b) have a significant impact on the local community in one or more wards.
- 3.3 The Council must publish a Forward Plan at least 28 days before the start of the period covered of Key Decisions to be taken. A key purpose of the Forward Plan is to give the community an opportunity to comment on a proposal before a decision is taken. Further details about the Forward Plan are included in Part 2, Chapter 17.
- 3.4 A Key Decision can only be taken if it has been included in the Forward Plan, except in cases of genuine urgency where the General Exception or Special Urgency provisions have been applied.
- 3.5 Any comments received during consultation on a Key Decision have to be considered by the body or person taking the decision. Similarly, any comments received have to be reflected in any report about the decision submitted to the body or person taking the decision.
- 3.5 Within two working days of a Key Decision being taken a written statement, in the form of a Decision Notice, shall be published containing details of the decision made.
- 3.7 Key decisions are subject to "Call-In", the process for which is detailed in Part 2, Chapter 8 of the Constitution.

#### **Non-key executive decisions**

- 3.8 Other non-key executive decisions shall be taken by the relevant committee (the Cabinet or Health and Wellbeing Board) or officer in accordance with the responsibilities for functions as set out in this Constitution. Where non-key executive decisions are to be taken by the Cabinet or Health and Wellbeing Board, these shall also be included in the Forward Plan wherever possible.

### **Recording (publishing) of executive decisions by officers in accordance with The Openness of Local Government Bodies Regulations 2014**

- 3.9 The Council shall publish details of all executive decisions taken by officers above the threshold of £200,000, in accordance with The Openness of Local Government Bodies Regulations 2014.

#### **Other decisions**

- 3.10 The Assembly has appointed a number of Committees to carry out certain prescribed functions that cannot be undertaken by the Cabinet. These Committees and their responsibilities are described in Part 2 of the Constitution.

#### **Scrutiny of decisions**

- 3.11 The Assembly has established an Overview and Scrutiny Committee (and a Health Scrutiny Committee in relation to health-related matters) to scrutinise key decisions taken by the Cabinet.

#### **Implementing Decisions**

- 3.12 Subject to there being no Call-In, all key decisions shall stand and can be acted upon once the agreed time period for Call-In has elapsed.
- 3.13 All other decisions can be acted upon immediately, subject to any restriction placed at the time or any statutory requirements.

### **4. Urgent Action**

- 4.1 In exceptional circumstances and where delay will be prejudicial to the interests of the Council, the Chief Executive or his/her nominated deputy is authorised to take urgent action which is not otherwise delegated to him/her, subject to ensuring:
- (i) that the actions are set out in a detailed report which has been cleared by the Chief Financial Officer and the Monitoring Officer;
  - (ii) compliance with the Constitution and, in particular, relevant rules where appropriate; and
  - (iii) that the action taken and the full details are subsequently reported to the next available meeting of the relevant committee.
- 4.2 Prior to the Chief Executive taking the action, the relevant Chief Officer / Director will be required to liaise with Governance Services to ensure that all aspects of the urgent action procedures are met. In relation to matters under the remit of the Cabinet, this should include the relevant Chief Officer / Director contacting in advance the Chair of the Cabinet and the Chair of the relevant Scrutiny Committee to advise them of the reasons for taking the urgent action. Where, for any reason, it is not possible to contact the said Members, the Deputy Chair of the Cabinet and the Deputy Chair of the relevant Scrutiny Committee will be contacted. For matters under the remit of other committees, the relevant Chief Officer / Director should contact in

advance the Chair of the committee to advise him/her of the reasons for taking the urgent action.

- 4.3 Once the urgent action has been taken, written confirmation will be sent by the Chief Executive to the Chair and, in the case of Cabinet matters, also to the Chair of the relevant Scrutiny Committee advising of the action and providing a copy of the report.
- 4.4 The Call-In procedure will not apply to any Cabinet decision taken under these Urgent Action provisions.

## **Part 2 – The Articles**

### **Chapter 17 – Access to Information**

#### **1. Scope**

- 1.1 These rules apply to all meetings of the Council established under Section 101 of the Local Government Act 1972, Sections 11, 21 or 53 of the Local Government Act 2000 and Section 194 of the Health and Social Care Act 2012. This includes the Assembly, Ceremonial Council, Cabinet, Health and Wellbeing Board, Scrutiny Committees and Regulatory Committees / Boards.

#### **2. Additional Rights and Information**

- 2.1 These Rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

#### **3. Rights to Attend Meetings**

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

#### **4. Notice of Meetings**

- 4.1 The Council will give at least five clear days notice of any meeting. For the purposes of calculating the notice period, the day on which the notice is given and the day of the meeting shall be disregarded.

#### **5. Access to Agenda and Reports before the Meeting**

- 5.1 The Council will make available for inspection copies of agendas and reports that are open to the public. These will be available at the Council's offices and on its website at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item is added.
- 5.2 Where a report is prepared after the notice of the meeting has been sent out, it shall be made available to the public as soon as it is completed and made available to Councillors.

#### **6. Supply of Copies**

- 6.1 On request, the Council will supply copies of:
- (a) any agenda and reports which are open to public inspection;
  - (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
  - (c) if the Monitoring Officer thinks fit, any other documents supplied to Councillors in connection with an item.

to any person on payment of a charge for postage and any other reasonable costs (if appropriate).

## **7. Access to Minutes and Reports after Meetings**

- 7.1 The Council will make available copies of the following documents for six years after a meeting:
- (a) the minutes of the meeting or record of decisions taken, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
  - (b) a summary of any proceedings not open to the public where the minutes open to inspection do not provide a reasonably fair coherent record;
  - (c) the agenda for the meeting; and
  - (d) reports relating to items where the meeting was open to the public.

## **8. Background Papers**

- 8.1 Every report will list those documents relating to the subject matter of the report, which, in the author's opinion:
- (a) disclose any facts or matters upon which the report, or part of it, was based; and
  - (b) have been relied upon to a material extent in preparing the report.
- 8.2 This will not include published works or those which disclose exempt or confidential information and, in respect of Cabinet reports, any advice of a political adviser.
- 8.3 Background papers are available for public inspection for four years after the date of the meeting. A copy of each background paper will be available for inspection at the Council's offices and on the Council's website.

## **9. Summary of Public's Rights**

- 9.1 In addition to the information contained in this chapter, a summary of the public's rights to attend meetings and to inspect and copy documents is set out in Part 1, paragraph 6 of the Constitution.

## **10. Exclusion of Access by the Public to Meetings**

- 10.1 Section 100A of the Local Government Act 1972 relates to the public's rights to attend council meetings and includes provisions whereby the public must or may be excluded from a meeting where either confidential or exempt information is to be considered.

### **Confidential Information**

- 10.2 The public has (legally) to be excluded from meetings whenever it is likely that confidential information will be disclosed.

- 10.3 Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot, by Court Order, be publicly disclosed

### **Exempt Information**

- 10.4 The public may be excluded from meetings whenever it is likely that exempt information will be disclosed.
- 10.5 Exempt information means information falling within one or more of the ten categories set out in **Appendix 1** to this Chapter, in accordance with Part I of Schedule 12A to the Local Government Act 1972 (as amended by the Local Government (Access to Information) (Variation) Order 2006.
- 10.6 Information is not exempt 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.
- 10.7 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 that Article.

## **11. Exclusion of Access by the Public to Reports**

- 11.1 If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his/her opinion relate to items during which, in accordance with above, the meeting is likely not to be open to the public. Such reports will be marked "Not for Publication" and explain the category of information likely to be disclosed.

## **12. Procedure before taking Key Decisions**

- 12.1 Subject to paragraph 14 (General Exception) and paragraph 15 (Special Urgency), a key decision may not be taken unless:-
- (a) a Forward Plan has been published in connection with the matter in question; and
  - (b) at least 28 clear days have elapsed since the publication of the Forward Plan; and
  - (c) notice of the meeting has been given in accordance with paragraph 4 above.

## **13. The Forward Plan**

- 13.1 The Forward Plan will contain details of all key decisions due to be taken in the months ahead by the Cabinet, the Health and Wellbeing Board or such other body or individual responsible for the discharge of an executive function.
- 13.2 The Forward Plan will be published at least 28 clear days before the date that a key decision is to be taken and will be published on the Council's website.

- 13.3 Wherever possible, the Forward Plan will also include available details of non-key decisions that will be taken by the Cabinet and the Health and Wellbeing Board during the period covered.
- 13.3 The Forward Plan will, as far as possible, describe the following particulars for each item, together with information on how a person can make representations and the deadline for doing so:
- (a) the subject matter;
  - (b) the name of the Member meeting or Chief Officer who will be taking the decision;
  - (c) the estimated date when a decision will be taken;
  - (d) any groups/persons who will be consulted before taking the decision;
  - (e) how any such consultations will be carried out;
  - (f) a list of the relevant documents which will be submitted to the decision taker for consideration in relation to the matter;
  - (g) whether all or part of the report is expected to contain confidential or exempt information which will prevent it being made public, and the reason why with regard to paragraph 10 above. This is to provide members of the public the opportunity to make representations against the intention of a matter being considered in private.
- 13.4 Where any matter involves the consideration of confidential or exempt information or the advice of a political adviser or assistant, a summary of the matter shall be included in the Forward Plan but the exempt or confidential information or the advice, as the case may be, need not be included.

#### **14. General Exception**

- 14.1 If a key matter has not been included in the Forward Plan, then subject to paragraph 15 (Special Urgency), the decision may still be taken if:-
- (a) it must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan;
  - (b) the Monitoring Officer has given the Chair of the relevant Scrutiny Committee, or in his/her absence the Deputy Chair, written notice of the matter to which the decision is to be made, including reasons why compliance with the normal requirements is not practical;
  - (c) copies of the notice are made available for public inspection; and
  - (d) at least five clear days have elapsed since (b) and (c) have been complied with.

## **15. Special Urgency**

- 15.1 If by virtue of the date by which a decision must be taken paragraph 14 (General Exception) cannot be followed, then the decision can only be taken if the Chair of the relevant Scrutiny Committee has given his/her agreement that the matter is very urgent and cannot be reasonably deferred. In the absence of the Chair, the Deputy Chair shall act and in the absence of both the agreement of the Chair of the Assembly shall be obtained.

## **16. Report to the Assembly**

- 16.1 If any Scrutiny Committee agrees that a key decision which falls within its remit has been taken which was not:

- (a) included in the Forward Plan;
- (b) the subject of the General Exception procedure; or
- (c) the subject of the Special Urgency procedure;

then that Scrutiny Committee may require the Cabinet to submit a report to the Assembly within such reasonable time as the Scrutiny Committee specifies. The Chief Executive may also require such a report on behalf of the Scrutiny Committee when so requested by the Chair or in their absence, their Deputy. Alternatively, the requirement may be raised by a resolution passed at a meeting of the Scrutiny Committee.

- 16.2 The Cabinet will prepare a report for submission to the next available meeting of the Assembly. However, if the next meeting of the Assembly is within five working days of receipt of a written notice or the resolution of the relevant Scrutiny Committee, then the report may be submitted to the subsequent Assembly meeting. The report to Assembly will set out the particulars of the decision, who was responsible for making the decision and, if the opinion was that it was not a key decision, the reasons for that opinion.

## **17. Additional Rights of Access for Members**

- 17.1 Councillors are entitled on a “need to know” basis to receive documents and information on request where it is clear that the Councillor concerned requires the documentation or information because of their position within the Council or by virtue of their membership of a committee or sub-committee.
- 17.2 In addition, Councillors have a separate statutory right to inspect documents relating to any business to be transacted at a meeting of the Cabinet within 28 days of the meeting and provided that the documents are within the possession of the Cabinet.
- 17.3 Documents and information shall be made available on request by officers to Councillors unless:
- a) there is a clearly and properly justifiable reason for declining access;
  - b) the Councillor in question cannot establish a legal right to the information or documentation;

- c) the document contains the advice of a political adviser;
  - d) the document is in draft form.
- 17.4 Councillors will only be entitled to receive such information and documents under their statutory right if it is not exempt or confidential in accordance with the provisions of the Access to Information legislation. However, they may nevertheless be entitled under their common law “need to know” rights.
- 17.5 If information is requested which is not readily available, or will require significant resources to produce, officers are advised to seek guidance from the Monitoring Officer before providing the information.
- 17.6 These rights of a Councillor are additional to any other rights he/she may have.

## APPENDIX 1

### Exempt Information

Category	Condition
1. Information relating to any individual	Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information that is likely to reveal the identity of an individual	Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	<p>1. Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>2. Information is not exempt if it is required to be registered under:</p> <ul style="list-style-type: none"> <li>• Companies Act 1985;</li> <li>• Friendly Societies Acts 1974 and 1992;</li> <li>• Industrial and Provident Societies Acts 1965 to 1978;</li> <li>• Building Societies Act 1986;</li> <li>• Charities Act 1993.</li> </ul> <p>3. The rights of access by Members are contained in section 100A to K of the 1972 Act</p>
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the Authority or a Minister of the Crown and employees of, or Officer-holders under the Authority	Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in

<b>Category</b>	<b>Condition</b>
	disclosing the information
6. Information that reveals that the authority proposes: a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b) to make an order or direction under any enactment.	Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

## **Part 2 – The Articles**

### **Chapter 18 – Budget and Policy Framework**

#### **1. The Framework for Cabinet decisions**

- 1.1 The Assembly will be responsible for the adoption of the Council’s Budget and Policy Framework. Once a Budget or a Policy Framework is in place, it will be the responsibility of the Cabinet to implement it.

#### **2. Process for Developing the Framework**

- 2.1 The Assembly may, from time to time, review which plans and strategies shall comprise the Policy Framework (as listed in Part 2, Chapter 4) and may determine that:
- (i) it is minded to remove a plan or strategy from the Policy Framework;
  - (ii) an existing plan or strategy which forms part of the Policy Framework shall be reviewed;
  - (iii) that an additional plan or strategy shall be included in the Policy Framework.
- 2.2 In the case of (i) above, the Assembly shall consult the Cabinet before taking a decision whether to remove a plan or strategy from the Policy Framework. In the case of (ii) and (iii) above, the Assembly shall ask the Cabinet to prepare and recommend a draft policy or strategy. The Cabinet may also, at its own discretion, review an existing plan or strategy and submit it to the Assembly.
- 2.3 The Assembly may give instructions to the Cabinet in relation to any matters which the Assembly would wish the Cabinet to take into account as part of the preparations of a draft plan or strategy. The Assembly may also give instructions to the Cabinet in relation to any consultation with a Scrutiny Committee, other committees, partners, groups, individuals etc. which the Assembly would wish the Cabinet to undertake as part of the preparations of a draft plan or strategy. In the absence of any instructions from the Assembly, the Cabinet may determine its own consultation arrangements and may undertake additional consultation to any prescribed by the Assembly.
- 2.4 Where the Cabinet’s initial proposals have been referred to the relevant Scrutiny Committee for further advice and consideration, the Scrutiny Committee may canvass the views of local stakeholders if it considers it appropriate in accordance with the matter under consideration and having particular regard not to duplicate any consultation carried out by the Cabinet.
- 2.5 The Scrutiny Committee shall report to the Cabinet on the outcome of its deliberations. The Scrutiny Committee shall have 20 working days to respond to the initial proposals of the Cabinet unless the Cabinet considers that there are special factors that make this timescale inappropriate. If it does, it will inform the Scrutiny Committee of the time for response when the proposals are referred to it.

- 2.6 Having considered the report of the relevant Scrutiny Committee the Cabinet, if it considers it appropriate, may amend its proposals before submitting them to the Assembly for consideration. It will also report to the Assembly on how it has taken into account any recommendations from the Scrutiny Committee, as well as any other representations made to the Cabinet during consultation on the matter.
- 2.7 The Assembly will consider the proposals of the Cabinet and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place. In considering the matter, the Assembly shall have before it the Cabinet's proposals and any report from the relevant Scrutiny Committee.
- 2.8 The notice of the Assembly's decision shall state either that the decision shall be effective immediately (if the Assembly accepts the Cabinet's proposals without amendment) or (if the Cabinet's proposals are not accepted without amendment), that the Assembly's decision will become effective on the expiry of at least 5 working days after the publication of the notice of decision, unless the Leader objects to it in that period.

**Conflict Resolution:**

- 2.9 The Leader must have a minimum of 5 working days in which to object to a decision of the Assembly which appears to be contrary to the recommendations of the Cabinet in connection with the setting of the Budget or any specific proposals or strategies, before the decision of the Assembly takes effect. The objection must be made in writing to the Chief Executive prior to the date upon which the decision is to be effective, stating the reasons for the objection.
- 2.10 If the Leader registers a formal objection there must be a meeting of the Assembly to reconsider the decision in dispute and the decision shall not be effective pending that meeting. The Assembly must consider the grounds for objection within 14 working days of the receipt of the Leader's written objection. At that meeting, the decision of the Assembly shall be reconsidered in the light of the Leader's objection.
- 2.11 The Assembly may insist that its decision is to stand. This confirmation will be by formal resolution passed by a simple majority. The decision shall be implemented immediately.

**3. Decisions outside the Budget or Policy Framework**

- 3.1 The Cabinet or any other body or individual discharging executive 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 Council, then that decision shall be a "departure decision" and may only be taken by the Assembly, subject to paragraph 4 below.
- 3.2 If the Cabinet or any other body or individual discharging executive functions want to make such a departure decision, they shall take advice from the

Monitoring Officer and/or the Chief Financial Officer as appropriate depending on 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 those officers is that the decision would not be in line with the existing Budget and/or Policy Framework, then the decision may take an “in principle” decision but the matter must be referred to the Assembly for decision, unless the decision is a matter of urgency in which case the provisions in paragraph 4 below shall apply.

#### **4. Urgent decisions outside the budget or policy framework**

- 4.1 The Cabinet or any other body or individual discharging executive 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 the Assembly if the decision is a matter of urgency. However, the decision may only be taken if:
- (i) it is not practical to convene a quorate meeting of the Assembly; and
  - (ii) the Chair of the relevant Scrutiny Committee agrees that the decision is a matter of urgency.
- 4.2 The reasons why it is not practical to convene a quorate meeting of the Assembly and the Chair of the relevant Scrutiny Committee’s consent to the decision being taken as a matter of urgency must be noted in the record of the decision. In the absence of the Chair of the relevant Scrutiny Committee the consent of the Deputy Chair will be sufficient.
- 4.3 Following the decision, the decision taker will provide a full report to the next available Assembly meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

#### **5. In-year changes to policy framework**

- 5.1 The responsibility for agreeing the Budget and Policy Framework lies with the Assembly, and decisions by the Cabinet or any other body or individual discharging executive functions must be in line with it. No changes to any policy and strategy which make up the Policy Framework may be made by those bodies or individuals except those changes:
- a) which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint;
  - b) necessary to ensure compliance with the law, ministerial direction or Government guidance;
  - c) in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Assembly following consultation, but where the existing policy document is silent on the matter under consideration.

## **6. Call-in decisions contrary to the Budget or Policy Framework**

- 6.1 Where a Scrutiny Committee is of the opinion that a Cabinet decision is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Council's Budget (thereby a "departure decision"), then it shall seek advice from the Monitoring Officer and/or Chief Financial Officer.
- 6.2 In respect of functions which are the responsibility of the Cabinet, the Monitoring Officer's report and/or Chief Financial Officer's report shall be to the Cabinet with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take and to prepare a report to the Assembly in the event that the Monitoring Officer / Chief Financial Officer conclude that the decision was a departure decision, and to the relevant Scrutiny Committee if the Monitoring Officer / Chief Financial Officer conclude that the decision was not a departure decision.
- 6.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer / Chief Financial Officer is that the decision is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget, the Scrutiny Committee may refer the matter to Assembly. Alternatively, the Monitoring Officer / Chief Financial Officer may refer the matter direct to the Assembly. In such cases, no further action will be taken in respect of the decision or its implementation until the Assembly has met and considered the matter. The Assembly shall meet within 10 working days and will receive a report of the decision or proposals and the advice of the Monitoring Officer / Chief Financial Officer. The Assembly may either:
- (i) endorse a decision or proposal of the Cabinet 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 Assembly be minuted and circulated to all Councillors in the normal way; or
  - (ii) amend the Council's Financial Rules or policy concerned to encompass the decision or proposal and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Assembly be minuted and circulated to all Councillors in the normal way; or
  - (iii) require the Cabinet to reconsider the matter in accordance with the advice of the Monitoring Officer and/or Chief Financial Officer, in cases where the Assembly 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.

## Part 2 – The Articles

### Chapter 19 – Officers

#### 1. Senior Management structure

##### General

- 1.1 The Council will engage such officers as it considers necessary to carry out its functions.
- 1.2 The Council will engage persons for the following posts, who will be designated chief officers:

<b>Post</b>	<b>Main areas of responsibility</b>
Acting Chief Executive (and Strategic Director, Law and Governance)	Overall responsibility for all corporate, policy, employment and operational matters.  Human Resources and Organisational Development.
Strategic Director, Children and Adults	Public Health and Wellbeing.  Adult Social Care; Adult Commissioning and Safeguarding; Mental Health.  Children’s Social Care and Complex Needs; Children’s Commissioning and Safeguarding; Schools and Education; Youth Services.  Disability Services and Care Leavers.
Strategic Director, Inclusive Growth	Regeneration; Housing and Assets Strategy; Capital Delivery.  Economic Development, Employment and Skills; Planning and Development Management.  Energy and Sustainability; Parks Commissioning.  Commercial Services and Corporate Procurement.  Culture and Heritage.
Strategic Director, Community Solutions	Community Engagement, Participation and Prevention; Community Cohesion and Equalities.  Customer Contact  Customer Collections and Welfare, including Council Tax, rent and other payment collection, debt recovery and customer support.
Strategic Director, My Place	Housing and Property Management, including Landlord and Leaseholder Services.  Public Realm, including Highways, Parks and Environment, Street Cleansing, Waste Collection

	and Recycling. Fleet Management.
Strategic Director, Finance and Investment	Corporate and Strategic Finance, Treasury Management, the Capital Programme. Investment and Acquisition Strategy. The Council’s Pension Fund. Corporate Assurance and Counter Fraud. Information Technology (IT); Data Protection and Freedom of Information.
Director of Strategy	Corporate Strategy. Insight and Innovation Services; Corporate Performance and Programme Management. Corporate Communications, Campaigns and Events; Mayoral Support.
Chief Legal Officer (and Monitoring Officer)	Legal; Governance and Electoral Services. Community Safety; Enforcement and Regulatory Services; Civil Protection; Parking Services.

1.3 The Chief Officers form the Executive Management Team, along with other senior management as determined by the Chief Executive, and share responsibility for the proper governance and running of the Council and the delivery of the Council’s strategic framework across the priority areas of:

- Prevention, Independence & Resilience;
- Inclusive Growth;
- Participation and Engagement
- Well-Run Organisation.

1.4 The Chief Executive will determine and publicise via the Council’s website a description of the overall departmental structure of the Council.

## **2. Statutory Posts**

2.1 The Council currently designates the statutory posts as follows:

<b>Post</b>	<b>Designation</b>
Acting Chief Executive (and Strategic Director, Law and Governance)	Head of Paid Service
Strategic Director, Children and Adults	Director of Adult Social Services Director of Children’s Services
Chief Legal Officer	Monitoring Officer
Strategic Director, Finance and Investment	Chief Financial Officer (commonly referred to as “Section 151 Officer”)
Director of Public Health	Director of Public Health

## **3. Functions of the Head of Paid Service**

3.1 The key functions of the Head of Paid Service are as follows:

- a) Overall corporate management and operational responsibility (including overall management responsibility for all officers).
- b) Provide leadership and promote high standards of conduct throughout the Council and in all of its activities;
- c) Act as Proper Officer as required.
- d) Provision of professional advice to all parties in the decision-making process.
- e) Responsible for a system of record-keeping for all the Council's decisions and boards.
- f) Represent the Council on partnership and other external bodies (as required by statute or the Assembly).

3.2 The Head of Paid Service cannot be the Monitoring Officer or statutory Scrutiny Officer but may hold the post of Chief Financial Officer if a qualified accountant.

## **4. Functions of the Monitoring Officer**

4.1 The key functions of the Monitoring Officer are as follows:

- a) Maintain an up-to-date version of the Constitution and ensure that it is available to Councillors, staff and the public.

- b) After consulting with the Chief Executive and Chief Financial Officer where practicable, report to the Assembly in respect of a non-executive function or to the Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission has given rise to or would give rise to unlawfulness or if any decision or omission has given rise to maladministration, under sections 5 and 5A of the Local Government and Housing Act 1989. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
  - c) Contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee and in reporting allegations of failure to comply with the Councillors' Code of Conduct.
  - d) Arrange the conduct of investigations into matters referred and take such other actions as the Standards Committee may direct within its terms of reference.
  - e) Maintain the register of Members' interests.
  - f) Act as Proper Officer as required.
  - g) Advise, in conjunction with the Chief Financial Officer, whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.
  - h) Be responsible for providing advice on the scope of the powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework to all Councillors.
- 4.2 The Monitoring Officer cannot be the Chief Financial Officer, the Chief Executive or the statutory Scrutiny Officer.

## **5. Functions of the Chief Financial Officer**

5.1 The key functions of the Chief Financial Officer are as follows:

- a) Responsible for the administration of the financial affairs of the Council as required by section 151 of the Local Government Act 1972 or (so far as relevant) section 112 of the Local Government Finance Act 1988, including the provision of financial information both internally and externally as required.
- b) After consulting with the Head of Paid Service and the Monitoring Officer where practicable, report to the Assembly in respect of a non-executive function or to the Cabinet in relation to an executive function and the Council's external auditor if he / she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- c) Act as Proper Officer as required.
- d) Contribute to the corporate management of the Council, in particular through the provision of professional financial advice;

- e) provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget issues to all Councillors and support and advise Councillors and officers in their respective roles.
  - f) Advise, in conjunction with the Monitoring Officer, whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.
  - g) Provide appropriate financial information to the media, members of the public and the local community.
- 5.2 The Chief Financial Officer cannot be the Monitoring Officer or the statutory Scrutiny Officer.
- 6. Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Financial Officer**
- 6.1 The Council shall provide the Monitoring Officer and Chief Financial Officer with such officers, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.
- 7. Delegation to Officers**
- 7.1 The delegation of powers to Chief Officers is set out in Part 3 of this Constitution.
- 7.2 Each Chief Officer shall be responsible for maintaining an internal scheme of delegation.
- 8. Conduct**
- 8.1 Officers will comply with the Employee Code of Conduct and Councillor / Employee Relations' Protocol set out in Part 5, Chapters 4 and 5 respectively of this Constitution.
- 9. Appointment and dismissal of staff**
- 9.1 The appointment and dismissal of staff shall be governed by the provisions of the Officer Employment Procedure Rules contained in Part 4, Chapter 3 of this Constitution as supplemented, where appropriate, by the Council's personnel policies and procedures.

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## **Part 3**

# **Officer Scheme of Delegation**

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## **Part 3 – Officer Scheme of Delegation**

### **Chapter 1 – Functions which are Delegated to Officers**

This section sets out those functions which have been delegated to officers.

#### **1. Powers of delegation**

- 1.1 Non-executive functions are delegated to officers from the Assembly, Committees and Sub-Committees under section 101 of the Local Government Act 1972 and, in the case of licensing and gambling, under section 10 of the Licensing Act 2003 or section 154 of the Gambling Act 2005.
- 1.2 Executive functions are delegated to officers by the Leader or from the Cabinet under section 14 of the Local Government Act 2000.
- 1.3 Functions are delegated to the Director of Public Health under section 73A of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012.

#### **2. Basis of Delegation**

- 2.1 Where the Assembly, a Committee or Sub-Committee, the Leader or the Cabinet has delegated a function to an officer, the person or body making the delegation may, at any time, resume responsibility for the function either in respect of a particular matter or generally, and so may exercise the function despite the delegation.
- 2.2 An officer to whom a power is delegated may refer the matter to the Chief Executive, or to the person or body making the delegation, for their determination. It will be appropriate for the officer to refer a matter to:
  - (a) the Chief Executive where the determination of the matter raises issues of corporate priorities or the co-ordination of the discharge of various functions of the Authority;
  - (b) the person or body making the delegation where the determination of the matter is likely to be particularly controversial or raises issues of policy which it would be appropriate for Councillors to determine; or could, by its scale or complexity, expose the Council to major corporate risk which cannot be contained within Service Budgets.
- 2.3 In exercising any delegated powers, officers should ensure that decisions are consistent with Council policy, within approved spending limits, and in the best interests of residents and the Council as a whole. Relevant Councillors should be informed/consulted as appropriate depending on the nature and sensitivity of the decision.

#### **3. Conflicts of Interest**

- 3.1 Every officer is responsible for identifying whether he/she has any conflict of interest in any matter which is under consideration, actual or perceived, within the Authority, and for notifying the Authority (including under section 117 of the Local Government Act 1972).

- 3.2 Where an officer has a conflict of interest in any matter, he/she shall not participate in that matter in his/her capacity as an officer except with the prior approval of his/her line manager, the Monitoring Officer or the Chief Executive.
- 3.3 Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by the Monitoring Officer. Where the Monitoring Officer is unable to act the matter shall be discharged by the Deputy Monitoring Officer.
- 3.4 Where an Executive Management Team Director is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter him/herself or allocate the matter to another officer.
- 3.5 Where the Monitoring Officer is unable to act on a matter in his/her statutory capacity under section 5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Deputy Monitoring Officer.
- 3.6 Where the Monitoring Officer is unable to act on a matter in relation to Member conduct, the matter shall be discharged by the person appointed by the Monitoring Officer for this purpose under section 82A of the Local Government Act 2000.
- 3.7 Where any other officer is unable to act on a matter, that officer's line manager or the Chief Executive may arrange for another officer to discharge the matter.

#### **4. Context for the Exercise of Functions**

- 4.1 Except for matters reserved to the Assembly, to the Cabinet or to a Committee for decision, all other matters are delegated to the appropriate Chief Officer subject to the General Conditions and Limitations below and the Contract and Financial Rules. Each Chief Officer, in making decisions under this scheme, is required to do so within the internal scheme of management for their own directorate / service area. This will include appropriate monitoring arrangements and dissemination of information both internally and externally to the Council.

#### **General Conditions and Limitations**

- 4.2 In taking any decision, each officer must ensure that they have acted in a considered, well informed and defensible manner which is in the best interests of the Council and its residents. The more significant the decision, the greater the obligation to demonstrate that appropriate consideration has been given to the way the decision was made.
- 4.3 As a general rule all decisions will need to be made with a full understanding of Council policy relating to the decision, an awareness of relevant legal obligations including equality requirements, and a clear assessment of the impact of the decision on those affected. Decisions will also need to be consistent with the Council's Budget strategy and will need to be effectively risk assessed.
- 4.4 The obligation to ensure that these issues are properly understood rests with decision makers. Where doubt exists advice must be taken from those officers

who are professionally qualified to give advice, such as the Council's Monitoring Officer and Chief Financial Officer. Officers must not commit the Council to a course of action which will entail financial obligations beyond those approved by the Council.

- 4.5 Where the decision is politically sensitive or likely to affect significant numbers of residents, decision makers are under a general obligation to consult with those from whom the decision is delegated and Members where appropriate. Where realistic choices exist and where good practice would suggest it to be appropriate, public consultation should be undertaken after consulting with appropriate Members.
- 4.6 No officer, other than the Strategic Director, Law and Governance or the Chief Legal Officer, shall authorise or institute any legal proceedings or process or instruct legal agents or Counsel without the prior written consent of the Strategic Director, Law and Governance or the Chief Legal Officer.
- 4.7 The powers delegated to officers shall not include the power to take a Key Decision, except in the following cases:
  - (a) in relation to contracts with a value between £200,000 - £500,000 in accordance with the Council's Contract Rules;
  - (b) where the Cabinet or HWBB has specifically delegated the responsibility to an officer;
  - (c) where the Chief Executive considers that the matter is so urgent that it is appropriate to take a Key Decision, in line with the Urgent Action provisions in Part 2, Chapter 16 of this Constitution or other emergency provisions within the Constitution.
- 4.8 This Scheme of Delegation is set out, as far as possible, in terms of broad areas of responsibility rather than in terms of specific statutory powers. The Chief Executive shall be responsible for co-ordinating the discharge of the Council's functions between the various officers.
- 4.9 The Chief Executive may allocate or re-allocate responsibility for functions between officers as necessary for the effective discharge of those functions or to cover absence of particular officers.
- 4.10 Where an officer is going to be absent for a period of time, the appropriate line manager may re-allocate responsibility for that officer's functions as necessary to ensure the effective discharge of those functions during the officer's absence. Where the Chief Executive is going to be absent for a period of time then responsibility for the Chief Executive's functions, as necessary, shall be allocated by the Chief Executive, either to a specific Executive Management Team Director or to the remaining Executive Management Team collectively, or by such officer as the Chief Executive shall determine for this purpose.
- 4.11 Where a function is delegated to a Director, it shall also be exercisable by the Chief Executive and relevant Executive Management Team Director. Where a function is delegated to an Executive Management Team or Director it shall also be exercisable by the Chief Executive, except the functions of Monitoring

Officer and Chief Financial Officer. Where a function is stated to be specifically delegated to a particular officer, that function shall not be exercised by any other officer except in accordance with this Scheme.

### **Areas of Responsibility**

- 4.12 The areas of responsibility of Chief Officers and other specified officers are set out in sections 5 to 11 below and, where appropriate, shall include the areas of responsibility of each officer within his/her service area.
- 4.13 These areas of responsibility include some statutory and other functions that are directly delivered by Council-owned companies and / or other third-party providers. In such circumstances, the relevant Chief Officer's responsibilities shall extend to holding the service provider(s) to account via any and all appropriate means, including via internal governance arrangements and /or other "dotted line" arrangements as designated by the Chief Executive.

## **5. All Chief Officers**

- 5.1 All Chief Officers are authorised to exercise the following powers and duties of the Council in respect of services under their control with the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution:
- (a) take all lawful action consistent with overall Council policy to deliver agreed strategy plans and policy within their area of responsibility and within approved Budgets, service plans, contract and financial procedural Rules, the general obligation to act in the best interests of residents and the Council and to achieve value for money;
  - (b) incur expenditure on the Council's behalf within the sums approved by the Assembly and in line with the Financial Regulations and Rules;
  - (c) procure goods and services consistent with the Council's Contract Rules;
  - (d) deal with the invitation and acceptance of tenders within the limits set out in the Contracts Rules;
  - (e) submission of bids for funding in consultation with the relevant Cabinet Member where this does not imply an ongoing commitment to the Council when the funding ends, requires match funding that cannot be met within Directorate Budgets or could, by its scale or complexity expose the Council to major corporate risks which cannot be contained within Directorate Budgets;
  - (f) approve the following, within any parameters prescribed in the Council's Contract, Financial or other Rules or policies:
    - (i) write-off of irrecoverable debts.
    - (ii) virements between budgets.
    - (iii) compensation claims from residents, businesses and contractors.

- (iv) financial settlements in Court actions, in consultation with the Council's authorised legal representative and the Chief Executive, when considered to be in the best interests of the Council to do so.
- (v) the award of settlements arising from Ombudsmen recommendations.
- (vi) disposal of or writing-off of assets.
- (g) service or placing of any necessary statutory or other notices;
- (h) after consultation with the Strategic Director, Law and Governance or Chief Legal Officer, authorising the institution, defence or appearance in criminal or civil proceedings in relation to any legislation which they are responsible for monitoring, enforcing or otherwise implementing on behalf of the Council;
- (i) deal with all staffing and management issues and arrangements (except those reserved to the Assembly) in line with the Council's strategic management arrangements and staffing policies, on the advice of the Director of Workforce Change;
- (j) Issuing licences;
- (k) Enforcing byelaws.

**6. The Acting Chief Executive (Head of Paid Service) (and Strategic Director, Law and Governance)**

- 6.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Acting Chief Executive shall:
- (a) exercise overall responsibility for all corporate, policy, employment and operational matters;
  - (b) be the Council's principal adviser on all matters of policy;
  - (c) in exceptional circumstances, such as a civil emergency, during a void in political leadership or to maintain the efficient and effective governance of the Council, take any decision on behalf of the Council (after consultation with the Leader where appropriate / feasible);
  - (d) exercise overall responsibility for promoting the community leadership role of the Council with Government Departments and other agencies, and other national, regional and local authorities;
  - (e) exercise overall responsibility for all employment matters for all staff (except those reserved to member-level meetings) including disciplinary, grievances, job evaluation, selection for redundancy where there is no appeal against dismissal, appeals in respect of gradings, appeals in respect of harassment and bullying, refusal of retaining employees beyond retirement age, injury allowances, discretionary early retirements, efficiency retirements, discretionary death grants (in cases where

employees are not married), early payment of preserved benefits, and all matters relating to restructuring/ reorganisation except those reserved to the JNC Salaries and Conditions Panel;

- (f) determine the settlement of employment matters in the best legal and financial interests of the Authority, having taken appropriate advice from the Chief Financial Officer, the Chief Legal Officer and the Director of Workforce Change;
- (g) nominate Chief Officers, as appropriate, to hear appeals against first and second written warnings on the grounds of misconduct, sickness absence and capability, and grievance appeals; and first stage appeals against final written warnings.
- (h) be responsible for securing implementation of the Council's decisions within the agreed Policy Framework to ensure the overall effectiveness of the Council's services;
- (i) investigate disciplinary matters, with the involvement of an independent person, against the Monitoring Officer and Chief Financial Officer;
- (j) be responsible for determining Civil Contingency services, with operational responsibility for the provision of these services being delegated to the Operational Director, Enforcement and Community Safety as deputy to the Acting Chief Executive in relation to this matter;
- (k) appoint a Proper Officer for the purpose of any statutory function which is not covered by this Scheme;
- (l) be responsible for setting the strategic management arrangements for the Council and for the allocation of roles to Directors other than those which are statutorily prescribed.

6.2 The Acting Chief Executive is the Council's statutory Head of Paid Service.

6.3 In addition, the Acting Chief Executive, in her dual role as Strategic Director, Law and Governance, shall be responsible for all matters within the remit of the following areas:

- (a) Human Resources and Organisational Development, including learning and development, occupational health, safety and wellbeing, employment policies and procedures and equalities and diversity in employment.

6.4 The Strategic Director, Law and Governance is the designated Borough Electoral Registration Officer.

6.5 The Strategic Director, Law and Governance is the designated Returning Officer for Local Government Elections and the Deputy / Borough Returning Officer, as appropriate, for all other elections / referenda.

## **7. Strategic Director, Children and Adults**

7.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Strategic Director,

Children and Adults shall be responsible for all matters within the remit of the following areas:

- (a) Adult Social Care, including disabilities, care assessment and planning and intensive support;
- (b) Strategic Commissioning and Partnerships, including integration commissioning and adult safeguarding;
- (c) Public Health, including the following (some of which are statutory responsibilities of the Director of Public Health):
  - (i) Developing and maintaining the Joint Strategic Needs Assessment for the Council.
  - (ii) Supporting and advising the Health and Wellbeing Board.
  - (iii) Developing and maintaining a Public Health Plan.
  - (iv) Meeting the Council's obligations for liaison with and support to the Health Protection Agency.
  - (v) Providing public health leadership, advice and information to the public as required by the Health Act 2006.
  - (vi) Preparing and publishing an annual report on public health in Barking and Dagenham.
  - (vii) Discharging the responsibility for co-operation and joint working in relation to public health within Barking & Dagenham on behalf of the Council.
  - (viii) Discharging the responsibilities for social care research and information in relation to public health and well-being.
  - (ix) Overseeing the responsibilities of the Council for liaison with voluntary sector social care and health organisations.
  - (x) Authorising Patient Group Directions in the exercise of the Council's new public health functions under the National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013.
- (d) Children's Social Care and Complex Needs, including children in care and care leavers, children with disabilities and educational psychology.
- (e) Education, Youth and Childcare, including school estate, the Adult College, early years, integrated youth services and engagement, school improvement and the appointment of parent governor representatives to the Overview & Scrutiny Committee, in accordance with The Parent Governor Representatives (England) Regulations 2001.
- (f) School admission arrangements including the determination of the annual arrangements following their consideration by the Schools Forum, subject

to their being no material changes to the arrangements which must be approved by the Cabinet.

- (g) Children’s Safeguarding, Early Intervention and Commissioning, including quality, safeguarding and reviews, traded services (with schools) and troubled families.
- (h) Exercising the Council’s obligations under Sections 36 and 37 of the Counter-Terrorism and Security Act 2015.

7.2 The Strategic Director, Children and Adults is the statutory Director of Adult Social Services and Director of Children’s Services.

## **8. Strategic Director, Inclusive Growth**

8.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Strategic Director, Inclusive Growth shall be responsible for all matters within the remit of the following areas:

- (a) Regeneration, including the Estate Renewal programme;
- (b) Housing and Assets Strategy;
- (c) Capital Delivery;
- (d) Economic Development, Employment and Skills;
- (e) Planning and Development Management, including matters relating to the naming of building and roads that are not otherwise reserved to the Cabinet;
- (f) Energy and Sustainability;
- (g) Commercial Services, including Corporate Procurement;
- (h) Culture and Heritage Services, including leisure, libraries and sport;
- (i) Parks Commissioning.

**(Note:** The Strategic Director, Inclusive Growth is responsible for the Council’s duties as the Local Planning Authority. The postholder will liaise with Be First on its delivery of the core planning functions. The Council retains responsibility for the determination of planning applications and Compulsory Purchase Orders).

## **9. Strategic Director, Community Solutions**

9.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Strategic Director, Community Solutions shall be responsible for all matters within the remit of the following areas:

- (a) Community Engagement, Participation and Prevention;
- (b) Community Cohesion and Equalities;

- (c) Customer Contact;
- (d) Customer Collections and Welfare, including Council Tax, rent and other payment collection, debt recovery and customer support.

## **10. Strategic Director, My Place**

10.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Strategic Director, My Place shall be responsible for all matters within the remit of the following areas:

- (a) Housing Management, including landlord and leaseholder services, allocations, repairs and maintenance, caretaking, travellers, tenant participation and sheltered housing;
- (b) Public Realm, including parks and environment, waste collection and recycling and grounds maintenance;
- (c) Highways, including street cleaning and lighting;
- (d) Property and Fleet Management.

## **11. Strategic Director, Finance and Investment**

11.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Strategic Director of Finance and Investment shall be responsible for all matters within the remit of the following areas:

- (a) Corporate and Strategic Finance, Treasury Management and the Capital Programme;
- (b) Investment and Acquisition Strategy;
- (c) Information Technology (IT), Data Protection and Freedom of Information services;
- (d) Corporate Assurance, including audit and anti-fraud, risk management and insurance.
- (e) The Council's Pension Fund.

11.2 The Strategic Director, Finance and Investment shall also have authority to:

- (a) determine applications for mandatory and discretionary non-domestic rate relief and discretionary housing benefit in accordance with the approved scheme;
- (b) determine appeals in relation to applications for Council Tax discretionary relief in accordance with the approved scheme;
- (c) sign-off all statutory financial returns, except those reserved to the Assembly or Cabinet.

- (d) constitute an Investment Panel to advise on the implementation of the Council's Investment and Acquisition Strategy by appraising individual investment decisions and development schemes and, where appropriate, have authority to approve recommendations from the Panel, except those which are the Cabinet's responsibility;
- (e) negotiate terms and agree investment proposals and land and property acquisitions for projects within the Investment and Acquisition Strategy and the Be First Business Plan, in consultation with the Strategic Director, Law and Governance or Chief Legal Officer and the relevant Cabinet Members, on the advice of the Investment Panel;
- (f) exercise delegated authority, advised by the Investment Panel, to:
  - (1) agree the appropriate source(s) of funding for each individual approved development proposal;
  - (2) approve the draw-down of development funding from the development facility subject to:
    - (i) a positive recommendation to proceed with each individual development proposal by the Investment Panel; and
    - (ii) that the funding for the facility, any drawn downs and borrowing costs are provided for in the Council's Medium Term Financial Strategy and is satisfied that the funding is in line with statutory guidance on local authority investments and is state aid compliant.
  - (3) agree, in consultation with the Strategic Director, Law and Governance or Chief Legal Officer:
    - (i) the terms and form of such legal agreements (as are necessary) to give effect to the development facility and to enter into such agreements on behalf of the Council;
    - (ii) the terms and form of legal agreements to give effect to the draw-downs as referred to above, including instruments providing security to the Council, and to enter into such agreements or security documents on behalf of the Council.
  - (4) approve the allocation of additional funding approved by the Cabinet for Be First, subject to being satisfied that it is financially prudent to do so;
  - (5) approve, in consultation with the Strategic Director, Law and Governance or Chief Legal Officer, the entering into (by Be First or the Council) of any agreement or commitments required to enable the delivery of the Council's capital programme as commissioned subject to:
    - (i) compliance with relevant procurement and state aid law;

- (ii) being satisfied as to the appropriate terms and financial implications;
  - (iii) being satisfied that the terms of such agreements or commitments would not cause the Council to be in breach of its Constitution.
- (6) approve, in consultation with the Strategic Director, Law and Governance or Chief Legal Officer, the entering into (by Be First or the Council) of any agreement or commitments required to enable the delivery of any approved schemes within the Council's Investment and Acquisition programme subject to:
- (i) the endorsement of the Council's Investment Panel;
  - (ii) compliance with relevant procurement and state aid law;
  - (iii) being satisfied as to the appropriate terms and financial implications;
  - (iv) being satisfied that the terms of such agreements or commitments would not cause the Council to be in breach of its Constitution.
- (g) constitute a Shareholder Panel to be responsible for the regular monitoring of the performance of Council-owned companies and other corporate vehicles against their annual business plan targets, monitoring of strategic objectives and their delivery and associated risks and consideration of all reserved matters in accordance with relevant company Shareholder and other Agreements;
- (h) exercise delegated authority, in consultation with the Shareholder Panel, in respect of any non-strategic reserved matters requiring the approval of the Council as Shareholder or partner (Note: all strategic reserved matters shall continue to be the responsibility of the Cabinet).

11.3 The Strategic Director, Finance and Investment is the Council's Senior Information Risk Officer (SIRO).

11.4 The Strategic Director, Finance and Investment is the Council's statutory Chief Financial Officer.

## **12. Director of Strategy**

12.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Director of Strategy shall be responsible for all matters within the remit of the following areas:

- (a) Corporate Strategy;
- (b) Corporate Communications, Campaigns and Events;
- (c) Insight and Innovation Services;
- (d) Corporate Performance and Programme Management;

(e) Mayoral Support

12.2 The Director of Strategy is the Council's statutory Scrutiny Officer.

### **13. Chief Legal Officer**

13.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Chief legal Officer shall be responsible for all matters within the remit of the following areas:

- (a) Legal and Governance & Electoral Services, incorporating Member Development and general Members' support;
- (b) Community Safety;
- (c) Enforcement Services, including street trading;
- (d) Regulatory Services, including housing and licensing;
- (e) Civil Protection;
- (f) Parking Services.

13.2 The Chief Legal Officer shall also have authority to:

- (a) take any action to implement any decision taken by or on behalf of the Council, including the signature or service of statutory and other notices and any document;
- (b) institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where he/she considers that such action is necessary to protect the Council's interests;
- (c) instruct counsel, solicitors or other experts for legal proceedings, public inquiries, or other matters involving the Authority;
- (d) enter objections to any proposal affecting the Authority, the Authority's area or the inhabitants of the Authority's area.

13.3 The Chief Legal Officer is the Council's statutory Monitoring Officer.

### **14. Detailed Scheme of Management**

14.1 Each Chief Officer, in making decisions under the above scheme, is required to do so within the internal scheme of management for their own directorate / service area.

### **15. Recording, Implementing and Accounting for Decisions**

15.1 The Openness of Local Government Bodies Regulations 2014 require a written record to be made of any decision that has been delegated to an officer under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- (a) grant a permission or licence;

- (b) affect the rights of an individual; or
  - (c) award a contract or incur expenditure which, in either case, materially affects the Council's financial position.
- 15.2 The written record referred to in Rule 15.1 above must be produced as soon as reasonably practicable after the decision has been made and must contain the following information:
- (a) the date the decision was taken;
  - (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 the decision has been delegated under a specific express authorisation, the names of any Member of the Council who has declared a conflict of interest in relation to the decision.
- 15.3 The written record of the decision, together with any background papers, must be made available for inspection by members of the public as soon as reasonably practicable after the decision has been made:
- (a) at all reasonable hours at the Council's Offices;
  - (b) on the Council's website,
  - (c) by such other means that the Council considers appropriate.
- 15.4 The written record of the decision must be retained and made available for public inspection for at least six years. Any background papers referred to by the decision-maker should be retained and made available for public inspection for at least four years. The relevant retention period will begin with the date on which the decision, to which the written record and any background papers relates, was made.
- 15.5 Nothing in the above Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence, or, information that, in the opinion of the Monitoring Officer can be defined as exempt, as set out in Part 2, Chapter 17 of the Constitution.
- 15.6 Each Officer is responsible for ensuring that any decision which they take is properly recorded in line with the provisions of Rules 15.1 to 15.5 above, and that the record of that decision is available to other Officers, to Members and to the public as required by statute and this Constitution, particularly if the decision relates to a change in policy or practice, or a financial commitment.
- 15.7 The Openness of Local Government Bodies Regulations 2014 state that a person who has custody of a document which is required to be made available for inspection by members of the public will commit an offence if, without reasonable excuse, that person:
- (a) intentionally obstructs any person exercising a right conferred by the Regulations to inspect written records and background papers; or

(b) refuses any request made under the Regulations to provide written records or background papers.

- 15.8 Every Officer is responsible for ensuring that any decision which he/she takes is implemented in accordance with that decision.
- 15.9 Every Officer is accountable for each decision which he/she takes and may be called to provide an explanation of his/her reasons for the decision and account for its implementation to other Officers, Members and statutory regulators.

## **Part 3 – Officer Scheme of Delegation**

### **Chapter 2 – Statutory Functions which are allocated to Officers**

This section sets out those Officers who have been designated by the Council to discharge specified statutory functions.

#### **1. Legislation, Function and Proper Officer**

<b>Legislation</b>	<b>Function</b>	<b>Proper Officer</b>
Section 4 Local Government and Housing Act 1989	Head of Paid Service	Chief Executive
Sections 5 and 5A Local Government and Housing Act 1989	Monitoring Officer	Chief Legal Officer
Section 151 LGA 1972	Chief Financial Officer	Strategic Director, Finance & Investment
Section 28(1) Representation of the People Act 1983	Acting Returning Officer (Parliamentary Election)	Strategic Director, Law & Governance
Section 35(3) Representation of the People Act 1983	Returning Officer (Local Election)	Strategic Director, Law & Governance
Section 8(2) Representation of the People Act 1983	Electoral Registration Officer	Strategic Director, Law & Governance
Section 6(A1) Local Authority Social Services Act 1970	Director of Adult Social Services	Strategic Director, Children & Adults
Section 18 Children Act 2004	Director of Children’s Services	Strategic Director, Children & Adults
Section 72(1)(a) Weights and Measures Act 1985	Chief Inspector of Weights and Measures	Chief Legal Officer
Section 73A National Health Service Act 2006, as amended by Health and Social Care Act 2012	Director of Public Health	Director of Public Health
Section 31 Local Democracy, Economic Development and Construction Act 2009	Statutory Scrutiny Officer	Director of Strategy

<b>Legislation</b>	<b>Function</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Section 83(1) to (4)	Witness and receipt of Declaration of Acceptance of Office	Chief Executive
Section 84(1)	Receipt of notice of resignation of elected Member	Chief Executive
Section 88(2)	Convening a meeting of Council to fill a casual vacancy in the office of Chair	Chief Executive
Section 89(1)	Notice of casual vacancy	Chief Executive
Section 100A – 100H	Access to Information and admission of public (including press) to meetings	Chief Executive
Section 115(2)	Receipt of money due from officers	Chief Executive
Section 146(1) (a) and (b)	Declarations and certificates with regard to transfer of securities	Strategic Director, Finance & Investment
Section 225	Deposit of documents	Chief Executive
Section 228(3)	Accounts for inspection by any Member of the Council	Strategic Director, Finance & Investment
Section 229(5)	Certification of photographic copies of documents	Chief Legal Officer
Section 234	Authentication of documents	Chief Legal Officer
Section 238	Certification of byelaws	Chief Legal Officer
Section 248	Officer who will keep the Roll of Freemen	Chief Executive
Schedule 12, Para 4(2)(b)	Signing of summons to Council meeting	Chief Executive
Schedule 12, Para 4(3)	Receipt of notice about address to which summons to meeting is to be sent	Chief Executive
Schedule 14, Para 25 (7)	Certification of resolution concerning the Public Health	Chief Legal Officer

<b>Legislation</b>	<b>Function</b>	<b>Proper Officer</b>
	Acts 1875 to 1925	
<b>Local Government Act 1974</b>		
Section 30(5)	To give notice that copies of an Ombudsman’s report are available	Chief Executive
<b>Local Government (Miscellaneous Provisions) Act 1976</b>		
Section 41(1)	The officer who will certify copies of evidence of resolutions and minutes of proceedings	Chief Executive
<b>Local Authorities Cemeteries Order 1977</b>		
Regulation 10	To sign exclusive rights of burial	Chief Legal Officer
<b>Representations of the People Act 1983</b>		
Sections 82 and 89	Receipt of election expense declarations and returns and the holding of those documents for public inspection	Chief Executive
<b>Local Elections (Principal Areas) (England) Rules 2006</b>		
Schedule 2, Rule 54	Retention and public inspection of documents after an election	Strategic Director, Law & Governance
<b>Local Government and Housing Act 1989</b>		
Section 2(4)	Recipient of the list of politically restricted posts	Chief Executive
3A(1)	Grant and supervision of exemptions from political restriction	Chief Executive
<b>Local Government (Committees and Political Groups) Regulations 1990</b>		
Regulation 8	For the purposes of the composition of Committees and nominations to political groups	Monitoring Officer
<b>Local Authorities (Standing Orders) (England) Regulations 2001</b>		
Schedule 1 Part 2	Notification of appointment or dismissal of officers	Chief Executive

<b>The Local Authorities (Executive Arrangements) Access to Information (England) Regulations 2012</b>		
Regulation 7	Access to agenda and connected reports for public meetings	Monitoring Officer
Regulation 7(2)	Confidential / exempt information and exclusion of public from meetings	Monitoring Officer
Regulation 9	Publicity in connection with key decisions	Monitoring Officer
Regulation 10	General exception relating to the Forward Plan	Monitoring Officer
Regulation 12	Recording of Executive decisions made at meetings of the Cabinet	Monitoring Officer
Regulation 13	Individual Executive decisions	Monitoring Officer
Regulation 14	Inspection of documents following Executive decisions	Monitoring Officer
Regulation 15	Inspection of background papers	Monitoring Officer
Regulation 16	Members' rights of access to documents	Monitoring Officer
<b>Building Act 1984</b>		
Section 78	Dangerous buildings or structures	Chief Legal Officer
Section 93	Authentication of documents	Chief Legal Officer
<b>Food Safety Act 1990</b>		
Section 49(3)(a)	Authentication of documents	Chief Legal Officer

<b>Public Health Act 1936</b>		
Section 85(2)	To serve notice requiring remedial action where there are verminous persons or articles	Strategic Director, Children & Adults
<b>Public Health Act 1961</b>		
Section 37	Control of any verminous article	Strategic Director, Children & Adults
<b>The Health Protection (Local Authority Powers) Regulations 2010</b>		
Regulation 2	Exclusion from school of a child liable to convey a notifiable disease	Strategic Director, Children & Adults
Regulation 3	Requesting names and addresses of pupils attending a school or department of a school	Strategic Director, Children & Adults
Regulations 4-7	Disinfection of things and premises	Strategic Director, Children & Adults
Regulation 8	Request for co-operation for health protection purposes	Strategic Director, Children & Adults
Regulations 9,10	Restriction of Access to and control of dead bodies	Strategic Director, Children & Adults
Part 2A	Authority to apply to a JP for a Part 2A Order that imposes restrictions or requirements on a person(s), or relating to a thing(s), a body or human remains, or premises, to protect human health against infection or contamination that presents, or could present, significant harm to human health.	Strategic Director, Children & Adults
Section 48	Certifying that the retention of a body in a building would endanger health	Strategic Director, Children & Adults
Section 59	Authentication of documents relating to matters within his/her responsibility	Strategic Director, Children & Adults
<b>National Assistance Act 1948</b>		
Section 47	Removal to suitable premises of	Strategic Director,

	people in need of care and attention	Children & Adults
<b>National Assistance (Amendment) Act 1951</b>		
Section 1	Certification of the need for immediate action	Strategic Director, Children & Adults
<b>National Health Service Act 2006, as amended by the Health and Social Care Act 2012</b>		
Section 73A (1) (a)	the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1	Director of Public Health
Section 73A (1) (b)	the exercise by the authority of its functions by virtue of section 6C(1) or (3)	Director of Public Health
Section 73A (1) (c)	anything done by the authority in pursuance of arrangements under section 7A	Director of Public Health
Section 73A (1) (d)	the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health	Director of Public Health
Section 73A (1) (e)	the functions of the authority under section 325 of the Criminal Justice Act 2003	Director of Public Health
Section 73A (1) (f)	such other functions relating to public health as may be prescribed	Director of Public Health
<b>Freedom of Information Act 2000</b>		
Section 36	To carry out the functions of the 'qualified person' for the purposes of determining prejudice to effective conduct of public affairs	Monitoring Officer
<b>Counter-Terrorism and Security Act 2015</b>		
Section 36 and 37	To carry out the functions of the Authority that relate to the creation and operation of a local panel	Strategic Director, Children & Adults

# **Part 4**

# **Rules**

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## **Part 4 – Rules**

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18. Sustainable Procurement
19. Freedom of Information and Data Protection
20. Term of Contract and Costs Assessment including extension periods
21. Key Decision
22. The Application of IR35
23. Applicable Legislation and Health and Safety
24. Development of a specification or schedule of requirements

###### **PROCESS CONSIDERATIONS**

25. Evaluation Criteria (Quality and Financial) and expectations including Ratio's and Credit Reference Check
26. No Fault Termination/Break Clause
27. Early Termination
28. Shortlisting Criteria and Exclusion Criteria (including Pass/Fail)
29. Terms and Conditions
30. TUPE ((Transfer of Undertakings (Protection of Employment))

31. Route to Market and process
32. Setting up a Framework / Dynamic Purchasing System (DPS)
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## **SECTION D**

### **PROCUREMENT CATEGORY PROCESS WORKFLOWS**

34. Process Flows
35. Waiver Process and Impact of Waivers if not used correctly

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37. E-procurement Tool
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39. SQ and ITT
40. Using internal and external frameworks
41. Setting up a Framework
42. Using internal or external DPS (Dynamic Purchasing System)
43. Site Visits / Presentations
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## **SECTION F**

### **PROCUREMENT CONSIDERATIONS DURING THE PROCESS**

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46. ITT Methodology
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## **SECTION G**

### **AWARDING A CONTRACT PROCESS**

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## **SECTION H**

### **CONTRACT MANAGEMENT**

63. Contract Management
64. Risk Management
65. Contract Milestones
66. Variations / Changes to Contracts including Extensions
67. Novation, Assignment and Sub-contracting
68. Contracts Register and Forward Plan Upkeep
69. Change in Law Assessment and Impact Management and Reporting
70. Document Retention Policy, Period and Removal
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## **SECTION I**

### **MAKING CHANGES TO THE CONTRACT RULES**

72. Process to Change

## SECTION A

### GENERAL APPLICATION OF THE RULES

#### 1. Introduction

- 1.1. These Contract Rules (“Rules”), issued in accordance with section 135 of the 1972 Local Government Act), are the Council’s procedure rules for procuring, (buying, renting, leasing etc) goods, services and works for the Council. They are intended to promote good purchasing practice and public accountability and to deter acts of corruption.
- 1.2. The Rules are part of the Council’s Constitution and therefore Officers have a duty to ensure they have fully understood them prior to commencing any procurement or contracting activity.
- 1.3. These Contract Rules are to be read alongside current UK legislation / regulations. Where there is any conflict between the Regulations and these Rules the legislation / regulations shall prevail.

#### 2. Definitions

- **Approval Table** - means the table set out in Rule 10.2 detailing the Contract Value bands together with the level of approval required.
- **Bronze Category** - means any procurement for Project, Goods, Works, or Service’s identified as costing up to £30,000 inclusive of VAT.
- **Contract** - means any contract, agreement or order for the carrying out of work, the provision of services or the supply of goods or materials to or for the Council, whether by the purchase, lease, rental or hire purchase, including the provision of services to the public on the Council’s land or premises or a concession contract. It shall not include contracts for the employment of staff or the sale, purchase, lease or license of land or buildings.
- **Contract Award Notice** - means the notice required to be published in FTS and Contracts Finder indicating that a relevant contract has been awarded by the Council pursuant to the Regulations which also encompasses the requirements of Regulation 84 of the Public Contract Regulations 2015.
- **Contract Award Report** - means the formal written report detailing the procurement conducted as provided for in Rule 58.
- **Commercial Services Team** - means the commercial services team who can be contacted via email on [commercialservice@lbbd.gov.uk](mailto:commercialservice@lbbd.gov.uk)
- **Contract Notice** - means the notice required to be published in FTS and Contracts Finder indicating that the Council intends to commence a relevant procurement pursuant to the Regulations.
- **Contract Value** - means and shall be measured as the aggregate amount the Council expects to pay the Contractor over the total duration of the contract (including any inflation uplift and any extension period) or where the Council is not paying a contractor directly, the Contract Value will be the financial benefit

that the contractor will receive over the duration of the contract. If there is any doubt in respect of such a valuation, Corporate Procurement must be consulted. Please note the total value must include VAT as detailed in PPN10/21

- **Corporate Procurement** - means the Council's procurement function <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Corporate-Procurement.aspx>
- **Council Company** - means any company or organisation owned or controlled by the Council.
- **Cross-border interest** - means the potential interest that providers in EU Member States may have in tendering for a contract.
- **Emergency** - means a serious unforeseen event, situation or occurrence that happens unexpectedly, and which is likely to cause immediate danger to the Council, its residents or property if immediate action is not taken. The Emergency must be urgent and unforeseen – for example, natural disasters such as flooding, fires or bombing, or financial or operational, such as a current supplier ceasing to operate leaving residents without critical services.
- **Framework Agreement** - means any agreement between the Council or the Council and one or more contracting authorities and/or one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded to contractors during a given period, in particular regarding price, and where appropriate, the quantity envisaged.
- **HWB** - means the Council's Health and Wellbeing Board as established and set out in Part 2, Chapter 7 the Council's Constitution.
- **ITT (Invitation to Tender)** - means an invitation to prospective bidders to submit tenders for contracts with a Contract Value that falls under the Gold Category.
- **ITQ (Invitation to Quote)** - means an invitation to prospective bidders to submit quotes for contracts with a Contract Value that falls above the Silver Category but below the Gold Category.
- **Gold Category** - means any procurement conducted with a value of £213,477 inclusive of VAT or more
- **Key Decision** - means a decision which must be made by the Cabinet/HWB in accordance with Part 2, Chapter 16, paragraph 3 of the Constitution.
- **Legal Services** - means the Council's in-house Legal Services team ([Legal Services \(sharepoint.com\)](#))
- **Light Touch Regime** - means the regime prescribed and covered by Part 2, Chapter 3, Section 7 of the Public Contract Regulations 2015 for social and other specific services.
- **Non-commercial considerations** - means the considerations fully defined in Section 17 of the Local Government Act 1988 (as amended);
- **Officer Scheme of Delegation** - means the corporate / departmental financial authorisation scheme of delegation for officers set out in the Council's Financial

Rules as the same may be amended from time to time by the Chief Financial Officer.

- **PAS91** - means the industry standard SQ for works entitled 'Construction Pre-qualification Questionnaires'.
- **Personalised Contract** - means a contract that relates to the social, educational or welfare/care needs of a child or an individual adult.
- **PIN** - means a Prior Information Notice. A PIN can be published before a procurement commences, when a requirement is above UK thresholds, and makes it possible to reduce the time needed to complete the competition.
- **Procurement Board** - means the Council's corporate Procurement Board.
- **Procurement Documents** - means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.
- **Procurement Strategy Report** - means the formal written report provided for in Rule 38.1 setting out the Procurement Strategy for the proposed procurement.
- **Regulations/Legislation** - means the Public Contract Regulations 2015 and Concession Contracts Regulations 2016 , as amended.
- **Retained EU Law** - means the definition as set out in the s 6(7) European Union (Withdrawal) Act 2018, which defines it as anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4.
- **Retained Treaties** - means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before 31 December 2020 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.
- **SQ** - means a Pre-Qualification Questionnaire (Supplier Questionnaire).
- **Scheme of Delegation** - means the corporate scheme of delegation set out in Part 3 of the Council's Constitution and/or the Officer Scheme of Delegation as appropriate.
- **Silver Category** - means any procurement conducted between the value of £30,001 to £213,476 (including VAT)
- **Suitability Assessment Questions** means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

### **3. Scope of the Contract Rules**

- 3.1. These Rules apply to all contracts and procurements for goods, works or services entered into by or on behalf of the Council, irrespective of whether the contract is financed from Council funds or from external funds, grant or other funds intended to be spent on procurement by the Council.
- 3.2. These Rules apply to all Officers of the Council and third-party contractors providing goods and services for and/or on behalf of the Council where the relevant contract between the Council and contractor provides for the contractor to comply with these rules.
- 3.3. These Rules shall not apply to Council-owned companies, who shall be responsible for ensuring that their procurement arrangements are robust, achieve best value and are legally compliant except where the relevant agreement provides for the company or organisation to comply with these Rules.
- 3.4. Where a Council -owned company procures on the Council's behalf, the company must comply with the Council's requirements and processes as defined in these rules unless the relevant agreement permits them to follow their own processes.

### **4. Exempt and Partially Exempt Procurements**

#### **Exempt Procurements**

- 4.1. These Rules do NOT apply to:
  - a) The acquisition or disposal of land or any interest in land - The Rules do not apply where the Council is acquiring or disposing of any interest in land, whether by freehold, lease, license etc. Legal Services and Property Services must be consulted on Development Agreements, as these may be considered a 'works' contract.
  - b) Contracts of employment - Human Resources should be consulted in respect of such contracts.
  - c) In-House Contracts - The tendering and contract award provisions of these rules shall not apply to the award of contracts between the Council and Council owned companies or such other bodies over which the Council has oversight provided the following conditions can be met:
    - (i) the Council exercises control over the entity similar to that which it exercises over its own departments.
    - (ii) more than 80% of activities of the entity relate to the performance of tasks entrusted to it by the Council; and
    - (iii) there is no direct private capital participation in the entity (with the exception of non-controlling and non-blocking forms of private capital participation required by national law in conformity with the EU Treaties).Where Officers are unsure about the application of this rule they must consult with Legal Services.
  - d) Subscriptions/ Membership fees - These Rules do not apply where the Council

is paying a subscription fee for any professional, political or other such grouping to which the Council or Council Officers belong on a professional or representative basis.

### **Partially Exempt Procurements**

- 4.2. The procurements and contracts listed below are exempt from the full tendering requirements in that Officers do not need to undertake a full procurement tender exercise. Officers must ensure however that the requirements of Rule 10.2 are adhered to, that the appropriate procurement strategy approval process has been followed e.g. by the Procurement Board, and that any necessary waiver has been granted.
- a) Framework Agreements/Contracts - Procurements from Frameworks are exempt from the full application of the Rules provided the framework has been properly procured under the Regulations and the procurement is made in accordance with the Framework's terms and conditions.
  - b) Consortia Arrangements - Where a procurement is made by another public authority or body (as lead contracting authority) acting with, by, or for the Council and any other authority, these Rules will not apply provided the Regulations and standing orders of the lead contracting authority or body have been followed and the provisions of Rule 10.2 followed.
  - c) Emergency procurements - Goods, works or services may be procured in a genuine Emergency without complying fully with the Rules provided an appropriate waiver has been obtained in accordance with Rule 35.9.
  - d) Personalised Contracts - Chief Officers may exempt Personalised Contracts from the full tendering requirements of these Rules. Officers must ensure however that the requirements of Rule 10.2 are adhered to where possible. Procurement Strategy Reports must be prepared before any procurement for such contract which meets the Gold Category is commenced. Such report shall be submitted for consideration and approval by the relevant Chief Officer rather than the Procurement Board. Personalised Contracts, where the Council is statutorily obliged to enter into the contract, may be approved by the Chief Officer rather than by the Cabinet / Health and Wellbeing Board (HWB).
  - e) The instructing of counsel or lawyers by the Chief Legal Officer where the Contract Value falls into the Bronze or Silver Category.

## **5. Chief Officer Responsibilities**

- 5.1. Each Chief Officer for the department procuring the goods, works or services shall be responsible for the compliance by Officers within their department with these Rules.
- 5.2. Authority to make decisions under these Rules may be further delegated by Chief Officers to other Officers within their department. Those officers who have delegated authority to take decisions in the name of the Chief Officer must be identified in the Officer Scheme of Delegation for the relevant department.
- 5.3. Chief Officers will be held accountable for all decisions made within their department under delegated authority and these Rules.

- 5.4. The Chair of the Council's Procurement Board shall be the Council's lead Officer responsible for procurement overview and obtaining value for money.

### **Officers' Responsibilities**

- 5.5. Procurements and contracts can only be made or entered into by duly Authorised Officers and in accordance with the Scheme of Delegation.
- 5.6. Officers must also ensure that any persons and/or organisations acting on behalf of the Council and spending Council funds e.g. contractors, agents, consultants and partners) fully comply with these Rules.
- 5.7. Officers responsible for purchasing on behalf of the Council must comply with these Rules, any accompanying Guidance, the Council's Procurement Strategy, Social Value Policy, applicable Financial Rules, and all UK and European Union law (if applicable) and binding legal requirements. In particular, where appropriate, Officers must comply with the provisions of the [Public Contract Regulations 2015](#).
- 5.8. It is Officers' ultimate responsibility before embarking on any procurement activity and particularly if they are in any doubt about whether the Rules apply, to seek appropriate advice, support and guidance from the Council's Corporate Procurement team and/or Legal Services.

## **6. Boards and their Roles**

### Cabinet and Health and Wellbeing Board (HWB)

- 6.1. Cabinet is ultimately responsible for all the Council's strategic procurement. Whilst Chief Officers have delegated authority to procure and award contracts with a Contract Value of less than £500,000, Cabinet shall be entitled to require any such procurement or contract to be approved by Cabinet if it deems fit.
- 6.2. Whilst Cabinet and Cabinet Members may propose, agree, or participate in setting the procurement strategy for any procurement or contract, Members, and in particular Cabinet Members, should avoid direct participation in the procurement and evaluation process for any contract.
- 6.3. The HWB has the same power as Cabinet to authorise the procurement and award of contracts where such procurement /contract is funded in part or in whole from the Public Health Grant or from within social care budgets.
- 6.4. Where a procurement or contract is funded partly or entirely from the Public Health Grant or a social care budget, any approval, authorisation, waiver, reference, or consultation required from Cabinet can be made either by Cabinet or the HWB. The relevant Chief Officer shall determine the appropriate body to make the decision.
- 6.5. Cabinet/HWB must agree the Procurement Strategy for all procurements of:
- a) all proposed revenue contracts with a Contract Value of £500,000 or more and
  - b) contracts where the final award may involve outsourcing any part of an existing in-house service or bringing a service back in-house.

## **Procurement Board**

- 6.6. The Procurement Board's primary role is to review, assess and challenge procurement strategies to ensure the required outputs align with the Council's core priorities.
- 6.7. Procurement Board is a required gateway to review the detail contained in the strategies prior to being submitted to Cabinet/HWB for Member scrutiny and approval or, depending on value, being signed off by the relevant Chief Officer.
- 6.8. The Procurement Board as a minimum will provide scrutiny to ensure commercial and operational benefits are to be achieved through the strategy. This will include Social Value, Equalities Impact Assessment, Carbon Net Zero and sustainability (this is not exhaustive and should cover the key priorities as set out in the Council's 5-year plan).
- 6.9. Procurement Board is also responsible for maintaining a Procurement Forward plan for all procurements existing or new that exceed the Gold Category
- 6.10. Promotes and shares best practice and any changes in legislation/mandate to ensure compliance is maintained and communicated.

## **7. Annual Procurement Plan**

- 7.1. Corporate Procurement shall prepare and maintain an annual forward-looking Procurement Plan. The Plan shall consist of details of all the new contracts which have been registered with Corporate Procurement and for which procurements (including extensions, additions and renewals) are planned for the forthcoming financial year. The Plan shall include all contracts with a Contract Value of £500,000 or above scheduled to commence in the forthcoming financial year.
- 7.2. The Procurement Plan serves two principal purposes:
  - a) To provide Cabinet and other readers with an overview of significant procurement activity; and
  - b) To inform potential suppliers of major future market activity.
- 7.3. Corporate Procurement shall each year prepare and submit an annual report to Cabinet detailing the contracts on the Procurement Plan and a brief summary of the proposed procurement strategy for each contract.
- 7.4. Upon consideration of the Procurement Plan report, Cabinet may confirm its agreement to the complete proposed Plan or in part any individual procurements or contracts which requires more detailed Procurement Strategy Reports to be submitted to it for closer consideration.
- 7.5. The procurement strategy for any contract with a Contract Value above £500,000 which has not been approved by Cabinet as part of the Procurement Plan in accordance with Rule 7 must be approved in line with the Gold Category.
- 7.6. The Procurement Plan shall be regularly reviewed and updated with any new planned procurement activities to be added.
- 7.7. A similar plan and report as described in Rule 7 shall be prepared and maintained in

respect of contracts funded in part or in whole from the Public Health Grant or from within social care budgets and reports thereon submitted (following the same procedure as set out above) for approval by the HWB at such frequency as the HWB shall deem appropriate.

## **8. Conflict of Interests**

- 8.1. If any Officer or Councillor involved in any procurement or award of contract has any connection - whether past or present, direct or indirect - with any bidder, then:
- a) that connection should be declared and registered using the appropriate conflict of interest form (see the Council's Constitution, in particular the Codes of Conduct for both Officers and Councillors); and
  - b) such officer or Councillor must not participate in any aspect of the tender process.

Any market research or consultation with third parties shall be conducted in accordance with Rule 12.

- 8.2. For all Gold Category procurements all officers/Councillors must complete conflict of interest statements.

## **9. Consequences of Non-Compliance with these Rules**

- 9.1. If the Council enters into a contract without complying with these Rules, the procurement process and subsequent contract could be challenged by an aggrieved party. If challenged the courts have the power to award damages against the Council or may issue an injunction which could prevent the Council from entering into the contract with a successful bidder.
- 9.2. In the case of a contract that should be procured under the UK procurement regime, i.e. under the Regulations, the courts also have the power to fine the Council and more importantly, can declare the award of the contract 'ineffective' which means the Council may be prevented from entering into the contract or the contract may be cut short.
- 9.3. It is therefore imperative that there is strict compliance with these Rules when carrying out procurement on the Council's behalf.
- 9.4. Officers failing to comply with or found to have breached these Rules will be subject to disciplinary action.

## SECTION B

### PROCUREMENT AND GOVERNANCE THRESHOLDS

#### 10. Procurement Legal Thresholds and Governance Categories

10.1. The current UK thresholds (at 1 January 2023) are as follows;

Type	Threshold (inclusive of VAT @ 20%)	Threshold (excluding VAT)
Goods and Services	£213,477	£177,897
Works	£5,336,937	£4,447,447
Concession	£5,336,937	£4,447,447
Light Touch	£663,540	£552,950

10.2. The Council has internal governance thresholds for procurement classified as Bronze, Silver and Gold categories. The values and governance required at these thresholds is set out below.

	<b>BRONZE</b>	<b>SILVER</b>	<b>GOLD (</b>
Value	£0 – £30,000 inc VAT	£30,001 - £213,476 inc VAT	£213,477 and above inc VAT
Minimum tender requirements	Two quotes – one of which must be from a local company	Three quotes (minimum) - one of which must be from a local company	Formal tender
Approval route	Budget holder unless less than two quotes are obtained, then a Delegated Authority report is required and signed by the budget holder	Budget holder unless a minimum of three quotations cannot be obtained, then a Delegated Authority report is required and signed by the budget holder. A copy of the Delegated Authority is to be attached to the Purchase Order at point of raising.	A Procurement Strategy Report is required to be presented to Procurement Board (and if required then Cabinet/HWB). Once approved by the Board(s) the strategy will need to be signed by the responsible officer within the delegated level of approval
EIA	No	No	Yes
Requirement to advertise	No	Yes – e procurement tool	Yes - e-procurement tool
Award Report Required	No	Yes	Yes

## **SECTION C**

### **PRE-PROCUREMENT CONSIDERATIONS**

#### **11. Collaborative Options – Internal and External**

- 11.1. As part of the initial strategic review and strategy development, consideration should be given to collaborative working or pooling of resources/spend profiles.
- 11.2. As part of the data and spend analysis it should be identified if there are any other areas of the Council that is purchasing the same or similar goods or services to ensure we aggregate the spend to give the best commercial envelope to take to the market.
- 11.3. In the event there are similar or complimentary requirements, further consideration should also be given for splitting the procurement into smaller or separate Lots to maximise process efficiencies and to achieve the outputs required for each of the requirements.
- 11.4. As part of the strategy development external collaborative opportunities should be explored, this would enable a larger spend profile to be taken to market to drive economies of scale. Although this may not be possible in some cases due to funding restrictions.

#### **12. Market Research and Soft market Testing**

- 12.1. Officers responsible for procurement may consult potential providers prior to the commencement of a procurement exercise with a view to preparing the procurement and informing providers of their procurement plans and requirements. This may include seeking or accepting advice from independent experts, authorities or from market participants. Advice obtained in the preliminary market consultation process can be used in the subsequent planning and conduct of the procurement procedure provided that the advice does not have the effect of distorting competition and does not breach requirements for non-discrimination and transparency. Officers should consult Corporate Procurement for advice.
- 12.2. Where a candidate or tenderer, or an undertaking related to a candidate or tenderer, has been involved at the pre-procurement stage (for example they have advised the Council in relation to 11.1 above or have otherwise been involved in the preparation of the procurement procedure) the Council must take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer, for example by providing the information which has been made available at the pre-procurement stage to all tenderers. Such measures shall be recorded in a Regulation 84 report.
- 12.3. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat suppliers equally.
- 12.4. Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.
- 12.5. Officers must avoid any conflict of interest as provided for in Rule 8 of these Rules.

### **13. Pre-Procurement Notices**

- 13.1. Officers must ensure that any Notice (Prior Information Notice (PIN) or Contract Notice) required for the UK Procedure are placed in Find A Tender by a member of Corporate Procurement.
- 13.2. A PIN may be used by the Council:
  - a) to make known their intention of planned procurements through the publication of a prior information notice, or
  - b) as a call for competition.
- 13.3. In each such case the provisions of [Regulation 48](#) shall be complied with.
- 13.4. Where officers wish to use this method, advice must be sought from Corporate Procurement and Legal Services.

### **14. Review the Council's Contracts Register**

- 14.1. Prior to any Procurement Process being developed the contracts register should be consulted to determine whether contracts are already in place to deliver Projects, Works Goods or Services of this type which the service could access. The Contracts Register can be accessed here: [Contract Register](#)
- 14.2. If contracts are already in place, this could remove the requirement for an additional exercise, saving on both time for the service having to undertake a procurement, and possibly cost where an improved price may be possible through economies of scale etc. Contact Corporate Procurement to ensure this is permissible under the contract terms and scope.
- 14.3. If an appropriate contract does not already exist, then the service should continue with the procurement exercise.

### **15. Insurance and Bonds or Other Security**

- 15.1. Before commencing procurement, Officers should take advice from the Council's Insurance team on levels and type of insurance that may be required for the contract.
- 15.2. Every contract for the carrying out of works or the provision of services shall require the contractor to take out and maintain Employers Liability, Public Liability and such other insurance policies as are deemed appropriate for the duration of the contract.
- 15.3. The contractor shall take out insurance for such a period as the Council's Insurance Team shall advise. Officers shall reserve the right to check insurance certificates for this period.
- 15.4. Where the contractor has not taken out the required insurance, the responsible Officer must notify the Council's Insurance team immediately.
- 15.5. Officers should seek advice from the Insurance team and Corporate Procurement to determine whether a performance bond, parent company guarantee (PCG) or other security will be required from the successful tenderer as a condition of the contract being awarded to such tenderer. Any such requirement shall be included in the ITT

or otherwise advised to tenderers before the deadline for submission of tenders.

- 15.6. Where the Insurance team advises that a bond, PCG or other form of security is required Officers shall ensure that arrangements are in place for the provision of the bond, or such other security required, before the contract start date. The Councils Insurance Team should be informed of the commencement of the contract and if applicable be provided with copies of the Contractor's policy documents.
- 15.7. The Bond, PCG or other security should be checked during the lifecycle of the contract to ensure it still offers the Council the surety from its original point.

## **16. Equalities Impact Assessment (EIA) and Corporate Risk**

- 16.1. All Gold-level procurements must include a summary of Equalities Impact Assessment (EIA) conducted in relation to the proposed procurement in accordance with the Council's Equality Policies and procedures and conform with legislative requirements. A copy of the full EIA must be kept on file.
- 16.2. Officers are required to assess the risk associated with the contract being procured as part of the Silver and Gold Categories. The risk assessment is split into two parts:

### **Silver Category**

- Operational Delivery Risk: The Commissioner will be responsible for assessing operational delivery risks which shall be measured by completing the Council's Risk Assessment tool, the tool can be accessed at <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>
- The risks and mitigations set out within this risk assessment should be used to drive contract management good practice as detailed in Rule 63 and in conjunction with the Contract Management Toolkit which can be accessed at <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>

### **Gold Category only**

- In addition to the risk process detailed in the Silver Category above, the below process is required;
- Financial Risk: The Commissioner and Corporate Procurement will undertake a risk assessment using the Councils Risk Assessment Tool to establish which of the two financial evaluation methodologies will be used as detailed in Rule 25 and can be accessed at <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>

## **17. The Council's Social Value Policy**

- 17.1. Officers should procure in compliance with the Public Services (Social Value) Act 2012 which requires that officers undertaking procurement consider:
  - a) how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's geographical area;

- b) How, in conducting the process of procurement, it might act with a view to securing that improvement; and
  - c) In addition to the legal requirement to comply with the Public Services (Social Value) Act 2012, officers must comply with the Council's Social Value Policy (<https://www.lbbd.gov.uk/social-value-policy>) which states that all procurements over £100,000 must include a minimum 10% social value weighting in the scoring evaluation.
- 17.2. All Commissioners should consider securing outcomes that deliver to the following priorities:
- a) Investment in local people
  - b) Investment in local economy
  - c) Environmental sustainability
- 17.3. The Social Value Toolkit (<https://www.lbbd.gov.uk/social-value-policy>) provides more detail on the type of activities that suppliers can consider when developing their Social Value commitments to the council. It is recommended that the Toolkit be provided to potential suppliers as part of the procurement process.
- 17.4. For further assistance regarding Social Value, please contact the Social Value Coordinator [socialvalue@lbbd.gov.uk](mailto:socialvalue@lbbd.gov.uk)
- 17.5. Wider Social Impact considerations should also be considered alongside the requirements to provide Social Value outcomes and the following points should be read in conjunction with this Section C.
- 17.6. In particular officers should wherever possible, but without breaching any law, use the Council's purchasing power to support local small and medium-sized enterprises (SMEs) or voluntary and community organisations. Officers should seek benefits and added value for the local geographical area and where this provides equal or better value for money for the Council than alternatives.
- 17.7. Officers must carefully review the required specifications and evaluation methodology of any procurement to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council. Officers must not, however, conduct a procurement in any way that is likely to show bias towards or discriminate in favour of any such organisation.
- 17.8. Officers must ensure that processes do not over burden or restrict Small to Medium Enterprises (SMEs) or voluntary and community organisations (VCS) from having the same opportunity to respond to procurements as those in the commercial sector. Equally, consideration should be given to the supply chain and how each specific procurement can help the local community and local small medium enterprises within the borough.
- 17.9. Officers may incorporate questions in their Invitations to Tender and evaluate responses relating to local economic benefits, and regeneration within the community or any other benefits (such as apprenticeships and employment) that support the local economy and prosperity for the borough where this is appropriate to the procurement. Advice on the preparation of the ITT and where appropriate, the Selection-Qualification Questionnaire (SQ), can be obtained from Corporate

Procurement or the Council's Social Value Coordinator.

17.10. Officers must include a statement as to how the procurement meets and addresses the Council's Social Value policies in every Procurement Strategy Report covering the procurement.

17.11. Relevant bodies can, in exercise of the Community Right to Challenge (under the Localism Act 2011), propose a solution to provide a service that the Council currently provides. Advice on the process to follow should be obtained from the Council's Policy Team (should a challenge be received).

## **18. Sustainable Procurement**

18.1. Sustainable procurement offers the Council the opportunity to encourage and work collaboratively with suppliers and contractors.

18.2. Officers must consider the environmental and social impacts of the procurement and endeavour to adopt practices that maximise service outcomes and at the same time minimise adverse impacts on the environment.

18.3. Officers are required to consider ways of procuring more resource and energy efficient alternatives and pay particular regard to the Council's environmental policies including the targets as set out in the Climate Emergency declaration.

## **19. Freedom of Information and Data Protection**

19.1. The Council has specific obligations under the Freedom of Information Act 2000 and Data Protection Acts regarding disclosure of information, and all tenderers must be notified that any documentation produced and provided during the procurement process may be subject to disclosure under the Acts.

19.2. During tender processes, bidders must be informed that they should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information made to the Council. Bidders should state why they consider the information to be confidential or commercially sensitive. Any such information shall be identified in the contracts concluded between the Council and successful bidder. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

## **20. Term of Contract and Costs Assessment including extension periods**

20.1. Officers must consider what the appropriate contract term is for each procurement and include provisions to enable contract extensions to be agreed at the Council's discretion. Officers must submit extensions for all Gold Category procurements to Procurement Board for approval.

20.2. For Goods and Services, it is recommended that the term should be a maximum of 5 years including any periods of extension unless there is clear justification set out in the Procurement Strategy Report.

20.3. In the event that capital repayment or concession payback periods need to be calculated, please discuss these with Corporate Procurement prior to setting the term.

- 20.4. Contract spend against the agreed pricing methodology (for example, price per item, bulk service cost/schedule of rates) should be monitored by the contract manager throughout the lifecycle of the Contract, to include any extended periods. Depending on the duration of the Contract and levels of competition, contracts should include Contract Reviews to enable both the Council and Supplier to assess spend levels to date to provide assurance that the service maintains value for money.
- 20.5. The spend over the contract term must NOT exceed the approved value contained within the approval documentation such as Delegated Authority, procurement strategy or waiver.
- 20.6. The spend must be equal or below the values agreed in the procurement process conducted, this should be validated prior to raising an initial purchase order or receipting to pay an invoice.

## **21. Key Decision**

- 21.1. Officers must consider whether a procurement involves a Key Decision. Typically, a procurement would not qualify as a Key Decision, irrespective of the value, if the funding is already provided for within the service budget and the approval being sought merely relates to the proposed procurement route / strategy.
- 21.2. If it is decided that a procurement does constitute a Key Decision (ie. approval is also being sought for additional funding) and the Contract Value exceeds £500,000, Officers must include the Procurement Strategy Report on the Cabinet/HWB Forward Plan.
- 21.3. Chief Officers may approve the procurement and award of contracts with a Contract Value of up to £500,000, in accordance with paragraph 4.7(a) of Chapter 1, Part 3 of the Constitution.

## **22. The Application of IR35**

- 22.1. If procuring an individual person or a person as a service, then prior approval must be obtained from Work Force Board (WFB) approval for the role.
- 22.2. If procuring a person as an individual or as a service, then an assessment must be undertaken to determine whether the IR35 regulations apply.
- 22.3. In the event that a temporary or interim worker accepts a new temporary or interim role with the Council and the role is different to the one previously conducted, then the officer must conduct a new IR35 determination process.
- 22.4. In the event that a temporary or Interim worker provides the same service to the Council and exceeds a 12-month period, a new IR35 determination must be conducted and each further 12-month period.
- 22.5. All records of IR35 Determinations must be kept in line with the data retention policy.
- 22.6. If advice or guidance is need on IR35 processes, the appropriate Human Resources Business Partner should be contacted.

## 23. Applicable Legislation and Health and Safety

- 23.1. Consideration must be given to the relevant legislation which covers the contract being procured. Examples include, but are not limited to: :
- Public Contract Regulations 2015 (PCR 2015)
  - Concession Contract Regulations 2016
  - Utilities Contracts Regulations 2016
  - Social Care Act 2014
- 23.2. Guidance should be sought from Corporate Procurement or the Legal Team to identify and agree the legislation that should be applied.
- 23.3. There is a need to ensure that contractors undertaking construction / maintenance works, either for or on behalf of the Council are well managed with regards to Health and Safety. Starting from pre-engagement through to completion.
- 23.4. For Bronze and Silver threshold contracts, the pre-engagement H&S questionnaire should be used, as well as the provision of information and monitoring documents <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Internal-Policies,-Forms,-and-Guides-regarding-Contractors.aspx>
- 23.5. For Gold threshold contracts the Corporate Procurement Team should be engaged and Pre-engagement H&S questions will form part of the process. However, the Provision of Information and Monitoring documents should still be used to assist with managing contractor risks on-site. <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Internal-Policies,-Forms,-and-Guides-regarding-Contractors.aspx>

## 24. Development of a Specification or Schedule of Requirements

- 24.1. A specification is a description of needs or requirements. It provides a detailed description of the goods, services or works which a supplier is expected to supply during the lifetime of the contract. Prior to developing the specification knowledge of the market should be applied, or market research conducted, to determine which suppliers can meet the requirement. Detail should be proportionate to the purchase value, complexity and operational risk relating to the requirement in order not to deter SME's or the C&VS from bidding.
- 24.2. As a minimum, the following should be considered (note list is not exhaustive):
- Delivery timeframe
  - Deadline for works completion
  - Price format
  - For Services: day/hourly/all-inclusive rates (total cost)
  - Quality
  - Quantity
  - Required supplier experience
  - Size / dimensions
  - Performance (including KPI's and Service Credits)
  - Installation / maintenance / servicing / warranty
  - Delivery (should generally request "delivery inclusive" or "Delivery Duty Paid")
  - Features / options

- Technical requirements
- Integration with existing goods / services
- Software and training
- Health and Safety
- Sustainability Considerations
- Equalities
- Social Value for all spend over £100,000

24.3. Consideration may also need to be given to:

- Will cost be inclusive of delivery, maintenance, installation, upgrades, etc.?
- VAT inclusive?
- International purchase? If so, have I considered which party will be responsible “incoterms” e.g., potential import taxes or customs fees?
- Will this item fit through the door or will the floor support it?
- Are there any additional regulatory requirements, e.g., Health and Safety legislation?
- Are there any relevant Council Policies to be aware of?
- Is sustainability a relevant consideration? Examples:
  - Are poor working conditions, low pay or environmental issues an issue in the supply chain?
  - Is there an appropriate way to address this in my specification, e.g. to require a Fair Trade Label or equivalent?
  - Is there any way to conduct this purchase in a way that contributes to the Council’s goal to reach Net Zero Carbon target by 2030, e.g., to require higher energy efficiency in equipment?
- For the Bronze Category, if a specification is submitted to a supplier by email, it should be made clear that a quotation is being requested.
- For the Silver Category, when a specification is sent via the e-portal it must be made clear that this is an Invitation to Quote.
- For all Gold level spend it is recommended that the specification is reviewed by the Commissioning lead, Corporate Procurement and the Legal Team.

## 25. Evaluation Criteria (Quality and Financial) and Expectations including Ratio’s and Credit Reference Check

25.1. An essential part of the procurement process is setting out how returned bids will be evaluated, and to make sure set the methods out clearly to ensure all bidders can understand how this will be conducted, but also ensures the Officers have written processes to comply with during the tender process.

25.2. The Evaluation Criteria will predominantly be split into three main elements:

- a) **Quality:** This element will contain questions or method statements which will enable an evaluator to review response against a set of requirements that can be scored against the methodology set out in the ITT.

To assist with the scoring, it is recommended the following scoring matrix is used:

Score	Rating	Criteria for Awarding Score
5	Excellent	Excellent response that fully meets and exceeds the essential requirements and demonstrates exceptional understanding and evidence in their suggestion/proposed solution to the question. May demonstrate ability to deliver against additional desirable requirements. Response puts forward ideas that will offer added value and significant positive impact for the borough, with evidence to support the response.
4	Good	Good response that meets the essential requirements and demonstrates sound understanding and evidence in their suggestion/proposed solution to the question. Some reference to desirable requirements may be provided. Response puts forward ideas that will offer potential added value and positive impact for the borough, with evidence to support the response.
3	Satisfactory	Satisfactory response. Demonstration by the Tenderer of meeting some of the essential requirements and demonstrates some understanding and evidence in their proposed solutions to the question. Response puts forward ideas that offer limited added value and positive impact for the borough, with limited evidence to support the response.
2	Fair (potential fail)	Fair response but does not meet the essential criteria. Reservations of the Tenderer's understanding and proposed suggestions/solutions. Little added value or positive impact suggested and evidenced.
1	Poor (fail)	Poor response that has not addressed the question. Major reservations of the Tenderer's understanding and proposed suggestions/solutions, with little or no evidence to support the response.
0	Unacceptable (fail)	No response to the question or the response does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the understanding or suitable methodology, with no evidence to support the response.

If the standard scoring matrix is not to be used, any other form must be agreed with Corporate Procurement and Legal Services.

- b) **Price:** This element must clearly show how financial bids will be evaluated against other bids, and what calculation will be used to determine the outcome and against the % weighting, this also applies to e-auctions, the standard

approach is as follows:

$$(A \text{ divided by } B) \times C = X$$

A = the lowest submitted price

B = the price submitted by the bidder

C = the weighting (%)

X = the score

If the standard scoring matrix is not to be used, any other form must be agreed with Corporate Procurement and Legal Services.

- c) **Ratios and Credit Reference Agencies:** These can be used to incorporate pass/fail criteria, this must be set out in the ITT and discussed with Corporate Procurement, Corporate Finance and Legal Services prior to inclusion.

#### **Ratio (Gold Category)**

There will be industry specific ratio evaluation models developed by Corporate Finance, these will be used for all procurements that are deemed as high risk and have been rated Red through the Council's risk matrix (see paragraph 16 for more information).

The Ratio will evaluate a company based on financial risk, its cash flow and liquidity, this will reduce or mitigate the risk of failure due to financial performance.

#### **Credit Reference Agency (Gold Category)**

For all over threshold procurements that are not rated as Red through the Council's risk matrix, the use of a Credit reference agency will be applied. There will be model templates that include the process and the written explanation for use.

Credit Reference Agencies should also be used as part of Contract Management to assess the stability of a supplier during the contract lifecycle.

The Contract Management Team should be consulted in the use to ensure the good practice principles contained in the Contract management Toolkit are observed.

#### **Social Value:**

This element will contain questions or method statements which will enable an evaluator to review response against a set of requirements that can be scored against the methodology set out in the ITT.

To assist with scoring, it is recommended the following scoring matrix is used:

<b>Score</b>	<b>Delivery Model (What)</b>	<b>Method Statement (How)</b>
<b>No response (0)</b>	Question not answered	Either doesn't respond to the question or provides an answer which is not related to the Social Value question.
<b>Poor (1)</b>	Inadequate response, when a bidder has not provided measurable Social Value outcome which aligns with the specific requirements in the Council's Social Value.	Poor explanation or insufficient detail of how the measurable Social Value outcomes will be achieved.
<b>Unsatisfactory (2)</b>	Indicates an attempt to set out a measurable Social Value requirement but limited and the response doesn't outline or quantify what will be delivered.	Attempts to explain generically how the measurable Social Value outcome might be delivered but requires much more detail around the specifics and implementation plans to provide assurance the plan will deliver the outcomes.
<b>Satisfactory (3)</b>	Response meets the majority of our expectation and sets out a measurable outcome that shows; some level of link to the Social Value theme(s) and some explanation of this will deliver against the Social Value theme(s). Goes some way towards meeting part of our expectation around the impact & reach within the community or theme focused area.	Has the basis of a realistic plan of for how the Social Value outcome will be delivered including indicative timeframes and resources required. Shows a method has been considered of how to achieve impact within the defined community group or theme focused area.
<b>Good (4)</b>	Acceptable response which commits to the delivery of a measurable outcome which provides a good link to the Social Value theme(s), quantifies and explains expectations around delivery. Meets expectation around the impact & reach within the community or theme focused area.	Clearly outlines how the measurable Social Value outcome will be delivered in some detail, as well as giving an indication of timeframes. Explains the method for achieving targeted impact within the defined community group or theme focused area.
<b>Very good (5)</b>	Exceeds expectation, clearly quantifies Social Value outcomes against the particular theme(s) and offers significant additional benefits, in a specific way. Highlights the specific impact expected within the community group or theme focused area. Clear focus on the community & its needs.	Not only outlines in detail how the Social Value outcomes will be delivered but also gives certainty of the process and highlights the monitoring or reporting structures and accountability for delivery. Possible dedicates resources focused on achieving the outcome.

## **26. No Fault Termination / Break Clause**

- 26.1. The Council may seek to insert a break/no fault termination clause into its contracts, this will enable the Council to give notice to a provider without recourse for costs outside of those for services already provided.
- 26.2. Generally speaking, a three-month notice period would be considered standard and the Council would need to outline this in the terms and conditions of contract being used.
- 26.3. In the event a break/no fault termination clause is considered, an assessment must be undertaken to show what impact this may have on bidding behaviours, or what risks may follow if the contract is terminated.
- 26.4. Consideration must be given whether this process is available to the supplier in tandem, or if the supplier should give a longer notice period, this generally would be the time required to undertake a re-procurement.
- 26.5. If this is built into the procurement process, Corporate Procurement Team and Legal Services must be consulted.

## **27. Early Termination**

- 27.1. Legal Services and the Chief Financial Officer must be consulted in all instances where early termination or suspension of a contract is being proposed.
- 27.2. Irrespective of the reason for the termination of the contract, the final authorisation to suspend or terminate a contract can only be given by Cabinet/HWB or the commissioning Chief Officer or other Officer (as the case may be) with the level of authority to award contracts of the value of the contract which is to be terminated.
- 27.3. Approval for early termination of a contract shall not be given unless a report setting out the following has been prepared and submitted to the Officer or decision-making body:
  - a) The full circumstances leading to such termination;
  - b) The financial implications of such termination, including penalties or compensation liabilities;
  - c) The legal implications of such termination;
  - d) Proposals for ongoing service provision;
  - e) Continued funding capability following the termination;
  - f) Potential re-procurement requirements.
- 27.4. Except in an Emergency or where specific departmental processes have been approved for early termination or suspension (e.g. in Safeguarding cases) no High Value Contract shall be terminated or suspended without the express approval of the Procurement Board.

## **28. Shortlisting Criteria and Exclusion Criteria (including Pass/Fail)**

- 28.1. Officers may introduce procedures for above threshold contracts aimed at reducing the number of bidders that it will invite to tender to a manageable number as part of the shortlisting process.
- 28.2. If a shortlist of potential bidders has to be drawn up in order to take forward a

manageable number of bidders, the criteria and reasons for shortlisting must be documented.

- 28.3. The shortlisting process must be open and transparent to all contractors and pre-determined selection criteria must be used.
- 28.4. The basis for both shortlisting and rejecting tenderers should be documented. These decisions must be based on factors that relate explicitly to the contractor's ability to deliver the contract.
- 28.5. The Council shall exclude a bidder from participation where a bidder has, or where the Council becomes aware, committed a criminal offence relating to fraud, corruption, terrorism, tax evasion, money laundering or such other offences as are prescribed in [Regulation 57 \(1\) – \(5\)](#).
- 28.6. The Council may exclude a bidder from participation where the bidder is found to be, or the Council becomes aware of the bidder becoming, bankrupt, guilty of professional misconduct, colluded with other bidders with a view to distorting competition and has shown significant deficiencies in the performance of a prior public contract or such other provisions as may be prescribed by [Regulation 57 \(8\)](#).
- 28.7. For full detail of the circumstances under which a bidder shall or may be excluded the Officer must obtain advice from Corporate Procurement.
- 28.8. These provisions will apply unless the bidder produces evidence that they have self-cleaned within the provisions of [Regulation 57 \(13\)](#).
- 28.9. Advice from Corporate Procurement should be sought before any bidder is excluded from the shortlist.

## **29. Terms and Conditions**

- 29.1. The Council has a suite of standard contract terms and conditions, and these must be used unless where mandated by use of a framework or DPS.
- 29.2. Any framework or DPS terms and conditions (such as Access agreements, Header Terms, Call Off terms or the framework/DPS), must be reviewed by Corporate Procurement and Legal Services prior to acceptance.
- 29.3. If not using the Council's terms and conditions or approved framework terms and conditions and it is being proposed to contract using the Suppliers Terms, officers must not enter into any agreements without the express permission of Legal Services.
- 29.4. If there is any doubt on which terms to use or which would fit better with the procurement, please discuss this with the Corporate Procurement Team and/or the Legal Team.

## **30. TUPE (Transfer of Undertakings (Protection of Employment))**

- 30.1. Where, as a result of any procurement, any employee either of the Council or of a current service provider is likely to be affected by changes to staffing or work conditions, redundancy, relocation or transfer of employment, Officers must have regard to the possible impact on such procurement and employee(s) of the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended. Such

TUPE issues should be included in the Procurement Strategy Report and any evaluation and award reports.

- 30.2. Officers must ensure that appropriate consultation with staff and trade unions is undertaken and that pension entitlements are considered and as far as possible, protected.
- 30.3. Advice regarding TUPE must be sought from Corporate Procurement and Human Resources and, where necessary, from Legal Services.

### **31. Route to Market and Process**

- 31.1. Officers must consider what procurement method and procedure is most likely to best achieve the Council's objectives including, but not limited to:
- a) Invitation to quote (for Bronze Category)
  - b) Procuring via an existing Corporate Contract or Council procured framework;
  - c) a full tender exercise;
  - d) Procuring via an existing Framework agreement; or
  - e) Utilising a buying consortium (e.g. ESPO, CCS) to procure on behalf of the Council, if this option is to be taken please discuss this with Corporate Procurement and Legal Services.
- 31.2. In addition, officers must also consider the options for the delivery of the required goods, services or works. The options include but are not limited to:
- a) Providing the goods, services or works in-house;
  - b) Procuring a third-party public or private body to provide the goods, services or works on behalf of the Council;
  - c) Providing the goods, services or works in partnership with a third party; and
  - d) Commissioning jointly with another Council/public body.
- 31.3. Where a competitive tendering process is required by these Rules or by Regulations, there are six process that could be used as follows;
- a) **Open procedure** – where all contractors expressing an interest in the contract are invited to submit tender bids in response to an advertisement.
  - b) **Restricted procedure** – where all interested contractors are invited to submit expressions of interest in response to an advertisement, and shortlisted contractors are then invited to submit a tender bid;
  - c) **Competitive Procedure with Negotiation** – where all interested bidders are invited to submit expressions of interest in response to an advertisement, and shortlisted contractors are invited to negotiate. This procedure can be concluded following evaluation of the bidders' initial tenders or can be carried out in successive stages in order to reduce the number of tenders to be negotiated provided this is indicated to bidders upfront. When the Council intends to conclude the negotiations, it must inform the bidders and set a deadline for

submission of new or revised tenders. The Council must then assess the final tenders based on the award criteria and award the contract.

- d) **Competitive dialogue** – where all interested contractors are invited to submit expressions of interest in response to an advertisement, and the Council enters into dialogue with shortlisted contractors to identify a solution (or solutions) which meets the Council’s requirements, and selected bidders are invited to submit tenders based on the solution/s resulting from the dialogue.
- e) **Innovation Partnership** – a procedure designed to allow the Council to establish a long-term partnership for the development and subsequent purchase of a new, innovative product, service or works. Officers must obtain advice from Corporate Procurement and Legal Services in relation to this procedure.
- f) **Negotiated Procedure without prior publication** – this procedure may be used in exceptional circumstances only and where the specific grounds for its application apply. Use of this procedure will require a waiver under Rule 35 and advice of Legal Services as well as Corporate Procurement has to be obtained before proposals for its use are progressed.
- g) **Light Touch Regime** – Contracts for social, education, health and other specific services listed in Schedule 3 of the Regulations and which have a contract value of £663,540 (inclusive of VAT) or over shall be subject to the Light Touch Regime. Light Touch Regime means that the procurement of these contracts are not subject to the same full regime as other above threshold service contracts but are subject to a lighter touch procedure which requires only that a contract notice or PIN be used to commence the procurement and a contract award notice published once a contract has been awarded. The Council has flexibility to determine what type of procedure it uses but any such procedure must comply with the principles of equal treatment and transparency and provide reasonable and proportionate timescales. Officers may use or adapt any of the procedures set out in Rule 31.

## **32. Setting up a Framework / Dynamic Purchasing System (DPS)**

- 32.1. Officers must prepare a Procurement Strategy Report before they procure any Framework/DPS Agreement. Such procurement report must be approved by the Chief Officer or Cabinet/HWB, as the case may be, in accordance with the approval process set out in Rule 10.2 and ascertained on the basis of the aggregate Contract Value of the Contracts to be let under the Framework/DPS Agreement.
- 32.2. The term of any Framework Agreement must not exceed four years (Regulations requirement) except in exceptional circumstances relating to the subject of the Framework Agreement. Officers must seek advice and approval from Legal Services if a Framework Agreement for more than four years is required.
- 32.3. The term for a DPS will need to be discussed and validated by Corporate Procurement and Legal Services prior to publication.
- 32.4. The default for creating a call-off mechanism when creating a Framework Agreement should be a mini-competition. Proposals to resort to direct call-offs should be set out in the Procurement Strategy Report and approved by the Procurement Board or in the case of Personalised Contracts, by the relevant Chief

Officer.

- 32.5. The call-off mechanism for a DPS is by mini-competition only.
- 32.6. Officers must consider the impact of potentially closing the market in any sector to new suppliers during the period of the Framework Agreement and ensure that the benefits and length of the Framework Agreements are justified.

### **33. Project / Procurement Timeline including implementation timeframe**

- 33.1. Procurement can take varying lengths of time depending on the Route to Market used and the complexity, size and longevity of the contract. To ensure the strategy can be delivered end to end, a project plan will need to be devised which sets out the key milestones, including, but not limited to:
- Approval Points (Officer, Chief Officer or relevant Board(s))
  - Pre-market engagement (if required)
  - Contract Drafting/Review
  - Development of the specification/schedule of requirements
  - Development of evaluation criteria, questions and methodologies
  - Advertising the opportunity (if over threshold mandated timescales)
  - Evaluation of returned bids
  - Moderation/mediation
  - Drafting and issuing de-brief letters
  - Standstill period (if required)
  - Contract sealing / signature
  - Implementation

## SECTION D

### PROCUREMENT CATEGORY PROCESS WORKFLOWS

#### 34. Process Flows

34.1. Firstly, an assessment should be taken on the likely cost of the Project, Works or Service which is to be procured and then follow the appropriate category process workflow as set out below (for a summary of categories please refer to paragraph 10.2):



#### **Bronze**

Less than £30,000 inc  
VAT

Led by the procuring  
service with support from  
Corporate procurement if  
and when required



#### **Silver**

Between £30,001 –  
£213,476 inc VAT

Led by the procuring  
service in collaboration  
with Corporate  
Procurement



#### **Gold**

More than £213,477 inc  
VAT

Led by the procuring  
service in collaboration  
with Corporate  
Procurement (Category  
Manager)

**Bronze Category Process Workflow: To be used for Project’s, Works,  
or Service’s identified as costing less than £25,000**

	<h1 style="text-align: center;">Bronze Contract Rules</h1>		
<p style="text-align: center;"><b>Goods, works, services, project costing less than £30,000 (inclusive of VAT)</b></p>			
	Key Steps	Tools / Templates / Quick Links	Guidance
<h1>1</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: 80%; margin: auto;"> <p>Consult the contract register</p> </div>	<p><a href="#">Contract Register</a></p>	<p>If a contract already exists that meets your requirements this can be used, except when this would exceed the contract value. Please check with the Contract owner and <a href="#">Corporate Procurement</a>.</p> <p>If you cannot use the existing contract, you must consult <a href="#">Corporate Procurement</a> for advice.</p>
<h1>2</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: 80%; margin: auto;"> <p>Develop a specification of requirements</p> </div>	<p><a href="#">Contracts and Procurement Team</a> which includes links to:</p> <ul style="list-style-type: none"> <li>• Purchase Order Terms</li> <li>• Short Form Terms</li> </ul>	<p>This includes:</p> <ul style="list-style-type: none"> <li>• what you want and how do you want it to be delivered</li> <li>• evaluation criteria</li> <li>• the budget</li> <li>• what terms and conditions will be used (Council Purchase Order terms, short form terms or Supplier Terms)</li> <li>• value for money assessment if this reviewing an existing contract you can baseline costs to show savings, cost mitigations or service improvement</li> </ul> <p>See <a href="#">paragraph 29</a> for further guidance on terms and conditions and <a href="#">paragraph 24</a> for details on what should be included within a specification</p>
<h1>3</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: 80%; margin: auto;"> <p>Assess the market</p> </div>		<p>You must have a minimum of 1 local supplier. If there are no local suppliers, seek advice from the Local Supply Chain Lead in <a href="#">Corporate Procurement</a> before proceeding.</p>
<h1>4</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: 80%; margin: auto;"> <p>Prepare the request for quote documentation and set return deadline</p> </div>		<p>You must also agree the number of suppliers that will be invited to quote. This will depend on the market size.</p>

5	Issue Request to Quote to the identified suppliers		<p>You should issue the Request to Quote to all identified suppliers as close together to give all the same time to review and respond.</p> <p>If the brief changes, you must advise all potential bidders to ensure you have been fair to all.</p>
6	Review the quotes and select the proposal that meets both the quality and price aspect	<a href="#">Contracts and Procurement Team</a>	<p>If you cannot comply with the requirement to source locally, then you will need to complete a Delegated Authority Form</p>
7	Inform successful and unsuccessful bidders of the outcome		<p>You should advise both the successful and unsuccessful suppliers by email and keep a record. For example.</p> <p>Thank you for your time to submit a quote/bid. Or this occasion you have not been successful.</p> <p>Or</p> <p>Thank you for your time to submit a quote/bid. I am pleased to inform you that you have been successful.</p>
8	Complete the contracts register form and submit to Corporate Procurement	<a href="#">Contracts and Procurement Team</a> which includes links to the Contract Register Online Form	<p>If you have any questions in relation to the completion of the contracts register form, please contact <a href="#">Corporate Procurement</a>.</p>
9	Commence contract and establish contract management over the contract period Observe 10-day standstill	<a href="#">Contracts and Procurement Team</a> which includes links to the Contract Management toolkit.	<p>If Purchase Order Terms have been agreed these will be issued with the Purchase Order.</p> <p>Short form terms will need information from the bid being added to make up the contract</p> <p>If you are to use Supplier Terms please seek advice from Legal Services and <a href="#">Corporate Procurement</a> to ensure acceptable liability coverage is maintained.</p>

## Silver Category Process Workflow: For Project, Works, or Service identified as costing £30,001-£213,476 inc VAT

	<h1>Silver Contract Rules</h1> <p>Goods, works, services, project costing between £25,000 and £213,476 (inclusive of VAT)</p>		
	Key Steps	Tools / Templates / Quick Links	Guidance
1	Consult the contract register	<a href="#">Contract Register</a>	If a contract/framework already exists that meets your requirements this can be used. Consult with <a href="#">Corporate Procurement</a> who will be able to advise if the existing contract can be used. If both procurement and the contract owner agree to use of the existing contract a requisition can be raised using the normal purchase of goods/services process.
2	Assess value for money		<p>This includes:</p> <ul style="list-style-type: none"> <li>• Baseline costs to evidence current position and to demonstrate savings or costs avoidance</li> <li>• Cost mitigations or service improvement</li> </ul> <p>(Normally only applicable if existing service).</p>
3	Draft specification of requirements		<p>This is where you would consider what you want, how do you want it delivered, what are the outputs, what is the budget, how you will evaluate scores”</p> <p>See <a href="#">paragraph 24</a> for further guidance on what should be included within a specification.</p>
4	Assess the local market	<a href="#">Contracts and Procurement Team</a> which includes links to the Delegated Authority Form	If there are no local suppliers that can deliver the service consult <a href="#">Corporate Procurement</a> . If no local supplier exists, you will need to complete a Delegated Authority Form.
5	Consider terms and conditions	<a href="#">Contracts and Procurement Team</a> which includes more information on terms and conditions	If Council terms will be used, please continue to the next step. You will need to consult with Legal Services if it is proposed that Supplier terms are to be used.

6	Place procurement onto the e-portal	<p><a href="#">Procurement e-portal</a></p> <p>Training is available via <a href="#">iLearn</a></p>	<p>The Commissioner is responsible for this element with guidance from <a href="#">Corporate Procurement</a>. This step will consist of the following:</p> <ul style="list-style-type: none"> <li>• Advertise on the Local Business Forum and also through the BEC to engage the Local Supply Chain</li> <li>• Select known suppliers</li> <li>• Advertise in Contracts Finder unless using a framework or Dynamic Purchasing System (DPS)</li> <li>• Publish council terms and conditions unless using a framework or DPS</li> <li>• Publish on 'Find a Tender' Portal, The Council's Website as an opportunity</li> </ul> <p>Training is required to gain access to the e-portal. <a href="#">Click here</a> to access training via iLearn. If e-portal access is not available please contact <a href="#">Corporate Procurement</a> who will be able to advise on next steps.</p>
7	Supplier/bidder clarifications		<p>Supplier/bidder may ask questions to clarify the specification. You must respond to all suppliers/bidders unless commercially sensitive information about the bidder. All response timelines must be the same. This ensures a fair, open and transparent process.</p>
8	Evaluate bids responses (via portal)	<p><a href="#">Contracts and Procurement Team</a> which includes links to the Delegated Authority Form</p>	<p>If there are less than 3 bids or less than 1 local supplier bid, then a Delegated Authority Form will need to be signed off by the budget holder.</p> <p>This should consists of the following:</p> <ul style="list-style-type: none"> <li>• Client/commissioner – quality</li> <li>• If over 100k Social Value Co-ordinator/Commissioner – Social Value Return</li> </ul>
9	Draft Award Report and obtain budget holder approval	<p><a href="#">Contracts and Procurement Team</a> which includes links to the Award Report.</p>	<p>The Commissioner will prepare the information required to enable the drafting of the report. Corporate Procurement can offer advice where necessary</p>

10	<p>Issue successful / unsuccessful letters and feedback via the e-portal. And respond to any challenge.</p>	<p><a href="#">Procurement e-portal</a></p> <p>Training is available via <a href="#">i Learn</a></p>	<p>In the event there is a challenge to the decision then please contact Legal Services.</p>
11	<p>Publish award notice in contract finder via e-portal</p>	<p><a href="#">Procurement e-portal</a></p> <p>Training is available via <a href="#">i Learn</a></p>	<p>This step consists of the following:</p> <ul style="list-style-type: none"> <li>• Publish award notice on Contracts Finder portal</li> <li>• Add contract onto the central Contracts Register</li> <li>• File contract with Legal Services</li> </ul>
12	<p>Commence the service</p>	<p><a href="#">Contracts and Procurement Team</a> which includes links to the Contract Management toolkit.</p>	<p>E-portal will send a reminder to the lead commissioner to advise when re- procurement should be reviewed and planned.</p> <p>It is the procuring service's responsibility to manage the contract and schedule its renewal, and to engage with <a href="#">Corporate Procurement</a> and Legal Services to ensure sufficient resource can be allocated.</p>

## Gold Category Process Workflow: For Project, Works, or Service identified as costing above £213,477 inc VAT

	<h1>Gold Contract Rules</h1> <p>Goods, works, services, project costing more than £213,477 (inclusive of VAT)</p>		
	Key Steps	Tools / Templates / Quick Links	Guidance
1	<div style="border: 1px solid #ccc; border-radius: 10px; padding: 10px; text-align: center;">Consult the contract register</div>	<a href="#">Contract Register</a>	<p>If a contract/framework already exists that meets your requirements this can be used. Consult with <a href="#">Corporate Procurement</a> who will be able to advise if the existing contract can be used. If both Procurement and the contract owner agree to use of the existing contract a requisition can be raised using the normal purchase of goods/services process.</p>
2	<div style="background-color: #f9e79f; border: 1px solid #ccc; border-radius: 10px; padding: 10px; text-align: center;">Conduct Commercial Research</div>		<p>Procurement will lead this step, in conjunction with the Commissioner/ procuring service. This includes:</p> <ul style="list-style-type: none"> <li>• Benchmarking</li> <li>• Market Warming</li> <li>• Market Capability</li> </ul>
3	<div style="background-color: #f9e79f; border: 1px solid #ccc; border-radius: 10px; padding: 10px; text-align: center;">Assess value for money</div>		<p>Procurement will lead this step, in conjunction with the Commissioner/ procuring service. This includes:</p> <ul style="list-style-type: none"> <li>• Baseline costs to show savings</li> <li>• Cost mitigations or service improvement</li> </ul> <p>(Normally only applicable if existing service).</p>
4	<div style="border: 1px solid #ccc; border-radius: 10px; padding: 10px; text-align: center;">Develop procurement strategy and obtain approval</div>	<p><a href="#">Contracts and Procurement Team</a> which includes links to the</p> <ul style="list-style-type: none"> <li>• Procurement Strategy Report Template</li> <li>• Cabinet/ Board Report</li> </ul> <p>Link to other <a href="#">Template Documents</a></p>	<p>You will need to complete a Procurement Strategy Report and present to Procurement Board for approval.</p> <p><b>Contracts over £500,000</b> A supplementary Cabinet/Board Report will need to be developed to obtain Cabinet or Health and Wellbeing Board approval. (Ensure the Forward Plan form is completed a minimum of 2 months prior to the Cabinet meeting the report will be presented at).</p>

5	Draft specification of requirements		<p>This is where you would consider what you want, how do you want it delivered, what are the outputs.</p> <p>Some of the content within the Procurement Strategy Report will form the basis of the specification</p> <p>See <a href="#">paragraph 24</a> for further guidance.</p>
6	Assess the local market		<p>Consult <a href="#">Corporate Procurement</a> who will assist with this step. Together with Corporate Procurement you will establish if there are local suppliers that can deliver the service.</p>
7	Consider terms and conditions		<p>Legal Services will lead this step, in consultation with <a href="#">Corporate Procurement</a>. If supplier terms are to be used then Legal Services will need to approve the terms in consultation with Corporate Procurement.</p> <p>Corporate Procurement will contact Legal Services to initiate the review.</p>
8	Place procurement onto the e-portal	<a href="#">Procurement e-portal</a>	<p><a href="#">Corporate Procurement</a> will lead this step and can consist of the following:</p> <ul style="list-style-type: none"> <li>• Advertise on the Local Business Forum and also through the Barking Enterprise Centre (BEC) to engage the Local Supply Chain</li> <li>• Select known suppliers</li> <li>• Advertise in Contracts Finder unless using a framework or Dynamic Purchasing System (DPS)</li> <li>• Publish council terms and conditions unless using a framework or DPS</li> <li>• Publish on 'Find a Tender' Portal, The Council's Website as an opportunity</li> </ul>
9	Evaluate bids responses (via portal)		<p><a href="#">Corporate Procurement</a> will lead this step. And consists of the following:</p> <ul style="list-style-type: none"> <li>• Client/commissioner – quality</li> <li>• Corporate procurement – compliance/mandatory elements</li> <li>• Corporate Procurement/Finance – financial model return with support from Finance</li> </ul>

			<ul style="list-style-type: none"> <li>Social Value Co-ordinator/Commissioner – Social Value Return</li> </ul>
10	Mediate Scores and rank bids against criteria.		<p><a href="#">Corporate Procurement</a> will lead this step and ensure all responses support the decision and Comply with PCR 2015. This will include any moderation.</p>
11	Draft award report and prepare feedback documentation	<p><a href="#">Contracts and Procurement Team</a> which includes links to the Award Report.</p>	<p><a href="#">Corporate Procurement/Commissioner</a> will prepare the information required to enable the drafting of the report, this will be commissioner-led, supported by Corporate Procurement.</p> <p>The feedback requirement will be led by Corporate Procurement with input from the Commissioner.</p>
12	Issue successful / unsuccessful letters and feedback via the e-portal. And respond to any challenge.		<p><a href="#">Corporate Procurement</a> will lead this step and will consult with Legal Services if there is any challenge.</p> <p><b>Observe 10-day standstill.</b> The standstill period is a period of 10 calendar days, during which the contract award process is suspended.</p>
13	Publish and file the contract		<p><a href="#">Corporate Procurement</a> will lead this step, in conjunction with the Commissioner. This step consists of the following:</p> <ul style="list-style-type: none"> <li>Publish award notice on Contract Finder and “find a tender” portals</li> <li>Add contract onto the central Contracts Register</li> <li>File contract with Legal Services</li> </ul>
14	Commence the service	<p><a href="#">Contracts and Procurement Team</a> which includes links to the Contract Management toolkit.</p>	<p>E-portal will send a reminder to the lead commissioner to advise when re- procurement should be reviewed and planned.</p> <p>It is the procuring service’s responsibility to manage the contract and schedule its renewal, and to engage with <a href="#">Corporate Procurement</a> and Legal Services to ensure sufficient resource can be allocated.</p>

### **35. Waiver Process and Impact of Waivers if not used correctly**

- 35.1. A waiver is a process that can occur if the Council's Contract Rules cannot be adhered to providing there are justifiable grounds.
- 35.2. A waiver must not be used to disaggregate spend to negate the need to comply with the Council's Contract Rules and/or UK Legislation.
- 35.3. A waiver must not be used to avoid the administrative inconvenience of a process or formal tender process or as a direct consequence of poor planning and management.
- 35.4. The responsible officer must detail and evidence in a waiver report the grounds that support the need not to comply with the processes as set out in paragraph 10.2.
- 35.5. The following are the grounds on which a waiver may be granted by the Chief Officer:
- a) That an emergency situation exists, or
  - b) That there is clear evidence the goods, services or works to be procured are of a specialist technical, artistic or proprietary nature, or
  - c) That there is only one supplier in the market capable of providing the service, goods or works e.g. a specific artist with intellectual property rights in a work of art, such that there is no benefit to be gained from competition, or
  - d) For reasons of systems or software licence support or compatibility, or
  - e) The circumstances of the proposed contract are covered by legislative exemptions (whether under UK Law or EU if applicable).
- In the case of below-threshold contracts only, any of the above or where:**
- f) The contract is a Personalised Contract, or
  - g) The nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is such that a departure from the requirements of the Contract Rules is justifiable; or
  - h) There are other circumstances which are genuinely exceptional.
- 35.6. The responsible officer and the chief officer must consider if the justification in the report offers the grounds to support the waiver, evidence should be recorded and kept as a record alongside the waiver document as this will be relevant in the case of an Audit or FOI request.
- 35.7. No waiver shall be granted by a Chief Officer or by Cabinet/HWB which purports to or has the effect of waiving the requirements of UK Law or any principles of transparency, equality and non-discrimination.
- 35.8. Where the Contract Value of a contract is or exceeds £500,000, approval to waive any of the Rules in this Section D must be obtained from the Cabinet/HWB except in an Emergency, in which case the Chief Executive can issue the waiver pursuant to Rule 35.9.

- 35.9. In an Emergency, the Chief Executive can, on the advice of the Chief Legal Officer and the Chief Financial Officer, issue a waiver from compliance with any of the provisions contained in this Section D for a contract with a Contract Value which exceeds £500,000, provided the requirements of the Urgent Action procedure set out in paragraph 4, Chapter 16, Part 2 of the Constitution are complied with and subject to the Regulations. Any such waiver must be reported to the next available meeting of the Cabinet/HWB.
- 35.10. The Chief Officer must keep a written record of all waiver approvals for his/her department and work with Corporate Procurement to avoid seeking exemptions in future. Copies of this record must be produced to the Procurement Board, and when required by the Monitoring Officer or Audit.
- 35.11. The details of a waiver must be added to the Contracts Register and an award notice placed in Contracts Finder for all spend over £25,000.00. The contracts register contains a waiver section that must be completed.

#### **Impact of Waivers if not used correctly**

- 35.12. A waiver essentially removes the requirement to conduct a competitive process, this will remove the Council's ability to:
- Negotiate and demonstrate value for money (VfM);
  - Inhibits financial forecasting and budget monitoring and impacts savings methodologies;
  - Disaggregation of spend which would disengage strategic direction;
  - Potentially agree to terms and conditions that do not align with Council requirements such as Social Value, local impact etc.;
  - Limit the market moving forward;
  - Increases the risk of dependency on the supplier, making it very difficult to move away;
  - May inhibit innovation in the market/Council.
- 35.13. All waivers in the Gold Threshold must contain comments from Corporate Procurement and Legal Services prior to approval by the delegated officer or Board.
- 35.14. All waivers should be kept on a central register as the detail will be required and subject to Audit and Scrutiny.
- 35.15. In the event that a waiver is required, you will need to complete the Waiver template. Please note you will be required to fully justify the reason(s) why the process should not be conducted in line with the contract Rules. This process must only be used for Bronze and Silver Categories.
- 35.16. Waivers that exceed the Gold Category will need to be reviewed and approved by Legal Services and then by Procurement Board, and in the event they are a key decision and above £500,000 they will require approval from Cabinet/HWB.

## SECTION E

### PROCUREMENT KEY ELEMENTS – SUMMARY

#### 36. Notice Types (when and where to use them)

- 36.1. Officers must ensure that any Prior Information Notices (PINs) or Contract Notice, by the Regulations are placed in the Find a Tender Service (FTS) and Contracts Finder if relevant based on value. The Notices are to be used as part of the Silver and Gold Categories and should be completed and published by the Corporate Procurement Team or the Category Manager.
- 36.2. PINs may be used by the Council:
- a) to make known their intention of planned procurements through the publication of a prior information notice, or
  - b) as a call for competition.
- 36.3. In each such case the provisions of [Regulation 48](#) of the Public Contracts Regulations 2015 shall be complied with.
- 36.4. The PIN Notice can be used as a tool to see how buoyant a market is, which may enable you to shape your procurement strategy and route to market options appraisal.
- 36.5. Where officers wish to use this method, advice must be sought from Corporate Procurement and Legal Services.

#### 37. E-procurement Tool

- 37.1. All tenders for procurements in the Silver and Gold Categories must be issued electronically via the Council's e-procurement tool.  
(<https://lbbd.bravosolution.co.uk/web/login.shtml>)
- 37.2. If support or advice is required on how to use the e-portal please contact Corporate Procurement.

#### 38. Procurement Documentation

- 38.1. There are a number of documents required dependent on the level of spend, these are as follows in points 38.2 and 38.3; the following link will allow access to the documents detailed below  
<https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>
- 38.2. **Gold** - A formal Procurement Strategy report will need to be completed, which clearly sets out the strategy for the Procurement. The Procurement Strategy will require implications from a Finance Business Partner, a Senior Legal Officer and a Procurement Category Manager as a minimum, the template can be found on the intranet in the Legal Services site.
- 38.3. **Award Report including Regulation 84** - An award report is required for all Silver and Gold Category procurements. The report will show the process agreed in the strategy, how the process was conducted and the result of the process. This report

will need implications from a Finance Business Partner, a Senior Legal Officer and a Procurement Category Manager as a minimum, the template can be found on the intranet in the Legal Services site.

- 38.4. For all Gold threshold procurements, Appendix A of the contract award report containing the Regulation 84 requirements will need to be completed on every above-threshold procurement (except for call offs from sole supplier frameworks or where a call-off from a framework is made without further competition)

## **39. SQ and ITT**

### **SQ (Selection Questionnaire)**

- 39.1. Where in above threshold (Gold Category) procurements Officers decide to include a SQ stage they shall:
- a) use the Standardised SQ Questionnaire (or the PAS91 for works contracts);
  - b) verify that bids submitted comply with the rules and requirements applicable to the tender; and
  - c) check whether grounds for exclusion apply and selection criteria is satisfied.
- 39.2. The Council may with a view to determining the economic and financial standing of tenderers impose requirements that tenderers possess the necessary economic and financial capacity to perform the contract.
- 39.3. In determining the requirements of 39.1 the Council may require tenderers:
- a) to have a minimum yearly turnover, which should not, except in exceptional high-risk situations, exceed twice the estimated Contract Value;
  - b) provide information on their annual accounts showing the ratios, for example, between assets and liabilities; and
  - c) have an appropriate level of professional risk indemnity insurance.

An SQ template will be available on the Council's e-portal, if any additional detail/questions are required, please consult with Corporate Procurement before continuing.

### **Invitation to Tender (ITT)**

- 39.4. An Invitation to Tender details how the procurement process will be conducted, on what basis it will be evaluated and will detail the requirements that the Bidders will need prior to deciding whether to bid.
- 39.5. There are two templates available on the Council's e-portal, covering differing financial modelling:
- A template that uses the ratio methodology as set out in Rule 25.5, this will be used for all High risk (Red rated) contracts
  - A template for lower risk above threshold procurements will be covered by the turnover requirements in addition to a Credit Reference rating, the rating must be agreed with Corporate Procurement and Finance prior to publication.

39.6. In the event that clarification is required to which template to use or need assistance in its completion, please contact Corporate Procurement.

#### **40. Using internal and external frameworks**

- 40.1. Officers may access and call-off goods, services or works from a Framework Agreement if the Council is either specifically named or described or referred to in acceptable geographic terms (e.g. “all London Boroughs” or “all UK local authorities” etc) in the Framework Agreement and the scope of the Council’s requirements are specified in the Framework.
- 40.2. Officers must get confirmation from Corporate Procurement that the Council is signed up to or otherwise has access to a specific Framework Agreement before procuring from that Framework Agreement.
- 40.3. Where the terms of a Framework Agreement allow for direct call-offs without competition and the terms of such call-off are sufficiently precise, Officers may, after consultation with Corporate Procurement and Legal Services, call-off under the Framework Agreement without competition.
- 40.4. Where it is proposed to award a specific contract based on a Framework Agreement in which all the terms of the proposed contract are not laid down or where the terms of the Framework Agreement so specify, a mini-competition shall be held in accordance with the terms of the Framework Agreement. Unless otherwise provided, tenders shall be invited from all members of the relevant category of the Framework Agreement which are capable of carrying out or delivering the requirements of the specific contract.
- 40.5. Procurement Strategy Reports must be prepared for all procurements with a Contract Value over UK threshold or more intended to be made from framework agreements except where the subject-matter of the procurement has been included within the scope and calculations of a previously approved Procurement Strategy Report covering the procurement of works, goods or services of the nature proposed from the framework agreement.
- 40.6. Details of all contracts awarded under Framework Agreements must be provided to Corporate Procurement who shall publish such details on Contracts Finder.
- 40.7. Frameworks can be used to procure in the Silver and Gold Categories.

#### **41. Setting up a Framework**

- 41.1. It is assumed that all requirements to set up an internal framework would be conducted under the Gold Category process of approval.
- 41.2. Officers must prepare a Procurement Strategy Report before they procure any Framework Agreement. Such procurement report must be approved by the Chief Officer or Cabinet/HWB, as the case may be, in accordance with the approval process set out in Rule 10.2 and ascertained on the basis of the aggregate Contract Value of the Contracts to be let under the Framework Agreement.
- 41.3. The term of any Framework Agreement must not exceed four years (UK requirement) except in exceptional circumstances relating to the subject of the Framework Agreement. Officers must seek advice and approval from Legal

Services in the event that a Framework Agreement for more than four years is required.

- 41.4. The default for creating a call-off mechanism when creating a Framework Agreement should be a mini-competition. Proposals to resort to direct call-offs should be set out in the Procurement Strategy Report and approved by the Procurement Board or in the case of Personalised Contracts, by the relevant Chief Officer.
- 41.5. Officers must consider the impact of potentially closing the market in any sector to new suppliers during the period of the Framework Agreement and ensure that the benefits and length of the Framework Agreement are justified.
- 41.6. Officers should also explore potential income generation from opening the framework to be used by other Public Bodies, this should be discussed with Corporate Procurement and the Legal Team to ensure terms and conditions align to this situation.

## **42. Using internal or external DPS (Dynamic Purchasing System)**

- 42.1. Officers may access and call-off goods, services or works from a Dynamic Purchasing System (DPS) if the Council is either specifically named or described or referred to in acceptable geographic terms (e.g. “all London Boroughs” or “all UK local authorities” etc) in the originating Notice.
- 42.2. Officers must get confirmation from Corporate Procurement that the Council is able to access or has already signed up to use the DPS before procuring from it.
- 42.3. The Officers must prepare a specification or scope of works that will be issued to all interested parties registered on the DPS.
- 42.4. The closing date for your request must be a minimum of 10 days to conform with UK legislation, and you must evaluate all returns.
- 42.5. Details of all contracts awarded under a DPS in the Silver and Gold Categories must be provided to Corporate Procurement who shall publish such details on Contracts Finder.

## **43. Site Visits / Presentations**

- 43.1. Save where the Competitive Procedure with Negotiation or Competitive Dialogue Procedures are used to conduct procurement, careful consideration should be given to the use of presentations and/or site visits within the tender process. There should be a clear understanding of the reason for the use of the presentation or visit and how it will contribute to the evaluation process. The documentation must clearly state what relevance and weighting presentations/site visits carry as part of the award criteria. If in doubt, officers should seek advice from Corporate Procurement and Legal Services.
- 43.2. The default position should be not to conduct site visits except where any of the location, activity undertaken, state of repair and suitability of the site will be important factors in the delivery of the service. In such cases Officers need to consider whether such criteria should be applied at the short-listing stage. If a site visit is required, this must be declared as part of the evaluation criteria in the tender

documentation. The ITT should state clearly what issues will be evaluated, the criteria against which they will be evaluated and the scores and weighting to be applied. Alternatively, site visits may be used as a verification exercise to verify criteria set out in the ITT.

- 43.3. Where a service is to be provided from Council premises and it is considered important that potential providers view the premises, all bidders must be invited to be present or be included in every site visit initialised by the Council.

#### **44. Business Continuity Plans and Disaster Recovery Plans**

- 44.1. To ensure the Council has appropriate resilience in its services and supply chain, All Gold Category procurements require that the tender process includes the requirement for the bidders to provide a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP).
- 44.2. This should form part of the ITT and can be either a scored or non-scored element.
- 44.3. In the event that a bidder cannot provide the BCP at point of tender, and they are successful in their bid, there is a requirement that they submit the BCP/DRP no longer than three months after 'go live' and this should be monitored as part of the contract management framework or during implementation (depending on the contract being procured)
- 44.4. The BCP/DRP should be tested as a minimum on an annual basis, this can take the form of a desktop exercise with the process and notes being completed including any improvement actions that must be completed by the Supplier and a new BCP/DRP issued to be held by the Council.
- 44.5. Where the risk is deemed very high (Red status) the testing program may be six-monthly until risks are mitigated and then annual reviews can be maintained.
- 44.6. The BCP/DRP requirements will also form part of the Council's Terms and Conditions as standard, in the event that you are seeking to use alternative terms and conditions such as a framework, you will need to discuss with Corporate Procurement and the Legal Team on how this can be addressed within the scope of the contract terms.

## SECTION F

### PROCUREMENT CONSIDERATIONS DURING THE PROCESS

#### 45. SQ Standard template or Additional requirements

45.1. In the event that additional questions are to be inserted into the SQ template, this should only be conducted after review by Corporate Procurement and the Legal Team to ensure the additions do not expose the Council to risk of challenge or inhibits potential response in the ITT (please refer to Rule 39 for the SQ outline requirements).

#### 46. ITT Methodology

46.1. The ITT is the document that sets out what the requirements are, how they shall be delivered and how bidders are evaluated. It is important to ensure that the process conducted mirrors the detail set out in the ITT. The main elements needed are:

- Any definitions being used in the document, written clearly and concisely;
- Introduction setting out expected start date, term and expiry and any extension options, and any potential periods, and a brief outline of the requirements;
- The procedure used eg Open Process;
- An indicative timetable, when it will be issued clarification period and response deadline;
- How the process will be run including how late or rejected tenders shall be managed;
- Any exclusion criteria and any pass/fail questions;
- Evaluation split across quality, price and Social Value, showing the percentage attributed to each element and also any further sub weightings. The Council's Social Value Policy requires all contracts over £100,000 to have a minimum of 10% weighting for Social Value;
- If an e-auction forms part of the process;
- Information governance and FOI requirements;
- Sets out the method questions for the quality aspect and how the financials and Social Value will be scored in more detail and will include elements such as Ratio's and/or Credit Reference agency use and any templates that need completing as part of the bid.

46.2. For templates, advice and guidance on any elements of the ITT, please contact Corporate Procurement and the Legal Team.

#### 47. GDPR

47.1. The Council must comply with all Data Protection legislation.

47.2. The confidential data during the bidding process and during the contract lifecycle should be outlined. It should also be stated that the information maybe subject to disclosure under legislation.

47.3. The data could be issued by the Council as an example under TUPE requirements or issued by the supplier as part of their bid response.

47.4. The Council also needs to consider if any information that would be covered by the Act would be owned by the Council but used by the supplier as part of its service

delivery, such as names and addresses for marketing material mailing services.

- 47.5. Advice should be sought from the Information Officer as part of the strategy development to ensure compliance and guidance can be given prior to publication.

#### **48. Fraud Prevention**

- 48.1. Every contract shall contain a condition permitting the Council to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, should the contractor, his servant or agent:
- a) offer, give or agree to give to anyone, any inducement or reward in respect of the relevant or any other Council contract (even if the contractor does not know what has been done); or
  - b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
  - c) commit any fraud in connection with any Council contract, whether alone or in conjunction with Council members, Officers, contractors or employees.
- 48.2. The Council shall exclude a bidder from participation where a bidder has, or where the Council becomes aware, committed a criminal offence relating to fraud, corruption, terrorism, tax evasion, money laundering or such other offences as are prescribed in [Regulation 57 \(1\) – \(5\)](#).
- 48.3. The Council may exclude a bidder from participation where the bidder is found to be, or the Council becomes aware of the bidder becoming, bankrupt, guilty of professional misconduct, colluded with other bidders with a view to distorting competition and has shown significant deficiencies in the performance or a prior public contract or such other provisions as may be prescribed by [Regulation 57 \(8\)](#).
- 48.4. For full detail of the circumstances under which a bidder shall or may be excluded the Officer must obtain advice from Corporate Procurement.
- 48.5. These provisions will apply unless the bidder produces evidence that they have self-cleaned within the provisions of [Regulation 57 \(13\)](#).

#### **49. Tender Process Deadlines/Milestones including E-procurement tool**

- 49.1. **Open Process** - The normal period from publication of the contract notice on the Find a Tender Service to the receipt of tenders is 35 days. There are generally two sets of circumstances when it is possible to shorten the 35-day period, which are outlined below (a third is in a state of urgency subject to certain provisions):
- **PIN notice published** - A PIN notice has been published at least 35 days and not more than 12 months before the dispatch of the actual contract notice on the Find a Tender Service. The timescale of 35 days may be reduced to 15 days.
  - **Use of electronic submission of tenders (e-procurement system)** - Where the Council permits the submission of tenders electronically, the minimum time limit for receipt of tenders can be 30 days. The tools and devices used for electronic receipt of tenders must (amongst other things) ensure that no one can have access to the data transmitted before the deadline for receipt of tenders.

A contract notice must also be published on Contracts Finder . This notice

should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.2. **Restricted Process** - The Restricted procedure is a two-stage process. It is possible to shorten the number of days as outlined below.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The normal period from publication of the contract notice on the Find a Tender Service for suppliers to express an interest in taking part in the tender is 30 days.

A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Invitations to tender** - After the initial assessment of the requests to participate, tenderers shall have a minimum of 30 days from the date of issue of the invitation to tender documentation to submit documentation.
- **Use of electronic submission of tenders** - Where the Council permits the submission of tenders electronically, the minimum time limit for receipt of tenders can be 25 days. The tools and devices used for electronic receipt of tenders must (amongst other things) ensure that no one can have access to the data transmitted before the deadline for receipt of tenders.
- **PIN notice** - Where a PIN notice has been published at least 35 days and not more than 12 months prior to the publication of the actual contract notice on the Find a Tender Service and which is not itself used as a means of calling for competition, the 30 days may be reduced to 10 days.

The Council can set the minimum time limit for tenders by agreement with tenderers. In the absence of agreement, the minimum time limit is 10 days.

- **Standstill Period** - After informing all participants of the outcome of the award

decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.

- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.3. **Competitive procedure with negotiation timescale** - The competitive procedure with negotiation is a two-stage process. It is possible to shorten the number of days as outlined below.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The normal period from publication of the contract notice on Find a Tender Service for suppliers to express an interest in taking part in the tender is 30 days.

A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Invitations to tender** - After the initial assessment of the requests to participate, candidates shall have a minimum of 30 days from the date of issue of the invitation to tender documentation to submit initial tenders.
- **Use of electronic submission of tenders** - Where the Council permits the submission of tenders electronically, the minimum time limit for receipt of initial tenders can be 25 days. The tools and devices used for electronic receipt of tenders must (amongst other things) ensure that no one can have access to the data transmitted before the deadline for receipt of tenders.
- **PIN notice** - Where a PIN notice has been published at least 35 days and not more than 12 months prior to the publication of the actual contract notice on Find a Tender Service and which is not itself used as a means of calling for competition, the 30 days may be reduced to 10 days.

The Council can set the minimum time limit for tenders by agreement with tenderers. In the absence of agreement minimum time limit is 10 days.

- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a

Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.4. **Competitive Dialogue** - The Competitive Dialogue procedure is a two-stage process. It is not possible to shorten the number of days.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The period from publication of the contract notice on Find A Tender Service for suppliers to express an interest in taking part in the tender is 30 days.
- A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find A Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.
- **Submission of tenders** - Tenders are submitted after a period of dialogue with the participating suppliers during which different solutions may be developed. When the time comes for the formal submission of tenders, there is no minimum period stipulated however, it must be reasonable and should reflect the complexity of the exercise.
- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.5. **Innovation Partnership** - The Innovation Partnership procedure is a two-stage process. It is not possible to shorten the number of days.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The period from publication of the contract notice on Find a Tender Service for suppliers to express an interest in taking part in the tender is 30 days.

A PIN cannot be used as a call for competition.

A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the

notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Submission of tenders** - Tenders are negotiated with the participating suppliers to improve their content. When the time comes for the final submission of tenders, there is no minimum period stipulated however, it must be reasonable and should reflect the complexity of the exercise.
- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.6. **Negotiated procedure without a call for competition** - The Negotiated procedure without a call for competition has no minimum timescales.

- **Contract Award Notice** - A contract award notice should be published within 30 days of the contract award.

## **50. Late Submissions**

- 50.1. Where a tender has been received which is after the electronic cut off point as managed by the e-procurement system, the responsible officer/Corporate Procurement shall prior to opening any of the tenders report this to his/her Chief Officer giving details surrounding the circumstances of the late tender. The Chief Officer/Head of Procurement, with the prior approval of the Chief Legal Officer, may accept the late tender if they determine that:
- a) the delay was caused by exceptional circumstances for which the bidder was not primarily responsible; and
  - b) the bidder has gained no unfair advantage from it being late and the tender process has not been compromised as a result.
- 50.2. If there is any doubt, Corporate Procurement and Legal Services must be consulted.
- 50.3. The Chief Officer shall record in writing the reasons why each late tender has been accepted or rejected and sign and date the record.
- 50.4. All tender related documentation must be stored and available for inspection in a secure location and must not be moved without the permission of Officers responsible for the procurement.

## **51. Erroneous Tenders**

- 51.1. The appropriate Chief Officer, with the prior approval of the Chief Legal Officer, may permit a bidder to correct an identified arithmetic or clerical error or omission that, in the opinion of the Chief Officer, is an obvious one and if they determine that the bidder has gained no unfair advantage from correcting the error. Any such corrections will be recorded on the tender file.
- 51.2. The Chief Officer of a procuring department may treat as irregular and may invalidate and reject a bid:
- a) where it appears that the tenderer is in breach of the Regulations and/or these Rules;
  - b) where a bid is subject to any qualification, amendment or alteration which has been prohibited by the Council as part of the procurement exercise;
  - c) any amendment to the tender price is received after the tenders have been opened; and
  - d) any tender from which the tender price has for some reason either been omitted or is otherwise not ascertainable.
- 51.3. The Chief Officer shall record in writing the reasons why each irregular tender has been accepted or rejected and sign and date the record.
- 51.4. All tender related documentation must be stored and available for inspection in a secure location and must not be moved without the permission of officers responsible for the procurement.

## **52. Abnormally Low Tenders**

- 52.1. Officers shall require a bidder to explain prices and costs in their tender which appear to be abnormally low in relation to the works, supplies or services.
- 52.2. The Council shall assess the information provided by consulting with the tenderer.
- 52.3. Officers may only reject a tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed. Officers need to seek advice from Corporate Procurement as to specific explanations and evidence that may be considered.
- 52.4. The Council shall reject the tender where it has established that the tender is abnormally low because it does not comply with the environmental, social and labour law obligations.

## **53. Clarification Questions**

### **Pre-Tender Clarification**

- 53.1. Officers may answer questions or provide information in response to requests from prospective bidders in relation to an ITT or ITQ. However, the selection process must be demonstrably fair to all participants. Accordingly, no bidder should be given information from which they may gain an unfair advantage over rival bidders who do not have access to that information.
- 53.2. A formal procedure for recording questions posed and responses sent must be in place and be used.

- 53.3. Questions of a complex technical or procedural nature must be notified to Corporate Procurement who may, if they deem it necessary, refer the issue to Legal Services.
- 53.4. Officers responsible for the procurement must set the date by which the bidders must submit questions and following which no further queries will be accepted after such time. This must be clearly stated in the ITT.
- 53.5. Where questions are asked, the questions and answers / responses received must be provided to all bidders at least six days before the final date for submission of tenders. If the information is not provided within this timeframe, the time limit for receipt of tenders must be extended for a reasonable period.

#### **Post Tender Clarification**

- 53.6. Seeking post-tender clarification of a tender whether in writing or by way of a meeting is permitted only with the approval of Corporate Procurement and on the advice of Legal Services.
- 53.7. Post tender clarifications should not be used as opportunities to conduct post-tender negotiations. Post-tender negotiation means negotiations with any bidder after submission of a tender and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. Such negotiations are prohibited under UK law.
- 53.8. Officers shall take into account the requirements of the Regulations and these Rules and consult Corporate Procurement before conducting any clarifications or refinements to any tender and related documentation.
- 53.9. Any post-tender clarifications must be conducted in line with the relevant UK (and if applicable EU Procedure) and must not distort competition particularly with regard to price. They should be used only to clarify any aspect of a tender that is not clear.
- 53.10. Any clarification or discussions must be conducted by or in the presence of at least two Officers, one of whom must be from Corporate Procurement, on Council premises if permitted or through virtual means, and a detailed contemporaneous written record kept.
- 53.11. Where post-tender clarifications may result in a significant change to the specification (or contract terms) the contract must not be awarded but be re-tendered. Officers should consult Corporate Procurement and Legal Services in cases of uncertainty.

#### **54. Standstill Period (if required)**

- 54.1. In the case of contracts subject to the full scope of the UK Regulations, which shall also include contracts subject to the Light Touch Regime, Officers must notify all bidders of the intended award of the contract and must allow a mandatory minimum standstill period of 10 calendar days (otherwise 15 days for non-electronic tenders) between notification of a proposed award and entering into a contractually binding agreement (Standstill Period).
- 54.2. Officers may not make an award of contract, nor make any commitment to award a contract, until the standstill period has expired. The standstill period must not commence until all internal approvals have been finalised.

- 54.3. Officers must notify all tenderers that submitted a bid of its decision in relation to the award of the contract. This must be done in writing by the quickest means of communication available as soon as possible after the award decision has been made.
- 54.4. The notice referred to above must include:
- a) details of the award criteria;
  - b) the reason for the decision, including characteristics and (in the case of bidders only) the relative advantages of the winning bidder;
  - c) the score obtained by the unsuccessful bidder;
  - d) the score obtained by the successful bidder;
  - e) the name of the bidder to be awarded the contract; and
  - f) the date on which the standstill period ends or before which the Council will not enter into the contract with the successful bidder.
- 54.5. A notice of the nature and containing the detail referred to in Rule 54.4 above must also be sent to all candidates i.e. those who applied to be invited to bid but who were not so invited. Such notice must also inform the candidates of the reason why they were unsuccessful but does not need to detail the relative advantages of the winning bid.
- 54.6. It is most important that any communication with the preferred bidder(s) does not lead such bidders to believe it constitutes a contract award or a conditional award. Corporate Procurement and Legal Services can advise on this.
- 54.7. The mandatory standstill period does not apply to below threshold procurements.
- 54.8. The mandatory standstill period applies for framework agreements only at the stage at which the framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements. However, Officers should always consider applying a standstill for mini competitions for Gold Category Contracts on a voluntary basis.
- 54.9. In the event a challenge is made to the award of the contract, Legal Services and Corporate Procurement must be notified immediately and advice obtained.

## **55. Unsuccessful De-brief process**

- 55.1. The Procuring Officer shall, if requested in writing and provided a notice under Rule 54.4 has not already been provided, within 15 days of receipt of such request, debrief in writing all those bidders who submitted a tender about the characteristics and relative advantages of the successful bidder.
- 55.2. This should normally include:
- a) the criteria for the award of the contract (e.g. the scoring and assessment mechanisms);
  - b) the reasons for the decision, including the characteristics and relative advantages of the successful tender;
  - c) the name of the successful tenderer;
  - d) the successful tenderer's score;
  - e) the tenderer's own score;
  - f) if relevant, an explanation as to why the tenderer did not meet the technical

specifications of the procurement;

g) what the tenderer could have done to improve their scores.

55.3. The standard debrief template is held on the Legal Service intranet site, and any questions or advice needed should be sought from Corporate Procurement and Legal Services prior to issue.

## **56. Challenge Process**

56.1. In the event that there is any type of challenge the responsible officer must contact Corporate Procurement and Legal Services immediately, so all appropriate action can be taken.

## SECTION G

### AWARDING A CONTRACT PROCESS

#### 57. Post Tender Clarifications / Requests to Change

- 57.1. The Council's standard approach is that, once the terms and conditions have been issued as part of the tender process and unless agreed during the tender initial clarification window, they should not be amended or agreed. In the event that this scenario occurs, advice must be sought from Corporate Procurement and the Legal Team prior to entering into a contract.
- 57.2. In order to assess any change, the general rule is that if it impacts the way the process was conducted or material changes the requirements or scope of the service, then the standard response is that we cannot change as it may impact how other bidders could have submitted and may have had a different outcome. If advice is needed, officers should consult with Corporate Procurement and Legal Services.

#### 58. Award Report (including Regulation 84 Report)

- 58.1. No contract, Framework or DPS shall be entered into before a Contract Award Report has been completed and approved by Cabinet/HWB or an Officer duly authorized under the Scheme of Delegation, as appropriate for spend conducted in the Silver or Gold threshold.
- 58.2. The Contract Award Report shall set out the details of the procurement, including details of the subject matter and value of the contract or Framework, details of the tender(s), the criteria and weighting applied, the evaluation process followed, a recommendation as to the successful tenderer(s) to whom the Council proposes to award the contract or Framework and reasons why it/they were successful. In the case of UK procured contracts or Frameworks, all the requirements of [Regulation 84 \(1\)](#) must be complied with.
- 58.3. In the case of tenders above the UK thresholds, bidders must be notified in writing of the award in accordance with this Rule 54.3 and 54.4. Guidance may be sought from Corporate Procurement.
- 58.4. In the case of procurements where a standstill period is required to be observed, a letter "(Letter of Intention to Award)" must be written to the successful bidder advising them that following the evaluation of bids, the Council intends, subject to the standstill period elapsing without challenge, to award the contract to the bidder.
- 58.5. The Letter of Intention to Award must set out the main terms of the contract that will bind the parties including the duration, price, contract conditions, and other significant contract terms and documentation such as the specification and tender response documents.
- 58.6. The Letter of Intention to Award must make it clear that the issuing of the Letter of Intention to Award is merely a statement of intention and does not equate to a firm offer to contract with the successful bidder as the Council still reserves the right not to award the contract.
- 58.7. Corporate Procurement must be notified immediately of any challenge to a

procurement process in order that appropriate and conforming action may be taken.

- 58.8. Officers responsible for the procurement must submit a report and obtain the further approval of Cabinet/HWB/the Chief Officer prior to award when:
- a) The contract which is the most economically advantageous solution, in accordance with the established tender evaluation criteria, is not being recommended for acceptance;
  - b) Cabinet/HWB has chosen in advance to become involved in awarding the contract.
- 58.9. An Award report template can be found on the Legal Teams Intranet site. For guidance on how to complete the report and any questions on the requirements of Regulation 84, please ask Corporate Procurement and Legal Services.

## **59. Sealing and Signing Process for Contracts**

- 59.1. Chief Officers must ensure that a signed or sealed contract is in place and all pre-conditions have been complied with (such as provision of insurance certificates and DBS checks) before the goods are ordered or works or services begin. Where for matters of urgency it is necessary for the Contractor to commence work without a signed contract being in place, the procuring Officer shall ensure that a Letter of Acceptance of the contract has been signed and returned by the successful bidder before the goods are ordered or works or services begin. Legal Services should be consulted before officers agree that the Contractor can commence work without a formal contract in place.
- 59.2. A contract must be sealed by Legal Services where:
- a) The Contract has with a value of £250,000 (including VAT) or more; or
  - b) the Council wishes to enforce a contract for a period longer than 6 years; or
  - c) the value of the consideration paid or received under the Contract is a nominal value that does not reflect the value of the supplies or services.
- 59.3. The fixing of the Council's Seal must be witnessed by the Chief Legal Officer or such other authorised Officer as s/he shall nominate. The seal must not be affixed without evidence of governance approval being in place.
- 59.4. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.
- 59.5. In order for Legal Services to seal a contract, Officers responsible for the procurement must provide:
- a) A sealing request form;
  - b) The Minute evidencing Cabinet/HWB approval; and/or
  - c) A signed Contract Award Report or Delegated Authority Report.
- 59.6. All contracts must be recorded on the Council's Contracts Register immediately after award. Officers are required to provide Corporate Procurement with an electronic copy of the signed contract and complete the Contract Register Form.
- 59.7. Records of all procurement activity must be retained in accordance with the Council's Document Retention Policy in either electronic or hard-copy format as appropriate.

- 59.8. The Council's original copy of the sealed contract must be registered with and retained by Legal Services. Council Officers are required to retain a photocopy and/or scanned version for their own records and to ensure appropriate monitoring of the obligations placed upon the contractor.
- 59.9. Chief Officers must keep a register of contracts completed by signature (rather than by the Council's seal) and arrange their safekeeping on Council premises.

## **60. Award Notice(s)**

- 60.1. A Contract Award Notice must be placed by Corporate Procurement or the procuring officer in the FTS (for all Gold Category procurements that are above threshold) following the award of a contract procured under the Regulations within 48 days of such award.
- 60.2. Within a reasonable time of publishing a Contract Award Notice in FTS Officers (but no later than 90 calendar days from award of the contract) shall ensure that a notice is also published on Contract Finder for all spend over £25,000.00 which contains at least the following information:
- a) The name of the Contractor;
  - b) The date on which the contract was entered into; and
  - c) The value of the contract.
- 60.3. The requirements of Rule 60.1 above shall also apply where a contract is awarded based on a framework agreement, i.e following a direct call-off or a mini-competition from or within a framework agreement.

## **61. Contracts Register Inclusion Process**

- 61.1. To ensure the Council complies with its obligations under the Transparency Agenda and also to comply with PPN 05/21- National Procurement Policy Statement which came into force in April 2022.
- 61.2. The requirement for the Council is to ensure it holds a central contracts register that will be used to:
- a) support the Cabinet Forward Plan;
  - b) support the Procurement Board forward plan;
  - c) meet its obligations under the transparency agenda;
  - d) offer a central view and oversight to use the data to make informed decisions on when to reprocure etc.
- 61.3. The Contracts Register template will be required to be completed for all contracts that exceed £25,000 in value. The template will be listed on the Legal Team's intranet site and can be accessed here: [Contracts Register Online Form Template.xlsx \(sharepoint.com\)](#)
- 61.4. The Contract Register template must be completed by the Commissioner for Bronze and Silver Categories, and by Corporate Procurement for Gold Category, within 14 days from contract award and issued to Corporate Procurement for central collation and publication.

**62. No Contract = No Service**

- 62.1. After awarding the procurement the responsible officer must ensure that contracts are entered into (sealed or signed) by both parties prior to the service commencing.
- 62.2. This requirement protects the Council as there will be agreed terms and conditions that govern the interaction and expectations of both parties, including performance and quality expectations and firm costs (fixed or schedule of rates).
- 62.3. If this process cannot be adhered to, the Risk and Assurance team, Corporate Procurement and the Legal Team must be advised so an assessment can take place to mitigate financial, physical or reputational risk to the Council.

## SECTION H

### CONTRACT MANAGEMENT

#### 63. Contract Management

- 63.1. An essential part of the procurement and planning process is to ensure there is an appropriate and proportionate contract management framework implemented relative to the size, value and risks associated with the delivery of the contract/services.
- 63.2. An effective contract management framework is a key tool to manage risks within the delivery of the contract and are a necessary part of the commissioning, contract and procurement lifecycle. Key risks include, but are not limited to risks such as:
  - a) The existing contract will expire before a new contract has been agreed;
  - b) Prices may increase due to being out of contract;
  - c) Not having agreed terms and conditions to govern the service.
- 63.3. All contracts must have a designated contract manager for the full term of the contract (including any extended periods). Their name and job title must be recorded on the Council's Contracts Register.
- 63.4. All Silver and Gold Category contracts are subject to formal reviews between the Council's Contract Manager and the contractor.
- 63.5. During the life of the contract the designated Contract Manager must monitor as a minimum:
  - a) Performance;
  - b) Compliance with specification and contract;
  - c) Spend against Contract Price and lifecycle value;
  - d) Continuous improvement initiatives to drive value;
  - e) User satisfaction
  - f) Risk management
- 63.6. Importantly, good/best value is not just about cost. Contract Managers should regularly engage with service users and discuss feedback/concerns with the supplier as part of Contract Management meetings.
- 63.7. Contract Managers should work collaboratively with the contractor throughout the contract lifecycle on securing continuous improvements in quality, cost and innovation in service provision.
- 63.8. The Contract Manager must ensure there is clarity over what is needed from the Contract, at what level of quality and periodically compare the Contract Price against what can be achieved in the wider market.
- 63.9. Contract Management training is available on I Learn  
<https://lbbd.learningpool.com/login/index.php>
- 63.10. Further information and guidance documents on how to contract manage effectively are available on the intranet at  
<https://lbbd.sharepoint.com/sites/Intranet/SitePages/Commercial-and-contracts-management.aspx>

63.11. For further support with specific contract management, or contract related queries please contact the Council's Commercial Services team on, CommercialServices@lbbd.gov.uk

## **64. Risk Management**

- 64.1. Contract managers are required to consider if there are any significant risks to key contracts which might adversely impact on contract cost or delivery. The assessment of operational delivery risks should be set out within the risk assessment undertaken at procurement stage (see paragraph 16 for more information). This should be periodically reviewed throughout the life of the contract.
- 64.2. Once identified, such risks should be recorded on team/service/department risk registers as necessary and should indicate how the risks are being, or are proposed to be, mitigated or managed to bring the risk to a level acceptable to the Council. This approach will make any key contracting risks visible and ensure they are managed in accordance with Risk Management policy.
- 64.3. Officers should seek advice and guidance on risk management from Corporate Procurement or the Council's Risk team.
- 64.4. The Council's Insurance team should be informed of the commencement of the contract and, if applicable, be provided with copies of a contractor's policy documents.

## **65. Contract Milestones**

- 65.1. In contracts there will be some key milestones that need to be understood, monitored, managed and actioned at the required points, this can be for:
- Price increases (RPI/CPI or annual agreed increase), or a period where the supplier can seek to increase pricing providing the support the claim;
  - Notice periods, some contracts detail how far in advance the supplier should be notified if the Council wishes to extend (if extension periods exist) or for the contract to end at the agree date;
  - Break clauses/No Fault termination periods;
  - General termination periods.
- 65.2. A key contract milestone requires advance planning so they can be delivered successfully and on time. Contract Managers should ensure there is clarity over:
- Which initiatives require further approval and the associated governance process;
  - Time required to re-procure or tender the requirements;
  - Implementation timescales;
  - TUPE consultation and timescale (if applicable);
  - Requirements to add to the Contracts Register prior to Contract commencement or extensions.

## **66. Variations / Changes to Contracts including Extensions**

- 66.1. Once a contract has commenced, the terms should not be varied unless provided for within the contract and on the basis that both parties shall have agreed the

variation.

66.2. Modifications to existing contracts are permitted without commencing a new procurement in the following circumstances ;

- a) Where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options.
- b) For additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of Contractor:
  - (i) cannot be made for economic or technical reasons; or
  - (ii) would cause significant service disruption or substantial duplication of costs for the Council.
  - (iii) provided that any increase in price does not exceed 50% of the value of the original contract.
- c) Where all of the following conditions are fulfilled:
  - (i) the need for modification has been brought about by circumstances which the Council acting diligently could not foresee;
  - (ii) the modification does not alter the overall nature of the contract; and
  - (iii) any increase in price is not higher than 50% of the value of the original contract or framework agreement.

(\*Note: the Council must publish a [Regulation 51](#) notice in the FTS when a contract has been modified under these headings.), this is for Gold Category procurements that exceed threshold.
- d) Where a new contractor replaces the one which had initially been awarded the contract as a consequence of either:
  - (i) an unequivocal review clause or option which is clear, precise and unequivocal (referred to above); or
  - (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the Regulations.
- e) Where the modifications, irrespective of their value, are not substantial. A modification is considered to be substantial where one or more of the following conditions is met:
  - (i) the modification renders the contract or the framework agreement materially different in character from the one initially concluded.
  - (ii) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional

participants in the procurement procedure.

- (iii) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement.
- (iv) the modification extends the scope of the contract or framework agreement considerably; and/or
- (v) where a new contractor replaces the one to which the Council had initially awarded the contract in other cases than those envisaged above.

f) Where the value of the modification (on a cumulative basis) is below both of the following values:

- (i) the relevant UK procurement thresholds; and
- (ii) 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts. Where a modification falls outside of the above circumstances, a new procurement process is required.

- 66.3. Price changes, which were not anticipated in the original contract, could amount to breach of the principles of equal treatment and transparency.
- 66.4. Annual price reviews (such as increasing by RPI/CPI) are usually covered within the contract and do not need a separate variation agreement. If it is unclear whether this is the case in respect of any particular contract, the Legal Team must be consulted.
- 66.5. Officers must seek advice from the Legal Team and Corporate Procurement before varying any contract. The Legal Team will advise whether the change can be made and draft all documentation in relation to the same.
- 66.6. No contract shall be varied without the approval of the Procurement Board on the advice of the Chief Legal Officer and the Chief Financial Officer, where the effect of the variation would be over the values detailed under a Gold Category or would increase the original contract to over the Gold Category.
- 66.7. Contract variations shall only be made by Cabinet/HWB or Officers with the requisite delegated authority to award the original contract (as the case may be) in accordance with the Scheme of Delegation.
- 66.8. Every decision to vary a contract must be in writing by a Cabinet/HWB minute or a Delegated Authority Decision Sheet signed by the Officer authorised under the Scheme of Delegation (as the case may be) and agreed by the Chief Legal Officer and the Chief Financial Officer their nominated delegates.
- 66.9. All contract variations must be registered and included with the original contract in the Council's Contract Register.

## **67. Novation, Assignment and Sub-Contracting**

- 67.1. No contract with a Contract Value of £100,000 or more shall be novated, assigned or sub-contracted without the express approval of the Chief Legal Officer and the Chief Financial Officer.
- 67.2. Officers must seek advice from Legal Services and Corporate Procurement before

novating, assigning or sub-contracting any contract. Legal Services will advise whether the transfer can be made and draft all documentation in relation to the same.

67.3. All requests regarding the change of parties to the contract must be referred to Legal Services.

## **68. Contracts Register and Forward Plan Upkeep**

68.1. Officers are required to issue an amendment to the Contracts Register in the event that:

- A contract term is amended (extension, termination etc);
- The total value of the Contract has been amended (if changes have been made that impact such as Modification or service changes through variation);
- The scope of Contract changes in terms of the service being delivered except where Rule 66.2 applies.

68.2. If advice or assistance is required on amending the Contracts Register, please contact Corporate Procurement.

68.3. In the event the Procurement Board Forward Plan requires amendment, please contact Corporate Procurement.

## **69. Change in Law Assessment and Impact Management and Reporting**

69.1. All contracts with a duration longer than three years should make provision to address how changes in the law that affect the contract will be addressed. If the law changes mid-way through the contract and it significantly affects the contract, the Legal Team and Corporate Procurement must be consulted immediately.

69.2. Any changes in law that impact the Council and its Contract Rules, policies or procedures, should be communicated through Procurement Board and wider Communications platforms, and should include:

- What statute is changing?
- What is the impact?
- How does it affect our service delivery?
- What do we need to do to comply with the changes in the legislation?
- Are there any costs associated with the changes?
- When do the changes come into force?

69.3. In the event that the changes will impact the Contracts Register or Forward Plan, officers should contact Corporate Procurement for assistance and advice.

## **70. Document Retention Policy, Period and Removal**

70.1. All Officers must follow the Council's Corporate Retention Guidelines.

70.2. All signed contracts must be retained for a period of six years from the execution date. Sealed contracts must be retained for a period of 12 years.

70.3. A Contractor that has been delivering a contract that requires the contractor to keep records for the Council shall be required, in respect of the information which they hold, to either:

- a) Keep the records themselves, and allowing the Council to have access upon request; or
- b) Return the records to the Council.

70.4. Once the contract has been awarded, Officers:

- a) Must keep the successful bidder's documents for at least six years after the end of the contract for contracts signed under hand and at least 12 years after the end of the contract for contracts under seal (Deed);
- b) Must keep the unsuccessful bidder's documents for at least 12 months from the date of contract award; and
- c) Must keep all documents, evaluation scores and notes from the tender process (including any records from market testing), for at least 36 months from the date of contract award.

## **71. Planning for re-procurement of the service(s)/Requirements**

71.1. The officer responsible for the contract/services being provided must ensure that all appropriate steps, approvals and time is given to plan the re-procurement of the services, this will include:

- Service enhancements that have been identified through the contract management of the existing service;
- Consider if the model needs to be changed to reflect innovations within the marketplace;
- Review the budget envelope to ensure sufficient funds are available to conduct the service;
- Ensure all approval routes are detailed and milestones are noted to ensure the re-procurement commences as the current service expires.

## **SECTION I**

### **MAKING CHANGES TO THE CONTRACT RULES**

#### **72. Process to change**

72.1. In accordance with Part 7 of the Constitution, the Council's Monitoring Officer may, having consulted with relevant officers, including the Chief Financial Officer on any finance-related issues, make such necessary or incidental amendments to these Rules to effect or implement any changes in law (whether due to legislation, case law or UK Directive), or to correct any inconsistency in, or clarify any interpretation of, these Rules.

72.2. If there is any change to the law which affects these Rules, that change must be observed until these Rules are revised. If these Rules conflict in any way with the law, the law takes precedence.

72.3. In accordance with the Council's Constitution, the Monitoring Officer has ultimate responsibility for the interpretation of these Rules after taking appropriate advice.

## **Part 4 – Rules**

### **Chapter 2 – Financial Regulations and Rules**

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## **Introduction**

In order to conduct itself efficiently, effectively and in accordance with good corporate governance, the Council needs to establish and adhere to financial management policies and this entails the establishment of financial regulations and rules which lay down the procedures to be followed by officers in discharging their financial duties.

The Financial Regulations and Rules are the framework within which the financial affairs of the authority operate. They set out and govern the way the Council undertakes financial planning, risk management and control processes, budget management, budgetary control and statutory year-end processes.

Any failure to comply with these rules constitutes misconduct and will be followed by disciplinary action as appropriate. Significant non-compliance will be gross misconduct and is likely to lead to dismissal.

The regulations provide clarity about the overarching financial accountabilities and responsibilities of bodies and individuals, including the Assembly, the Cabinet, the Chief Financial Officer, Chief Officers, Directors and Managers, and provide a framework for decision-making. Where there are specific statutory powers and duties, the Financial Regulations seek to ensure these are duly complied with, as well as reflecting best professional practices and decisions of the Council.

The Financial Regulations and Rules also govern the way the day-to-day financial administration and financial controls are conducted and exercised. They set out the standards to ensure that the Council's resources are used wisely and for the purposes intended, ensure the best practice for dealing with financial matters, improve value for money, service delivery and customer satisfaction and to secure the financial standing of the Council.

These regulations should be read in conjunction with all other financial policies of the Council including the Contract Rules, the Officer Scheme of Delegation, the Articles relating to the role of committees and the Employees' Code of Conduct included in the Council Constitution.

The regulations apply to all activities of the Council. In practice, this means all monies and funds administered by Council officers by virtue of their office. This includes the authority's direct service and trading organisations within the internal market and funds managed on behalf of third parties such as the superannuation fund and private school funds. Academies and Free Schools have their own financial regulations.

These Regulations shall not apply to Council-owned companies, who shall be responsible for ensuring that their own financial arrangements are robust, and legally compliant except where the relevant agreement provides for the company or organisation to comply with these Regulations.

External providers (outsourced services, contractors and consultants for example) are managed through the contract process. The contract document will set out the financial requirements. This will include for example, compliance with key control procedures, generation of service performance statistics, attendance at service client meetings and access to accounts.

The regulations apply to all staff and Members of the Council. However, the prime audience consists of Members, Chief Officers, Chief Financial Officer, Monitoring Officer, Directors, delegated budget holders and all staff working in Human Resources, Payroll, Payables, Receivables and Finance.

It is the responsibility of Chief Officers to ensure that all employees with financial responsibilities are made aware of and have access to these regulations and rules.

The Chief Financial Officer is responsible for maintaining a regular review and update of these Regulations. The Finance Managers, the Deputy Chief Financial Officer, or the Chief Financial Officer should be contacted if further advice, clarity and support are required in the application of the Financial Regulations and Rules.

Interpretation – please refer to Appendix A

**Section 1: Roles and Responsibilities**

Sound financial planning, management and administration are essential in order to:

- ensure and maintain the effective use of resources to achieve agreed service standards;
- provide complete, accurate and transparent accounts that demonstrate accountability to the public;
- comply with legal and corporate accounting requirements;
- ensure the appropriate use and security of financial and physical assets;
- help the Council provide value for money services and conduct its affairs in an efficient, effective and economic manner.

Members and officers of the Council shall carry out their roles in line with the key areas of responsibilities and associated specific financial procedure rules set out below.

<b>Roles, Responsibilities and Accountability</b>	
<b>Assembly</b>	The Assembly is responsible for adopting the Authority's Constitution and Councillor' code of conduct, and for approving the policy framework and budget within which the Cabinet operates.
<b>Cabinet</b>	The Cabinet is responsible for: <ol style="list-style-type: none"> <li>1. the regulation and control of the finances of the Council, and for discharging executive functions in accordance with the policy framework and budget;</li> <li>2. the approval of draft estimates for submission to the Assembly, and for monitoring financial performance throughout the year. The Cabinet shall also submit recommendations to the Assembly for the levying of general or special rates or taxes.</li> </ol>
<b>Overview &amp; Scrutiny</b>	The Overview & Scrutiny Committee is responsible for scrutinising any aspect of the finances of the Council, including monitoring and challenging the decisions of the Cabinet. They scrutinise executive

<b>Roles, Responsibilities and Accountability</b>	
<b>Committee</b>	decisions, before or after they have been implemented, and for holding the Cabinet to account.
<b>Audit &amp; Standards Committee</b>	The Audit and Standards Committee is an advisory body incorporating the Council’s audit function and reports to Assembly. It is responsible for providing independent assurance of the risk management framework and the associated systems of internal control.
<b>Head of Paid Service (Chief Executive)</b>	<p>The Head of Paid Service is responsible for:</p> <ol style="list-style-type: none"> <li>1. the corporate and overall strategic management of the authority as a whole and the establishment of a framework for management direction, style and standards;</li> <li>2. securing a process for resource allocation that ensures due consideration of national policy and corporate priorities;</li> <li>3. ensuring arrangements are in place to monitor, manage and measure the performance of the Council.</li> </ol> <p>He or she must report to and provide information to Cabinet, the Assembly, and other Committees.</p>
<b>Monitoring Officer (Chief Legal Officer)</b>	<p>The Monitoring Officer is responsible for:</p> <ol style="list-style-type: none"> <li>1. reporting any actual or potential breaches of the law or mal-administration to the Assembly and/or Cabinet;</li> <li>2. ensuring that procedures for recording and reporting key decisions are operating effectively;</li> <li>3. ensuring that executive decisions and the reasons for them are made public;</li> <li>4. advising all councillors and officers about who has authority to take a particular decision;</li> <li>5. advising the Cabinet or Assembly about whether a decision is likely to conflict with the Authority’s policy framework or budget;</li> <li>6. for maintaining an up-to-date constitution.</li> </ol>
<b>Chief Financial Officer (Strategic Director, Finance &amp; Investment)</b>	<p>The Chief Financial Officer is the Officer responsible for the proper administration of the Council’s financial affairs under Section 151 of the Local Government Act 1972, and Sections 112-114 of the Local Government Finance Act 1988.</p> <p>The Chief Financial Officer has a duty under Section 114(2) of the Local Government Act 1988 to make a report if it appears that the Council, Cabinet, or any Committee has carried out a decision</p>

<b>Roles, Responsibilities and Accountability</b>	
	<p>which (a) involves the Council incurring expenditure which is unlawful, or (b) involves a course of action which if pursued would be unlawful and likely to cause a loss or deficiency to the Council.</p> <p>The Chief Financial Officer has a duty under Section 114(3) of the Local Government Finance Act 1988 to make a timely report (in consultation with the Chief Executive and the Monitoring Officer) to every Member where it appears that the expenditure incurred or likely to be incurred in a financial year exceeds resources available to meet the expenditure.</p> <p>The Chief Financial Officer's responsibilities are:</p> <ol style="list-style-type: none"> <li>1. promoting and maintaining high standards of financial conduct;</li> <li>2. to ensure the co-ordination and integration of service planning, financial planning, asset management, value for money and corporate governance;</li> <li>3. to ensure that the Council's financial arrangements secure the proper stewardship and control of all public funds;</li> <li>4. to provide financial advice, information and support so that resources are managed effectively in delivering the Council's services;</li> <li>5. to set corporate financial management standards and agrees with Directorates detailed procedures to meet these standards;</li> <li>6. to ensure that there is an adequate internal audit and control;</li> <li>7. to approve financial systems or proposals to introduce new processes or systems (including IT systems) to ensure sound financial controls;</li> <li>8. to maintain the Council's principal accounting records and prepares the Council's annual statement of accounts;</li> <li>9. to provide information and financial returns to external bodies;</li> <li>10. to prepare the revenue budget and capital programme;</li> <li>11. treasury management and banking.</li> </ol>
<b>Chief Officers</b>	<p>Each Chief Officers' responsibilities are:</p> <ol style="list-style-type: none"> <li>1. to observe the Council's Financial Regulations, monitoring financial performance within their department and managing the service within the available budget and to clearly understand the consequences of a lack of control;</li> <li>2. to ensure that any expenditure incurred within their service is in</li> </ol>

<b>Roles, Responsibilities and Accountability</b>	
	<p>accordance with both the purpose and objectives of the services being provided. Expenditure must not be incurred or charged to any budget where such expenditure bears no relation to the service being provided;</p> <ol style="list-style-type: none"> <li>3. to establish standards of internal control and through their senior management team, ensure the proper identification and cost-effective management of financial risk; to plan and maintain the effective use of resources to achieve agreed service delivery standards, take or recommend actions where necessary to stay within, or less than, the agreed budgets set by Council;</li> <li>4. to achieve and demonstrate value for money for commissioned and provided services;</li> <li>5. to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation should identify staff authorised to act on the Chief Officer’s behalf, or on behalf of the Cabinet, in respect of payments, income collection and placing orders, together with the limits of their authority;</li> </ol> <p>Each Chief Officer, or failing them, the Chief Financial Officer, shall report to the Cabinet immediately where they are not complying with these Rules.</p> <ol style="list-style-type: none"> <li>6. the control and accountability of employees and the security, custody and control of all of the resources, including plant, buildings, materials, cash and stores, appertaining to his/her department.</li> <li>7. to operate processes to check that established controls are in place and evaluate their effectiveness and ensure that Budget Holders have effective procedures for safeguarding the Council’s resources;</li> <li>8. to identify the short, medium and long term financial implications of policy, legislative requirements and service standards;</li> <li>9. to establish clear accountabilities for all managers that include objectives of and responsibility for systems and information;</li> <li>10. to ensure all their staff understand and comply with Finance Regulations and Rules, Contract Rules, Council policies and directorate departmental instructions; and</li> <li>11. to ensure that all employees understand and have access to a copy of the Council’s Fraud and Corruption Policy and Strategy and associated guidance. Where fraud or corruption is</li> </ol>

<b>Roles, Responsibilities and Accountability</b>	
	<p>suspected, Chief Officers must immediately report this to the Head of Assurance.</p> <p>Each Chief Officer shall consult the Chief Financial Officer on any matter which is liable to materially affect the finances of the Council before any form of commitment is incurred and before reporting the matter to the Cabinet.</p> <p>Each Chief Officer shall consider the financial effects of new policy and changes in service delivery and ensure that all reports contain appropriate financial implications agreed with the Chief Financial Officer.</p>
<b>Directors / Budget Holders</b>	<p>Each Director and Budget Holder will:</p> <ol style="list-style-type: none"> <li>1. determine the appropriate level of control within their areas of responsibility in accordance with advice and guidance provided by the Chief Financial Officer, their Directors and the Council's auditors;</li> <li>2. monitor compliance within these regulations, policies and instructions;</li> <li>3. be accountable for planning and maintaining effective and efficient use of resources to achieve agreed service delivery standards within, or less than, the agreed budgets set by Council;</li> <li>4. clearly understand the consequences of a lack of control and compliance;</li> <li>5. ensure all their staff understand and comply with Finance Regulations and Rules, Contract Procedure Rules, Council policies and directorate departmental instructions; and have access to a copy of the Council's Fraud and Corruption Policy and Strategy and associated guidance;</li> <li>6. identify the short, medium and long term financial implications of policy, legislative requirements and service standards;</li> <li>7. achieve and demonstrate value for money for commissioned and provided services, plan service developments and take or recommend actions where necessary to stay within agreed budgets set by the Council;</li> <li>8. ensure all staff have effective procedures for safeguarding the Council's resources; and</li> <li>9. operate processes to check that established controls are in</li> </ol>

<b>Roles, Responsibilities and Accountability</b>	
	place and evaluate their effectiveness.
<b>All Employees</b>	<p>All employees have a responsibility to follow Finance Regulations and Rules, Contract Rules, Code of Conduct, Council policies and directorate instructions.</p> <p>Employees must ensure the Council resources are only used in carrying out the business of the Council and help the Council achieve open and honest administration by supporting approved fraud prevention strategies and avoiding potential conflicts of interest.</p> <p>Under no circumstances must employees use Council resources or assets for their personal benefit.</p> <p>Employees must not allow any personal debt owed to the Council to become unmanaged. Personal debt includes, but is not limited to, rent arrears, Council Tax arrears, arrears arising for leaseholder agreements with the Council, employee loan arrears or employee leasing arrangements. Where any such arrears have been accrued prior to employment with the Council and are still outstanding, employees should undertake to clear those arrears within an agreed and reasonable period of time.</p> <p>All employees have a responsibility to assist the Council's audit processes, to keep accurate and comprehensive records to support the transactions undertaken on the Council's behalf and to report to their Director any occasions where they believe that Finance Regulations and Rules, Contract Procedure Rules, Council Policies or Directorate instructions are not being followed, or where the resources are at risk.</p>
<b>Internal Audit and Risk Management Services</b>	To provide advice to management on the operation of financial controls to prevent fraud, material errors and misappropriation of funds, to investigate any suspected irregularities and management of risk. These Services will conduct independent reviews of Directorate internal control arrangements and will report non-compliance with the Council's Finance Regulations and Rules, and Scheme of Delegation.
<b>External Auditors</b>	The external auditors will report on whether the Council's accounts and statements present a true and fair view of the Council's financial position.

## Section 2: Financial Planning

Each year the Council is required to produce a Medium Term Financial Strategy (MTFS) to provide a framework for the Council to plan and manage the way resources are allocated and spent over the next three-year period, to meet the Council's objectives and to secure value for money. It therefore supports and guides the Council's annual budget setting process, the corporate planning process (including the external environment expected to be faced over the next three years) and facilitates effective service delivery.

The budgets reflect Council priorities and give authority to delegated budget holders to incur expenditure to meet service standards and targets.

In order to ensure a consistent approach across the Council, the Chief Financial Officer stipulates the detailed form and procedures relating to the development of the Medium Term Financial Strategy, revenue and capital budgets by the issue of standard formats (including timetables, information requirements and challenge processes).

Chief Officers and Directors shall prepare their reports to these standards. They will take into account the need to demonstrate the value for money, efficiency and effectiveness of current services and proposals for change, the policy choices available to the Council and service impact on national and local policy priorities including the implementation of statutory requirements, the risk and opportunities in implementing changes and the impact of proposals in the short, medium and long term.

The Chief Financial Officer shall present the Council's revenue and capital estimates (draft budget) to Cabinet for approval as part of the budget and Medium Term Financial Strategy process. The draft budget is to be submitted to and considered by Cabinet at its meeting in December, and then again with any amendments incorporated, at its meeting in February. The final draft budget is then to be approved and adopted by Assembly at its meeting in late February prior to the financial year.

### Key Timescales\*:

- |  |                     |
|--|---------------------|
| • Submission of savings proposals<br>(* not required for 2018/19 budget process) | August/ September * |
| • Scrutiny Committee review of Savings options                                   | October/ November   |
| • Cabinet approval of Fees & Charges   | November            |
| • Cabinet consideration of draft budget report                                   | February            |
| • Cabinet approval of Budget and Council Tax Report                              | February            |
| • Assembly approval of Budget  | February            |
| • Publication of Council Tax leaflet   | February            |

\* These timescales were correct for the 2018/19 budget process and are indicative for all other years (and can be overridden by guidance from Corporate Finance).

## **2.1 Annual Revenue Budgets**

- 2.1.1 The general format of the budget will be approved by the Council and proposed by the Cabinet on the advice of the Chief Financial Officer. The draft budget should include indicative cash limits to different services and projects including proposed contingency funds.
- 2.1.2 All Chief Officers are responsible for submitting bids to Corporate Finance to meet the departmental savings target set by Cabinet on the advice of the Chief Financial Officer.
- 2.1.3 Estimates of revenue income and expenditure for the current year revised budget and the following year base/original budget shall be prepared by Chief Officers in consultation with the Chief Financial Officer in accordance with any financial plan(s) approved by the Assembly.
- 2.1.4 Budgets shall reflect Council priorities and give authority to Budget Holders to incur expenditure to meet service standards and targets.
- 2.1.5 The Chief Financial Officer shall collate the estimates and submit them for approval to the Cabinet for submission to the Assembly.
- 2.1.6 The Overview & Scrutiny Committee is responsible for reviewing and providing scrutiny on the draft budget ahead of it going to Cabinet.
- 2.1.7 Finally, on the advice of the Chief Financial Officer, the budget will be proposed by Cabinet and approved by the Assembly. The draft budget should include allocation to different services and projects, proposed taxation levels and contingency funds.

## **2.2 Capital Budgets**

### **Annual Review and Approval by Assembly**

- 2.2.1 The Chief Financial Officer shall undertake an annual review of the medium-term capital programme and consequential revenue implications for inclusion in the Medium Term Financial Strategy. This review shall take into account the ongoing need for a scheme with particular focus on cost, benefits and risk assessments.
- 2.2.2 Guidance for the preparation of the Capital Programme including the need for a full project appraisal shall be issued by the Chief Financial Officer.
- 2.2.3 Proposals for new capital schemes for the following financial year and future three years shall be prepared by Chief Officers in consultation with the Chief Financial Officer in accordance with any financial plans of the Council. The Programme will then be reported to the Cabinet for submission to the Assembly.
- 2.2.4 The Programme shall include all schemes which are within the definition of prescribed capital expenditure, and shall show:
  - i. Existing schemes for the period of the programme;

- ii. New schemes to be started in the period of the Programme;
- iii. The estimated capital expenditure which will arise on each new scheme and the relevant form of funding; and
- iv. Slippage on schemes in progress but not expected to be completed in the current year.

### **Project Appraisals for Capital Schemes**

- 2.2.5 Project appraisals for capital schemes (together with any supporting information) are to be submitted to the relevant Group Finance Manager, who will liaise with Corporate Finance. All proposed projects will be subject to assessment by the Options Appraisal Group prior for inclusion in the Programme. The appraisal process will consider options analysis, funding and costs of the project, associated revenue costs, legal, procurement implications and key risks. Once an initial appraisal has been carried out, a report can be presented to Cabinet approving the scheme. After Cabinet approval has been given, a detailed appraisal process must be undertaken; including a detailed risk register, health and safety assessment, procurement strategy and an Equalities Impact Assessment prior to capital works commencing. Funding received for schemes without adequate project appraisal will be recorded and notified to Cabinet as part of the monthly resource monitoring report as *'Funding with projects being developed.'*
- 2.2.6 A delegated authority form is required before Contractors can be engaged and this form must be signed off by the Project Manager, the Project Sponsor, the relevant Chief Officers, Procurement and Corporate Finance. The delegated authority form details the reason for the project, the options considered, the Cabinet approval date, funding available, the contractor selected and the value of the contract awarded.
- 2.2.7 Capital expenditure shall only be incurred in accordance with the approved Capital Programme. The Chief Financial Officer shall be responsible for defining whether expenditure is classed as capital or revenue.

### **Capital Receipts**

- 2.2.8 All capital receipts shall be pooled unless otherwise agreed by the Cabinet, for example, to contractual obligations or reduce any set aside of capital receipts or where legislation requires a different approach.

### **Council and Be First - Investment Schemes**

- 2.2.9 Schemes to be considered in accordance with the Council's Investment and Acquisition Strategy for investment funding shall be submitted under delegated authority to the Strategic Director, Finance and Investment, or to the Cabinet (where the matter is the responsibility of the Cabinet). The Strategic Director, Finance and Investment shall be advised by recommendations from the Investment Panel following consideration of the appropriate appraisals, technical and legal advice in compliance with the Council's Constitution,

2.2.10 The Cabinet shall be responsible for authorising the overall investment and acquisition budgets to support the delivery of the Investment and Acquisition Strategy. The Strategic Director, Finance and Investment, advised by the Investment Panel, shall be authorised to make the appropriate borrowing arrangements and to agree the appropriate source(s) of funding for each investment or acquisition.

#### 2.2.11 Departmental Borrowing

Where there is insufficient external funding for a capital project, departmental borrowing can be used where the project is expected to generate sufficient savings to cover the costs of borrowing. The funding sources will be recorded on the capital programme once the project has been approved.

The cost of borrowing constitutes two elements; the Minimum Revenue Provision (MRP) and Interest. The costs will be calculated as follows:

- MRP will match the actual MRP charge using the approved basis in the Treasury Management Strategy (currently straight-line basis over the life of the asset although this may be reviewed);
- The interest charge will also be the same each year and will be the total departmental borrowing multiplied by the interest rate;
- The interest rate will equal the Public Works Loan Board (PWLB) rate of an Equal Instalments of Principal (EIP) loan as at 1st April in the year after the asset become operational with a term equal to that of the asset's life.

Although the actual interest charged will be greater than a normal EIP loan the fact charges are not incurred until the asset becomes operational will in part offset this. Additionally, the complexity of varying the interest charges would be impractical.

Arrangements for charging departments with the costs of departmental borrowing are set out below:

- Borrowing costs are charged the year after the asset becomes operational;
- Budgets to cover the borrowing costs will be transferred by departmental finance and copies provided to Corporate Finance, once Corporate Finance have circulated the charges and central codes to use; and
- Budgets will have to be set based on estimated departmental borrowing as final financing figure will not be known until year-end. As such a further in year budget transfer maybe required to match actual outturn. This demonstrates a clear relationship between project cost and revenue implications.

#### 2.2.12 Minimum Revenue Provision

Local authorities are required each year to set aside some of their revenues as provision for debt in respect of capital expenditure financed by borrowing.

The Council currently uses the Equal Instalment Method to calculate its Minimum Revenue Provision (MRP) which is given by the following formula:

$$\frac{A - B}{C}$$

where:

**A** is the amount of the capital expenditure in respect of the asset financed by borrowing or credit arrangements;

**B** is the total provision made before the current financial year in respect of that expenditure;

**C** is the inclusive number of financial years from the current year to that in which the estimated life of the asset expires.

## **2.3 Reserves and Provisions**

2.3.1 The Chief Financial Officer is responsible for recommending to the Cabinet the adequate level of unallocated General Fund and HRA Reserves, the Reserves Strategy and any limitations or conditions on the use of such unallocated reserves.

2.3.2 The Chief Financial Officer is responsible for recommending to the Cabinet the adequate level of specific provisions and earmarked reserves including the decision-making and authorisation processes for the use of those provisions and reserves.

## **Section 3: Financial Management**

A key component of good financial management is to ensure that the revenue, capital and balance sheet accounts are reviewed regularly throughout the year, not just at year end. The first building block for good financial management is strong stewardship.

Sound financial management and control is important to:

- ensure expenditure incurred within services is in accordance with both the purpose and objectives of the approved budgets, in line with Council priorities and to manage the delivery of services within the available budget;
- early detection of financial risks and implications that may impact on the financial strength and stability of the Council and to implement appropriate remedial actions; and
- facilitate the delivery of value for money services.

Budgetary control allows the Council to review and adjust its budget targets during the financial year, ensuring the accountability of budget holders against their allocated budgets. Identifying and justifying variances between budgets and year-end forecast and highlight changing trends and resource requirements, enabling efficient management of surpluses and deficits.

## **Budget Monitoring**

Budget monitoring will be carried out and reported to the Cabinet on a monthly basis that taking into account the advice of the Chief Financial Officer will make any appropriate recommendations to steward the budget in a direction consistent with agreed spending objectives.

Chief Officers, Directors and delegated budget holders are accountable for spending within budget, reporting any variations and implementing the action proposed to correct variances.

Directors and delegated budget holders must regularly monitor actual income and expenditure against all budgets they are responsible for and ensure that all budget targets are achieved. This includes:

- projection of likely future income and expenditure in order to identify any material potential over or under spends;
- take corrective action without delay and, if action beyond their authority is required, report to their Director immediately; and
- report any material variances from income and expenditure budgets to Corporate Finance, including any impact on future years so that appropriate actions can be taken to contain, reduce or eliminate projected over or under spend.

### **3.1 Revenue Budget Monitoring**

1. Chief Officers, Directors and delegated budget holders are responsible for monitoring their budgets and must take appropriate action to ensure they do not exceed their budget for any one financial year.
2. On a monthly basis, Chief Officers will meet with the Chief Financial Officer with budget monitoring reports to be submitted to Cabinet, setting out the overall financial position of each service and the current projected year-end outturn together with corrective actions as necessary.
3. Where it appears that an approved revenue budget (defined as the individual CIPFA summary subjective analysis for each service, as shown in the annually approved budget book) will overspend by £50,000 or 5% of the Gross Budget (whichever is the smaller), the responsible Chief Officer will notify the Chief Financial Officer and relevant Portfolio Holder, report to Cabinet and immediately take steps to rectify the situation.

4. Where a Service is forecasting an overall net overspend of £250,000, then this should culminate in an action plan to Cabinet, which sets out proposals for offsetting it, together with an assessment of the impact these corrective actions will have on service delivery and performance targets.
5. If an overspend in excess of £250,000 is forecast, then in addition that Chief Officer must notify the Chief Financial Officer and submit an action plan. Chief Officers must also advise whether the problem relates solely to the current financial year or is a recurring pressure.
6. Where a particular Service has (or is projecting to have) an unspent balance, the relevant Chief Officer must apply to the Cabinet if they wish to earmark these savings for a planned purpose in the next financial year. The Cabinet may agree the use of any under spending, subject to the advice of the Chief Financial Officer as to the overall financial position of the Council.

### **3.2 Revenue Budget Virement/ Adjustment**

Budgets may be transferred within the year using a budget virement or budget adjustment. In both cases, advice must be sought from Corporate Finance before the transfer is agreed.

#### **3.2.1 Revenue Budget Virement**

A budget virement is a transfer of a budget from the purposes for which Council originally agreed in setting the budget and Council Tax to another purpose.

Following approval of the annual budget, Officers may approve virements in accordance with the delegations and limits set out below.

	<b>Revenue Budget Virement</b>	<b>Officer with Delegated Authority</b>
1.	<b>Within own Directorate:</b> Up to £100,000  Up to £200,000	Directors with budget responsibility in consultation with the Chief Officer and Group Finance Manager.  Chief Officer in consultation with the Chief Financial Officer.
2.	<b>Cross Directorate</b> Up to £200,000	Relevant Chief Officer in consultation with the Chief Financial Officer.
3.	<b>Reserves</b>	None. All virements to and from Reserves must be approved by Cabinet

Virements for greater amounts and all supplementary estimates must be approved by the Cabinet. Virements must not be fragmented to circumvent these rules.

Each virement request must indicate whether the virement is permanent (i.e. affect current and future years' budgets) or one-off for the current financial year only.

The virement must be recorded in the Council's financial system.

Virement is permitted from the revenue budget to the capital budget but not from the capital budget to the revenue budget.

All virements to and from Reserves must be approved by Cabinet.

### **3.3 Carry Forward of Revenue Budgets from One Year to the Next**

With the prior written approval of the Chief Financial Officer, Chief Officers may request for underspends on revenue expenditure of £50,000 per Director to be carried from one financial year to another. Any carry-forward exceeding £50,000 per Director in the aggregate requires the approval of the Cabinet, which may also require any overspend to be carried forward.

Only underspends arising from delayed spending of funding received for specific purposes may be carried forward if such underspend was as a result of factors beyond management control or where the Council will suffer a financial loss.

Carry forward may not be allowed if the Directorate's total budget or the total budget of the Council is overspent at year-end. The first call on any underspend is to rectify the overall financial position.

### **3.4 Capital Monitoring**

1. Before expenditure can commence on any individual scheme within the Capital Programme, the approval of the Cabinet and the Options Appraisal Panel will be required.
2. If an approved capital scheme is forecast to overspend then the relevant Chief Officer must notify the Chief Financial Officer, and also present options for offsetting the overspend.
3. The de minimis level for capitalisation of assets is set at:
  - £6,000 for vehicles;
  - £20,000 for all other expenditure, including schools.

Related assets may be grouped together to exceed the de-minimis level where individually they would not. Examples include expenditure on an IT project or bulk buying of wheeled bins.

### **3.5 Capital Budget Virements**

Capital Virements: Transfers of any amount between schemes over £100,000 (aggregated) must be approved by Cabinet. Transfers between schemes up to £100,000 can be made by Directors with budget responsibility, in consultation with the Chief Officer and Chief Financial Officer. If transfers to/from any particular scheme are £100,000 or above, approval is needed by Cabinet.

Capital re-profiles: Subject to there being no additional funding requirement and no revenue or capital cost implication arising from such a re-profiling then delegated authority is given to Chief Officers in consultation with the Chief Financial Officer to re-profile the capital budget of a scheme up to a value of £500,000. A series of smaller re-profiles must not be carried out in order to circumvent the total.

In order to ensure there is focus on delivery of projects on time and to budget, changes to the capital programme for virements and re-profiles will usually be made at one of three occasions during the financial year:

- February - as part of the MTFs and annual budget setting process;
- June – as part of the Final Outturn report; and
- November – as part of the Month 6 Budget Monitoring report.

Changes may occur at other occasions if events occur outside the control of officers e.g. late confirmation and release of funds by a school extending an existing scheme. Such changes will be exceptional and not a matter of course.

### **3.6 Use of Contingency**

The contingency as set in each year's budget may be called upon by Chief Officers in consultation with the Chief Financial Officer, for individual items of expenditure of up to £100,000, in excess of which will require Cabinet approval.

### **3.7 Financial Advice**

3.7.1 The advice of the Chief Financial Officer must be sought regarding any matter which could materially affect the finances or financial systems of the Council before any commitment is made.

3.7.2 Chief Officers shall ensure the early and continuous involvement of the Finance and Legal functions in proposals leading to reports to Members and in particular large, complex or sensitive proposals. The Chief Financial Officer and the Monitoring Officer must be consulted on any reports to Members in accordance with the Council's established report clearance procedures. The Chief Financial Officer and/ or the Monitoring Officer has the right to withdraw any report where notice has not been given or the full financial and/or legal implications cannot be provided in the timescale available.

## Section 4: Closure of Accounts

- 4.1 The Chief Financial Officer is responsible for making arrangements for closing the accounts and producing the annual Statement of Accounts, including all matters relating to their audit and public inspection.
- 4.2 Each Chief Officers is responsible for ensuring that they and their staff adhere to the instructions and timetable requirements set out by Corporate Finance to enable the closure of accounts.
- 4.3 Each Chief Officer / delegated budget holder shall, as soon as possible after the 31 March in each year, notify the Chief Financial Officer of all outstanding expenditure (creditors), income (debtors), payments in advance (PIA), and receipts in advance (RIA) relating to the previous financial year.
- 4.4 Each Chief Officer / delegated budget holder must provide on time any information and evidence (working papers) the Chief Financial Officer requires to produce the Statement of Accounts; complete claims for external funding; and to produce records to meet external audit requirements.
- 4.5 The Statement of Accounts will be prepared in accordance with the CIPFA Code of Accounting Practice, which includes the timescales for its production, and the requirement to produce an Annual Governance Statement (AGS).
- 4.6 The Annual Audit Letter presents the audit opinion of the accounts, as well as comments and recommendations on the Council's financial standing, the legality of financial transactions and internal control. This will be reported to the Audit and Standards Committee each year, with an appropriate management action plan.

### Key Timescales\*

- |   |               |
|---|---------------|
| ○ Outturn report to Cabinet – provisional                       | mid/late May  |
| ○ Outturn report to Cabinet – final                             | mid/late June |
| ○ Statement of accounts issued to Audit and Standards Committee | end of June   |
| ○ Deadline for approval of accounts                             | end of June   |
| ○ Audit and Standards Committee approve final accounts          | mid July      |
| ○ Accounts signed by external auditors                          | end of July   |
| ○ Accounts issued for publication                               | end of July   |

\* These timescales were correct for the 2018/19 closure of accounts and are indicative for all other years (and can be overridden by guidance from Corporate Finance).

## **Section 5: Risk Management & Control of Resources**

### **5.1 Internal Control**

Internal control refers to the aspects of systems and processes devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources, and safeguards the Authority's assets and interests by the prevention and/or detection of error and fraud.

The Chief Financial Officer should ensure that the financial management of the authority is adequate and effective; and that there is a sound system of internal control. The internal controls need to facilitate the effective exercise of the Council's actions and include the arrangements for managing risk.

Each Chief Officer is ultimately responsible for the internal controls and risk management arrangements within their service. Internal Audit support this through delivery of its Annual Audit Plan, designed to give independent assurance on the internal control and risk management arrangements of the Council.

### **5.2 Internal Audit**

5.2.1 Under the Accounts and Audit Regulations 2011 the Council has a statutory obligation to undertake an adequate and effective internal audit of its accounting records and of its system of internal control. The Head of Assurance has the delegated authority for providing and maintaining this service.

5.2.2 An annual review will be conducted into the effectiveness of Internal Audit which will be considered by the Audit and Standards Committee. Such a review will form part of their annual review of the effectiveness of the overall system of internal control and reported in the Annual Governance Statement.

5.2.3 The Head of Assurance, and their nominated officers, shall have authority to:

1. enter at all reasonable times into Council operational premises or onto Council land, (this can also that of the Council's supplies and contractors where permitted by the contract agreement);
2. have access to all records, documents and correspondence relating to any financial or other transactions of the Council;
3. require such explanations as are necessary concerning any matter under examination; and
4. require any employee of the Council to produce cash, stores or any other Council property under his control.

### **5.3 Fraud, Corruption, and Theft**

- 5.3.1 Under Section 151 of the Local Government Act 1972 the Council has a statutory obligation to ensure the protection of public funds. Accordingly, the Council maintains an effective system of prevention and detection of fraud, corruption, and theft and associated policies.
- 5.3.2 The primary responsibility for the prevention, detection, and deterrence of fraud, bribery or money laundering activity lies with each Chief Officer. However, all Council employees have a duty to act to prevent and report occurrences of fraud and theft. This is supported by the Corporate Anti-Fraud Team through its proactive, preventative and reactive work.
- 5.3.3 Managers should immediately inform the Head of Assurance in any case where fraud/irregularity is suspected, who shall in turn recommend what appropriate investigations are required to the Chief Financial Officer.

### **5.4 Risk Management**

- 5.4.1 The Cabinet is responsible for approving the Authority's risk management policy statement and strategy and for reviewing the effectiveness of risk management. Cabinet is also ultimately responsible for ensuring that proper insurance exists where appropriate.
- 5.4.2 The Chief Financial Officer is responsible for the Authority's risk management policy statement and for promoting it throughout the Council.
- 5.4.3 Chief Officers are responsible for maintaining risk registers in accordance with the Risk Management policy and framework, issued by the Council's Head of Assurance. Chief Officers will regularly review the risks and advise the Council's Head of Assurance appropriately of any material changes as they arise.
- 5.4.4 All managers are responsible for managing risk, including taking action to mitigate the occurrence of the risk, and for maintaining contingencies (including a business continuity plan) should the risk actually materialise. Managers will need to take into account the matrix rating of the risk and the costs of any mitigating action.
- 5.4.5 Risk Management and effective Corporate Governance require the management of all types of risk, financial and non-financial.
- 5.4.6 All risks should be identified on a 'likelihood / impact' matrix, where each is assessed in terms of having a low, medium or high likelihood and severity, by quantifying the financial impact where possible.
- 5.4.7 The Council has a whistleblowing scheme, which all staff should be made aware of by their Manager and actively encouraged to use when appropriate.

## **5.5 Insurances**

- 5.5.1 The Chief Financial Officer shall effect and periodically review all insurance cover in consultation with other Chief Officers who shall provide such information as may be required.
- 5.5.2 Chief Officers shall promptly notify the Chief Financial Officer of all new risks and any alterations, terminations, loss or liabilities that affect existing insurances.
- 5.5.3 Chief Officers should also inform the Head of Assurance of any losses as soon as possible.
- 5.5.4 Chief Officers shall consult the Chief Financial Officer in respect of the terms of any indemnity which the Council is required to obtain or provide.

## **5.6 Security**

- 5.6.1 Each Chief Officer is responsible for maintaining security at all times for all Council property, stocks, stores etc. under his/her control. He/she shall consult the Head of Assurance in any case where security is thought to be defective or where special arrangements may be needed.
- 5.6.2 Maximum limits for cash holding shall be agreed with the Head of Assurance and shall not be exceeded without express permission.
- 5.6.3 Keys to safes and other similar receptacles must be kept in a secure place or carried by a responsible person at all times. Any loss of keys must be reported to the Head of Assurance as soon as possible.
- 5.6.4 Each Chief Officer will be responsible for the privacy and security of all information held or accessed by computer equipment within his/her department in accordance with Data Protection and Information Governance best practice. The Strategic Director, Finance and Investment is the Council's Senior Information Risk Officer (SIRO) for the organisation and will ensure compliance with the Information Governance Statement of Compliance (IGSOCC).

## **5.7 Banking and Cash**

- 5.7.1 Bank accounts may only be opened with the prior approval of the Chief Financial Officer. If this prior approval is not given, the Council's Bankers will report the matter to the Council and disciplinary action is probable.
- 5.7.2 Bank accounts may only be overdrawn with the prior approval of the Chief Financial Officer. Approval will be on an exceptional basis only. If this prior approval is not given, the Council's Bankers will report the matter to the Council and disciplinary action is probable.
- 5.7.3 The Chief Financial Officer must approve all banking and card acquiring arrangements across the Council.

## **5.8 Imprest Accounts and Petty Cash**

- 5.8.1 In conjunction with corporate policy, the use of Purchasing Cards (P-cards) is to be used across the Council where possible in order to minimise the use of cash. The Oracle based i-expenses system is also to be used wherever possible by staff for the reimbursement of personal expenses incurred whilst undertaking Council business.
- 5.8.2 The Chief Financial Officer shall provide such Imprest Accounts as he/she considers appropriate. These are to be used on the few occasions when P-cards and i-Expenses are not possible.
- 5.8.3 There should be regular reimbursement of the petty cash up to an Imprest level, and the holder must ensure there is adequate physical security of the cash.
- 5.8.4 No income received on behalf of the Council may be paid into an Imprest Account but must be banked or paid into the Authority promptly, in accordance with these Rules.
- 5.8.5 Payments shall be limited to minor items of expenditure and such other specific payments as the Chief Financial Officer may approve and shall be supported by a receipt. This excludes the payment of salaries and wages. No individual item purchased on petty cash shall exceed £50 in value and the total of any petty cash transaction shall not exceed £100 without the Director's prior approval to individual payments or to specific areas of payment.
- 5.8.6 An employee responsible for an Imprest Account shall provide the Chief Financial Officer a certificate to the state of the account, annually and when otherwise required.
- 5.8.7 On leaving the employment of the Council, or otherwise ceasing to be entitled to hold an Imprest Account, an employee shall account to the Chief Financial Officer for the amount advanced to him/her. No Imprest account can be overdrawn.

## **5.9 BACS and Cheques**

- 5.9.1 The Council's usual payment method is by BACS, and cheques should only be raised in exceptional circumstances, where there are documented reasons as to why BACS is not possible.
- 5.9.2 All cheques shall be ordered by the Chief Financial Officer, who shall make proper arrangements for their safe custody.
- 5.9.3 Cheques above financial limits set by the Chief Financial Officer shall be manually countersigned by delegated officers authorised to do so by the Chief Financial Officer. The current limits are £5,000.

## **5.10 Electronic Payments – CHAPS and Direct Debit**

5.10.1 Where payments are to be transmitted electronically, the Chief Financial Officer shall approve the necessary arrangements made to safeguard the Council against losses. Requests for electronic transfers through the banking system must be made to the Corporate Finance (Treasury Management Team) in writing by an authorised signatory.

5.10.2 The Treasury Management team must be given advance warning when such transfers are required. As a general guide, five days' notice is required for all non-routine payments in excess of £50,000.

5.10.3 Payment by Direct Debit will only be made with the prior approval of the Chief Financial Officer and must include any necessary action to safeguard against loss of VAT recovery.

## **5.11 Investments, Borrowing and Trust Funds**

5.11.1 All investments and borrowings of money shall be under the control of the Chief Financial Officer and shall be made by him/her under arrangements approved by them in the name of the Council. These arrangements are detailed in the Council's Treasury Management Strategy Statement and its appendices.

5.11.2 All securities, the property of which are in the name of the Council or its nominees and the title deeds of all property and its ownership shall be held in the custody of the Council's Legal Service (or the Council's bankers, Custodian, Nominees or stockbrokers as appropriate).

5.11.3 The Council's custodian, with the approval of the Chief Financial Officer, shall be the Council's registrar of bonds, and shall transact and maintain records of all bond investments by the Council.

5.11.4 All trust funds shall wherever possible be in the name of the Council.

5.11.5 All employees acting as trustees by virtue of their official positions shall deposit all securities etc. relating to the trust with the Chief Financial Officer, unless the deed otherwise provides.

## **5.12 Stocks, Stores and Inventories**

5.12.1 Each Chief Officer is responsible for keeping all accounts of stocks and stores within their Service.

5.12.2 Each Chief Officer shall arrange for the storekeeper to keep the necessary records, after consultation with the Chief Financial Officer.

5.12.3 Each Chief Officer shall arrange for a system of continuous stocktaking to ensure that all items are checked at least once every year.

5.12.4 Any discrepancy or surplus, obsolete or unusable stock at any depot or stores where the total variation or expected loss does not exceed £500 or 1% of the

total value of stock held at that depot, whichever is the greater, shall be dealt with by the Chief Officer in consultation with the Chief Financial Officer. Where any variation or expected loss exceeds this amount a report must be submitted to the Cabinet.

5.12.5 Inventories shall be maintained by all departments in a form and with such details determined by the Chief Officer, and with the concurrence of the Chief Financial Officer.

5.12.6 Each Chief Officer shall be responsible for maintaining an annual check of all inventory items, and for taking appropriate action with regard to surpluses or deficiencies after consultation with the Chief Financial Officer.

5.12.7 Council property shall not be used for anything other than Council business without the prior approval of the responsible Chief Officer.

### **5.13 Leases**

5.13.1 Each Chief Officer is responsible for the leases within their Service.

5.13.2 Leases need to be accounted for correctly in compliance with International Financial Reporting Standards (IFRS).

5.13.3 Where there has been an acquisition of a new lease or a change in an existing one, Chief Officers should liaise with the Corporate Finance in order to agree the appropriate action and treatment of the lease.

### **5.14 Write Off, Disposal of Assets and Debts**

5.14.1 Write offs: If assets have been lost, stolen or damaged and the loss is not recoverable from insurance or other sources, they may be written off by the Chief Officers in conjunction with the Chief Financial Officer. Any write-off or disposal made without approval will be liable to disciplinary action.

5.14.2 Chief Officers may write off other non-repeating sums to the value of £2,000. Sums above this limit may be written off in agreement with the Chief Financial Officer.

5.14.3 Debts in relation to the Support and Collections functions may be written off in accordance with the debt write off strategy as agreed from time to time by the Cabinet. The most recent approval of this strategy was 25 April 2017 (amended 15 December 2020 and 20 September 2022).

5.14.4 Disposals: Any asset of the Council deemed obsolete or surplus to requirements shall, where the residual value does not exceed £5,000, be disposed of by the Chief Officer in consultation with the Head of Assurance. Where the residual value exceeds £5,000 a report shall be submitted to the Cabinet stating the reason for disposal and the recommended method of disposal. The Capital Finance team are also to be informed of the disposal, as it may affect the Fixed Asset Register.

5.14.5 Any proposals to sell or lease land/property, etc. at less than market value must follow the procedure as laid down in the "Land Acquisitions and Disposal

Rules”, which requires full consultation and agreement on the financial implications as approved by the Chief Financial Officer.

5.14.6 All land sales should adhere to the ‘Land Acquisition and Disposal Rules’ within Chapter 4 of Part 4 of the Council’s Constitution.

## **Section 6: Treasury Management Framework**

- 6.1 The Council adopts and adheres to the Key recommendations of the Revised CIPFA Treasury Management Code of Practice 2009, Cross-Sectoral Guidance Notes 2009 and Revised CIPFA Prudential Code
- 6.2 The Treasury Management Policy Statement (TMPS) shall be reviewed and maintained annually by the Assembly. This statement shall set out the policies and objectives of the Council’s treasury management activities.
- 6.3 The Chief Financial Officer shall create and maintain suitable Treasury Management Practices (TMPs), which shall set out the manner in which the Council will seek to achieve the policies and objectives set by the Assembly.
- 6.4 The Chief Financial Officer shall report to the Assembly annually and at regular intervals on all treasury management policies, practices and activities including an annual strategy at the start of the year and annual report at year end.
- 6.5 The Chief Financial Officer will set Prudential Indicators for the forthcoming and following two financial years. The Chief Financial Officer will provide regular reports to the Cabinet and Assembly and report any breaches or amendments of the Code.
- 6.6 Prudential Indicators are reported annually via the TMSS before the start of the financial year.
- 6.7 There are a number of treasury indicators which previously formed part of the prudential code, but which are now more appropriately linked to the Revised Treasury Management Code and guidance. Local authorities are still required to “have regard” to these treasury indicators.
- 6.8 The key treasury indicators which are still part of the Prudential Code are:
  - Authorised limit for external debt
  - Operational boundary for external debt
  - Actual external debt
  - External Debt
- 6.9 In the medium term local authorities only have the power to borrow for capital purposes.
- 6.10 The authorised limit – This sets the maximum level of external borrowing on a gross basis (i.e. not net of investments) and is the statutory limit determined

under Section 3 (1) of the Local Government Act 2003 (referred to in the legislation as Affordable Limit). This limit needs to be set or revised by Members.

- 6.11 The operational limit – This links directly to the Council’s estimates of the Capital Financing Reserve (CFR) and estimates of other cash flow requirements. This indicator is based on the same estimates as the authorised limits reflecting the most likely prudent but not worst-case scenario but without the additional headroom included within the authorised limit for future known capital needs now. It should act as a monitor indicator to ensure the authorised limit is not breached.
- 6.12 The Chief Financial Officer shall ensure that all legislative amendments and changes in treasury or capital limits are approved by the Assembly.
- 6.13 The Chief Financial Officer will be responsible for adopting the changes outlined and compliance with any practices or limits.

## **Section 7: Financial Administration, Systems and Procedures**

This section outlines the standards of financial administration, systems and procedures that must be followed to ensure that all employees have a clear understanding of their responsibilities in regards to:

- (i) Being clear on who is authorised to approve financial transactions;
- (ii) Ensuring staff appointments are made in accordance with employment law, that salaries and wages are properly authorised, that the proper deductions are made (statutory and non-statutory) and all payments are properly recorded and correctly charged;
- (iii) Ordering and paying for goods and services according to the Council’s Contract Procedure Rules, securing value for money, paying only for what the Council receives and dealing with VAT properly;
- (iv) Ensure the Council pays and accounts for tax correctly;
- (v) Ensuring all sources of income to the Council are identified, claimed and collected; and
- (vi) Ensuring that a live and complete record of all Council transactions is maintained.

### **7.1 Approval Limits**

- 7.1.1 The approval of contracts/ contractors should be carried out in accordance with the Council’s Contract Rules, which form part of this constitution. This entails amongst other things that proposed contracts greater than £500,000 must be reported to Cabinet before any procurement process begins. Furthermore, the procurement of lower value contracts are subject to a series

of procedures and controls as set out in the Contract Rules and the actual award of contracts is subject to approval being granted by one or more Chief Officers depending upon contract value.

- 7.1.2 The approval of all payments, (including purchase orders, invoice authorisations, termination payments) should be carried out within each service in accordance with the Council's internal financial scheme of delegation.

## **7.2 Human Resources and Payroll – Payments to Employees and Members**

- 7.2.1 The Chief Financial Officer is responsible for the payment of all salaries, wages and pensions, compensation and other emoluments due to current or former employees of the Council, and to Members. Each Chief Officer shall notify the Council's Transactional HR service as soon as possible, of all matters affecting the payment of such emoluments i.e. appointments, resignations, absences from duty etc.

- 7.2.2 The names of employees authorised to sign any documents affecting pay shall be sent to the Chief Financial Officer and/or partners, as required, by each Chief Officer together with specimen signatures and shall be amended on the occasion of any change. The Chief Officer must sign this notification.

- 7.2.3 Payments should be paid directly into employees' / councillors' bank accounts on the specified pay date and should only be paid to the person concerned, unless otherwise authorised.

- 7.2.4 All payments made shall be in accordance with established pay grades and rates of pay.

## **7.3 Ordering and Paying for Goods and Services**

- 7.3.1 All staff and managers are required to ensure that the most appropriate method of payment is used for each item of expenditure (excluding employee's salary payments) as follows:

1. i-Expenses – used to reimburse staff for expenses incurred in the course of their work for example travelling and subsistence, eye tests, glasses (towards the cost of single vision / bi-focal lenses) and medical certificates.

The usage of the automated i-expenses system will have authorisation levels decreed by the Organisational hierarchy up to a maximum claim value of £250. Where claims are made in excess of this value, they will not be automatically paid once approved by an appropriate officer but will be subject to further investigation by the Accounts Payable Manager or designated representative, prior to the release of payment.

The Chief Executive and Chief Officers will self-approve their expenses and provide a monthly report to the Chief Financial Officer.

2. Purchase Card – used to pay for low value, high volume goods or services such as advanced booking of accommodation and travel expenses, books and periodicals.
3. Purchase Order – all other expenditure that cannot be purchased using i-expenses and purchase card.  
 There may be occasions, in cases of emergency, when verbal orders are placed, but these must be the exception rather than the rule and always confirmed by the issue of an authorised official order. Any verbal orders must be retrospectively raised on Oracle i-Procurement as a confirmation order to comply with the Councils “no PO no pay” policy.

Under no circumstances may individual employees use the Council’s ordering or payment systems for personal use or benefit.

Failure to comply with these rules constitutes gross misconduct and may be followed by disciplinary action as appropriate.

- 7.3.2 Payments must be in accordance with the Contract Procedure Rules and the Financial Scheme of Delegation set out within the constitution, in respect of financial limits and Cabinet approval, tendering for contracts, contract extensions and variation orders, and the use of approved supplier lists.
- 7.3.3 Chief Officers or Directors must designate specific employees who are authorised to place and approve orders on their behalf and must operate procedures which secure value for money in accordance with Contract Procedure Rules. The procedures must also be properly recorded, communicated to staff, and regularly monitored.
- 7.3.4 The Council operates an automated purchase to pay process and a requisition must be raised using Oracle i-procurement in order for a purchase order to be generated. The requisition raised is sent to an Approver with authorisation rights determined by the requisition amount and the project being charged.

The approvers for capital (programme) purchases are defined and agreed as part of the Capital Programme approval process. Before spending can commence on capital programmes, the delegated authority form, which approves the award of the contract to a named Contractor, must be completed and signed off by the appropriate Chief Officer, the Procurement Manager and Chief Financial Officer. Only then should a purchase requisition be raised on Oracle i-Procurement.

Currently, i-Procurement requisition authorisation levels are set as follows:

Band	Positions	Limits
<b>Revenue Expenditure</b>		
A	Any	£200

B	Team Leader	£10,000
C	Group Manager	£50,000
D	Nominated Manager (Commissioning)	£100,000
E	Director	£500,000
F	Chief Officers / Chief Financial Officer	Unlimited
<b>Capital Programme</b>		
A	Project Manager	Up to - £50,000
B	Programme Manager (Group Manager / Director)	£5,000,000
C	Project Sponsor (Chief Officer / Chief Financial Officer)	Above £5,000,000

There may be occasions where these authorisation levels may not be practical, but as these must be the exception rather than the rule, the Chief Officer will be required to submit a business case for approval by the Chief Financial Officer.

It is noted that:

- There must always be full compliance with the relevant Contract Rules requirements. In particular, a report must be produced on Procurement Strategy for any contract above £50,000; and
- This must be considered by the Procurement Board if it is over £100,000.
- Any Procurement over £500,000 requires Cabinet approval.
- Expenditure funded by the Public Health Grant and Social Care budgets can be approved by either Cabinet or the Health and Wellbeing Board. Chief Officers shall determine which is the more appropriate body to make the decision for the particular procurement.
- Chief Officers may, subject to Rules 4.2 (d) and 35.5 (f) of the Contract Rules, exempt Personalised Contracts from the full tendering requirements of the Contract Rules. Officers must however ensure that the requirements of Section B are adhered to (refer to Contract Rules 4.2 and 35.5 for further details).

All Capital Projects require review and approval by the Options Appraisal Group. This Group will be chaired by the Chief Financial Officer or his nominee. Also, before spending can commence on capital programmes, the delegated authority form, which approves the award of the contract to a named Contractor, must be completed and signed off by the appropriate Chief Officer, the Procurement Manager and Chief Financial Officer. Only then can a purchase requisition be raised on i-procurement.

Any changes in authorised personnel must be notified immediately to Corporate Finance and Corporate Procurement.

- 7.3.5 In order to protect individual employees and also minimise the risk of losses through misappropriation or fraud, duties must be arranged to avoid the same member of staff having authority to place orders, receive and pay for goods without the involvement of others. Where limited staff resources make this difficult to achieve, the advice of Internal Audit must be sought regarding compensating controls.
- 7.3.6 When receiving goods or services, checks must immediately be made by the requisitioner / buyer to ensure that:
1. The goods or services are in accordance with the order placed;
  2. Any faults or deficiencies are reported to the supplier and remedial action taken;
  3. Where necessary, inventories or stock records have been updated;
  4. Goods delivered are placed in the safe custody of their authorised recipient; and
  5. Goods and services are 'received' on Oracle i-Procurement.
- 7.3.7 Payment must only be made on the satisfactory completion of the order placed. Any proposal to pay in advance of receiving the goods or services must, therefore, be first authorised by the Chief Financial Officer.
- 7.3.8 Chief Officers will ensure to the satisfaction of the Chief Financial Officer that procedures and documentation are in place:
1. To verify that expenditure has been properly incurred, and accurate and timely payments are being made (i.e. within 30 days of the invoice being received by the Authority). Where supplier deadlines for payments are specified and they are shorter than 30 days, and especially where early payment discounts are offered, then these timescales should be met where possible;
  2. To verify that the goods, services, or works in question have been received or carried out and are to the quality expected. Goods and services must be ordered through Oracle i-Procurement and 'goods received' upon delivery;
  3. To ensure there is adequate provision in the Budget;
  4. To avoid duplicate payments; and
  5. Incorrect invoices will not be amended but returned to the supplier.

7.3.9 Where items of expenditure cannot be commissioned through the raising of an Oracle i-Procurement purchase order, the creditor invoices or requisitions must be certified for payment by the responsible budget officer or designated representative. The names of such authorised employees and specimen signatures shall be authorised by the respective Director and passed to the Chief Financial Officer.

7.3.10 The Chief Financial Officer may require, where necessary, evidence that appropriate checks have been undertaken before payment.

7.3.11 Construction Industry Scheme (CIS): When ordering services such as painting, decorating, plumbing or any other general building works deemed to be within the scope of the scheme, Budget Managers must observe the regulations stipulated by Her Majesty's Revenue and Customs (HMRC). The scheme requires that the Council acts as agent to the HMRC, deducting Income Tax where appropriate. Any enquiries should be referred to the Accounts Payable Manager who will liaise with the HMRC as necessary.

#### **7.4 Taxation and VAT**

7.4.1 The Chief Financial Officer is responsible for maintaining the Authority's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate. He / she is also responsible for advising Chief Officers on all taxation issues that affect the Authority.

7.4.2 The Payment Team must ensure that VAT is checked when paying invoices to ensure that:

1. Transactions where no VAT is paid are correctly identified as Zero Rated, Exempt or Outside the Scope; and
2. There is a valid tax invoice and the VAT is correctly calculated.

7.4.3 Delegated budget holders must ensure that tax is correctly charged on income due to the Council.

7.4.4 Corporate Finance Service is to provide a corporate resource that will advise on VAT implications across the Council. Where more technical advice is required departments will be required to fund the cost of that advice.

#### **7.5 Income Accounts and Debtors**

7.5.1 Chief Officers must ensure that accounts are rendered promptly for the recovery of all income due. Corporate Finance will raise all accounts as requested by Chief Officers, who will provide details of goods supplied or services / works rendered.

7.5.2 All money received by an employee on behalf of the Council shall be paid to the Chief Financial Officer, or as he/she may direct, to the Council's bank account. All cash received on behalf of the Council shall be receipted. No deduction may be made from such money without the Chief Financial Officer's authority.

7.5.3 Each employee who banks money shall enter on the paying-in slip the name of his/her department, office or establishment and, where payment is made by cheque, a reference to the related debt (such as the receipt number or the name of the debtor) or otherwise to indicate the origin of the debt, on the reverse of each cheque.

7.5.4 Every transfer of the Council's money from one employee to another will be evidenced in the records of the department concerned by the signature of the receiving employee.

## **7.6 Accounting Systems and Processes**

7.6.1 The Chief Financial Officer is responsible for the operation of the authority's accounting systems, the form of accounts and the supporting financial records.

7.6.2 Chief Officers are responsible for the proper operation of financial processes in their own departments.

7.6.3 Any changes made by Chief Officers to the existing financial systems, proposals to introduce new processes or the establishment of new systems (including IT systems) must be agreed in advance by the Chief Financial Officer. Internal Audit must be informed of and involved as appropriate in all changes to systems of internal control before they happen in order that advice can be provided.

7.6.4 Chief Officers must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation. Each must also ensure that their staff are aware of their responsibilities under Freedom of Information legislation.

7.6.5 Delegated budget holders in conjunction with the Directorate Finance Managers must ensure that all financial transactions are accounted for in a timely manner in the accounting system using an appropriate code, which properly records the nature of the income or expenditure. All accounting transactions and financial statements produced must conform to the latest legislation and best accounting practices.

7.6.6 Delegated budget holders must ensure that all income and expenditure is accounted for separately and not set off, one against the other. Capital expenditure must be accounted for separately from revenue expenditure.

7.6.7 Delegated budget holders must only use their own designated accounting codes unless written authority has been given by another delegated budget holder or Chief Financial Officer.

7.6.8 The Chief Financial Officer, in conjunction with the delegated budget holders will maintain a definitive list of accounting codes to be used by all departments, which must be reviewed and updated regularly.

7.6.9 It is the responsibility of the relevant Group Finance Manager to ensure that Control and Suspense accounts are reconciled monthly. A monthly

reconciliation must be done for all bank accounts, to prove the correctness of the bank balance and to confirm that all transactions have been processed into the Council's accounts.

7.6.10 Journal transfers approved by Group Finance Managers must be used to make accounting adjustments and must show the full details of the transaction and reference to source documents.

## **7.7 Records and Procedures**

7.7.1 Chief Officers shall keep such records and adopt such procedures as, in the opinion of the Chief Financial Officer, are necessary to record correctly all financial operations of his/her department and to ensure accuracy and proper recovery of all sums due to the Council.

7.7.2 An effective system should be established for the examination and checking of accounts and cash transactions so that, as far as practicable:

1. The provision of such examination and checking of accounts and cash transactions shall be separated from the duties of collecting and disbursing monies;
2. Officers examining and checking accounts and cash transactions shall not themselves be involved in any of these transactions;
3. Where the principles set out above are not practicable the appropriate Chief Officer and the Chief Financial Officer shall be advised;
4. All arrangements with the Council Bankers, including the opening of new bank accounts, shall be determined by the Chief Financial Officer; and.
5. All bank accounts will be fully reconciled as at 31 March each year.

## **7.8 Trading Accounts**

The Chief Financial Officer is responsible for advising on the establishment and operation of trading accounts and business units.

# **Section 8: External Arrangements**

## **8.1 External Funding**

8.1.1 External funding covers bids to Government and other organisations that are offering funding for projects that meet certain criteria, as well as contributions from organisations and individuals (public or private).

- 8.1.2 Chief Officers are ultimately responsible for the external funding within their service, including exploring feasible options and proposals to maximise its availability to the Council and ensuring it is received and properly recorded.
- 8.1.3 Chief Officers must provide the Chief Financial Officer, or nominated deputy, with details of all bids for external funding. This should also include details of any matched funding; whether it is revenue or capital; and any future/ongoing revenue implications.
- 8.1.4 Chief Officers / delegated budget holders must not commit expenditure on projects requiring matched funding contributions until the external funding has been confirmed, unless approval has been given by the Chief Financial Officer.
- 8.1.5 Chief Officers / delegated budget holders must ensure that monies are received from the funding body, and where possible this should be before any planned financial commitments are entered into by the Council. Chief Officers / Directors must also advise the Chief Financial Officer of all grant and subsidy notifications as soon as they are received.
- 8.1.6 Chief Officers / delegated budget holders are also responsible for ensuring that all conditions associated with external funding are met, and that all appropriate information and evidence required to complete grant/subsidy claims is provided on time.
- 8.1.7 Where the external funding notified is higher than the budget, the surplus amount should be returned to the central contingency unless regulations specify restrictions on its use, in which case it should be used to offset other uncontrollable pressures within the service. Where the funding is less than the budget, the Chief Officers / Director should notify the Chief Financial Officer of options for containing the potential overspend.
- 8.1.8 Some services may be funded (wholly or partly) through time-limited external funding. When the possibility of expenditure / commitments slipping past the funding deadline is forecast, the responsible Chief Officers / Director / delegated budget holder should notify the Chief Financial Officer immediately and provide options for reducing expenditure and/or identifying alternative funding. Where there is a risk of external funding being reduced or stopped, budget managers should have an exit strategy in place, which will prevent any impact on other internal Council budgets.
- 8.2 Work for Third Parties**
- 8.2.1 The Cabinet is responsible for approving the contractual arrangements for any work for third parties or external bodies.

## **APPENDIX A**

### **INTERPRETATION**

- A.1 Any reference to an Act of Parliament, Regulation or other legislation shall include a reference to that legislation as amended, applied, consolidated or re-enacted by virtue of any subsequent legislation.
- A.2 Any reference to 'Chief Officer' shall also include their nominated deputies.
- A.3 The expression 'The Chief Financial Officer' is sometimes also known as the Council's 'Section 151 Officer.'
- A.4 Any reference to the 'Chief Financial Officer' shall include their nominated Deputy.
- A.5 The 'Assembly' means the Council acting as or through the Assembly and includes any person or body to which the Assembly delegates functions.
- A.6 The 'Council' means the London Borough of Barking and Dagenham.
- A.7 The expression 'Cabinet' includes any person or body to which the Cabinet delegates executive functions.
- A.8 'Value' shall mean, where known, the precise value or, where not known, the estimated value, of the works, services, goods or materials that will be payable by the Council over the entire contract period (including any extension period). Where the anticipated value is near the turning point between two classifications, the value of the contract shall be treated as if it were in the higher classification.
- A.9 'Partnership' means public sector partnerships in which the Council participates as a constituent participant or lead authority within a separate organisation.
- A.10 The term 'contract' shall include all the contracts, agreements and orders for the carrying out of work, the provision of services and the supply of goods or materials to, for, or by the Council, by the purchase, lease, rental or hire purchase, including the provision of services to the public on the Council's land or premises. It shall not include contracts for the employment of staff, or for the sale, purchase, lease or licence of land or buildings.
- A.11 These Rules are to be interpreted subject to United Kingdom and other relevant legislation, regulations, orders and directives.
- A.12 Chief Officers will refer to the Chief Executive any questions relating to the interpretation of the Rules.
- A.13 These Rules should be applied in accordance with the Code of Practice.

## **Part 4 – Rules**

### **Chapter 3 – Employment Procedure Rules**

#### **1. Introduction**

- 1.1 These Rules shall be regarded as Standing Orders of the Council for the purposes of The Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') and Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ('the 2015 Regulations').
- 1.2 The Council has a recruitment and selection policy and operational requirements which all Councillors and officers who undertake recruitment, selection and appointment must apply.

#### **2. Responsibility for the Discharge of Employment Functions**

- 2.1 Employment functions, including the appointment or discipline of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (as defined in the Local Government and Housing Act 1989), shall be discharged by the Assembly, or an appointed sub-committee, in accordance with the arrangements set out in Part 2, Chapter 4 of this Constitution.
- 2.2 Employment functions, including the appointment, dismissal or discipline of all other JNC officers, except those specified in paragraph 2.1 above, shall be discharged by the Assembly, or an appointed sub-committee, in accordance with the arrangements set out in Part 2, Chapter 4 of this Constitution.
- 2.3 The dismissal of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (as defined in the Local Government and Housing Act 1989), shall be discharged by the Assembly in accordance with the arrangements set out in Part 2, Chapter 4 of this Constitution and with regard to the Model Disciplinary Procedure and Guidance (England) published by the Joint Negotiating Committee for Local Authority Chief Executives.
- 2.4 The function of appointment, dismissal or discipline of all other officers, other than those referred to above or in respect of political assistants, shall be discharged on behalf of the Council by the Chief Executive or by an officer nominated by him/her.

#### **3. Conflicts of Interest in Employment Matters**

- 3.1 No officer shall take part in the appointment and dismissal of, and taking disciplinary action against, any officer, including making any recommendation in respect of such action, where the officer or a candidate for such appointment is a spouse, partner, close family relative or friend of the officer concerned.
- 3.2 Where an officer identifies that he would be in breach of Rule 3.1, above, he/she shall immediately notify his/her line manager and the Director of Workforce Change of such conflict, and the line manager shall arrange for another officer to take over responsibility in the matter. Where the officer is the Chief Executive, he/she shall inform the Leader and Chair of the Assembly of

such conflict and of the arrangements which he/she has made to avoid such conflict.

- 3.3 The Council will require any candidate for appointment as an officer to state in writing whether he/she is the spouse, partner or close family relative of a serving Councillor or officer or the spouse or partner of such a person. This statement will be included in appropriate recruitment literature.
- 3.4 Where a candidate has declared such a relationship, any offer of employment shall be subject to approval by the appropriate Director or above.
- 3.5 The Council will disqualify from consideration any candidate who directly or indirectly seeks the support of any Councillor or officer (other than in the proper course of interview and selection) for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- 3.6 No Councillor or officer will seek to support any candidate for appointment to the staff of the Council. Councillors shall not stand as referees for candidates for appointment as Officers.
- 3.7 Rules 3.5 and 3.6 above do not prevent an officer acting in a professional capacity as a referee for candidates for appointment.

#### **4. Political Assistants**

- 4.1 Appointment of an assistant to a political group shall be made in line with the Council's employment procedures. Representatives of the respective political group may participate in the recruitment process.
- 4.2 No political assistant post shall be allocated by the Council to a political group which does not qualify for one under section 9 of the Local Government and Housing Act 1989.
- 4.3 No political group shall be allocated more than one political assistant and a maximum of three political assistants shall be employed at any time.
- 4.4 A political group must have at least six councillors to qualify. Where more than three political groups qualify, the three groups with the highest number of councillors will have priority.
- 4.5 Disciplinary action and dismissal of an assistant to a political group shall be undertaken by the Chief Executive or an officer designated for that purpose by the Chief Executive.

#### **5. Disciplinary Action – Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer**

- 5.1 The Chief Executive may suspend the Monitoring Officer or the Chief Financial Officer, and the JNC Investigation and Disciplinary Panel may suspend the Chief Executive for the purpose of investigating alleged misconduct. That suspension will be on full pay and shall last no longer than two months unless extended at the direction of the JNC Investigation and Disciplinary Panel.

5.2 No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by the JNC Investigation and Disciplinary Panel.

## **6. Disciplinary Action – Other Employees**

6.1 Except where such involvement is necessary for any investigation or inquiry into alleged misconduct, Councillors will not be involved in disciplinary action against any officer. This provision does not extend to Councillors when acting in an appointed capacity on any committee or sub-committee set up for the purposes of determining disciplinary matters against JNC officers or any committee or sub-committee set up to consider appeals by officers against disciplinary action.

## **7. Notification Procedure for Appointment / Dismissal of Head of Paid Service and Chief Officers**

7.1 In accordance with the provisions of the 2001 Regulations, an offer of an appointment as Head of Paid Service or a Chief Officer, or a decision to dismiss such Officer, must not be made by the decision-maker until:

- (a) the decision-maker has notified the Chief Executive of the name of the person in respect of whom the proposed action is to be taken together with any relevant particulars which the decision-maker considers relevant. Where the final decision rests with the Assembly, the decision of the relevant committee to recommend such action to the Assembly shall be deemed to be a decision that the Council wishes to take the proposed action, and the committee shall be treated as the decision-maker for the purpose of notifying the Chief Executive thereof;
- (b) The Chief Executive has notified each Cabinet Member of:
  - (i) the name of the person in respect of whom the action is proposed;
  - (ii) any other particulars relevant to the action notified to the Chief Executive by the decision-maker, and
  - (iii) the period within which any objection to the making of the decision is to be made by the Leader on behalf of the Cabinet.

The notification shall be by e-mail or in writing to all Cabinet Members and the period of objection will be two working days or such longer period as the decision-maker shall determine. If the period of objection is to be shortened, notification will be by telephone and e-mail, and

- (c) either:
  - (i) the Leader notifies the decision-maker that neither he/she nor any other Cabinet Member has an objection to the action proposed;
  - (ii) the Chief Executive has notified the decision-maker that no objection was received by him/her from the Leader within that period;

- (iii) the decision-maker has considered any objection received from the Leader within that period and is satisfied that such objection is not material or is not well-founded.

## **8. Dismissal Procedure for the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer**

8.1 In the following paragraphs:

“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;

“relevant meeting” means a meeting of the Assembly to consider whether or not to approve a proposal to dismiss a relevant officer; and

“relevant officer” means the Chief Executive (Head of Paid Service), the Monitoring Officer or the Chief Financial Officer, as the case may be.

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

8.3 The Council must invite at least two Independent Persons to be considered for appointment to a JNC Independent Persons Committee, established under section 102(4) of the Local Government Act 1972 for the purposes of advising the Assembly on matters relating to the dismissal of relevant officers of the Council.

8.4 Subject to paragraph 8.5, the Council must appoint to the JNC Independent Persons Committee such relevant Independent Persons who have accepted an invitation issued in accordance with paragraph 8.3, in the following priority order:

- (i) an Independent Person who has been appointed by the Council and who is a local government elector;
- (ii) any other Independent Person who has been appointed by the Council;
- (iii) an Independent Person who has been appointed by another Authority.

8.5 The Council is not required to appoint more than two Independent Persons in accordance with paragraph 8.4 but may do so.

8.6 The Council must appoint any JNC Independent Persons Committee at least 20 working days before the relevant meeting.

8.7 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the Council must take into account, in particular, any advice, views or recommendations of the JNC Independent Persons Committee.

## **9. Other Polices**

9.1 Except as set out in these Employment Rules, or as required by law or under a contract of employment, all appointments shall be made and disciplinary action

shall be taken in accordance with the Council's Human Resources policies, practices and procedures which may add to these Rules but not conflict with them.

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## **Part 4 – Rules**

**(Note: These Land Acquisition and Disposal Rules are subject to a full review. In the meantime, any references to the Property Advisory Group (PAG) in this document shall also refer to any interim, alternative arrangements that the Chief Financial Officer may implement).**

### **Chapter 4 – Land Acquisition and Disposal Rules**

#### **1. Application**

- 1.1 The Rules apply to all relevant land acquisitions and disposals except:
- (i) where any provision is waived by the Cabinet by urgent action under paragraph 4, Chapter 16, Part 2 of the Constitution). The reason for any such waiver shall be set out in the appropriate minutes of the Cabinet; or
  - (ii) when the disposal of an interest in property results from statute and the Council cannot resist the disposal, e.g. the property being acquired by Compulsory Purchase Order, by an Academy in accordance with the statutory framework in the Academies Act 2010 or a lessee operating their rights under the leasehold enfranchisement legislation.
- 1.2 References to land in the Rules include any property constructed on land or land itself. The terms "acquisition" and "disposal" apply to any relevant interest in land, including freehold, leasehold, tenancies, licences, restrictive covenants, wayleaves, easements, options, etc. The sale of Council owned housing stock held in the Housing Revenue Account and disposed of under the provisions of Part V of the Housing Act 1985 is excluded from these rules.
- 1.3 Reference to a Service Division or Section shall be to the relevant Director or Group Manager or to a person properly authorised to act on their behalf.
- 1.4 The Rules shall not apply to Be First, a limited company wholly owned by the Council but operating independently, which shall be responsible for ensuring that its own land and acquisition arrangements are robust, achieve best value and are legally compliant.
- 1.5 The Rules shall not apply to land or property investments, disposals and acquisition decisions to be taken to implement the Council's Investment and Acquisitions Strategy. The Investment Panel will advise and make recommendations on individual decisions either to the Strategic Director, Finance and Investment (to the extent of the delegated powers available), or the Cabinet (where the matter is the Cabinet's responsibility). The Investment Panel will be guided by the principles and advice set out in these Rules.

#### **2. Control by the Cabinet**

- 2.1 All strategic decisions about the use, acquisition and disposal of land and property assets is within the remit of the Cabinet. Formulation of strategic decisions is overseen by the Property Advisory Group (PAG) and the Cabinet. The allocation of space in corporate buildings is initially considered by the Asset Management Group and, if appropriate, referred to the appropriate

Accommodation Group and then on to the relevant corporate board. Any disposals as a result of statute and those that the Council cannot legally resist will be an exception to the procedure, in which case the Chief Financial Officer is authorised to progress the disposal.

- 2.2 The disposal of all property either long-lease (over 20 years) or by the sale of the freehold, or land swap must be approved by the Cabinet. This provision does not affect the delegation to Chief Officers to dispose of minor interests in land up to the value specified in the Financial Rules (Part 4, Chapter 2, paragraph 5.14.4 of the Constitution).
- 2.3 The decision to dispose of surplus or under-utilised property must be made in accordance with the Council's Disposal Protocol. An appraisal for retention / disposal must be compiled and considered by PAG.
- 2.4 The decision to enter into leases for periods of up to 20 years for land and property assets with a capital value of less than £2m together with any tenancies, licences, restrictive covenants, wayleaves, easements, options, etc. is delegated to the Chief Financial Officer. For the avoidance of doubt, if the lease is for part of a land holding or property the capital value is the value of the whole asset and not just the area being leased.

### **3. Employee Responsibilities**

- 3.1 In order to provide clarity and certainty, any proposals to acquire, dispose or change the use of land shall be assessed by the Chief Financial Officer on behalf of the Council as landlord. The Chief Financial Officer shall act as a clearing-house for such policies before they are finally determined and implemented.
- 3.2 Property Services are responsible for professional advice to the Council on valuation and land matters, and for supplying or procuring valuation services to implement land sales, purchases or changes of use. These services may include surveying, security, ground investigations, valuation and negotiation. No other section shall initiate these activities, nor make any contact with another party during active negotiations, in relation to a land transaction, except under procedures agreed with Property Services.
- 3.3 Where the Council's objectives for land are initiated by a service other than Property Services, the responsible employee must afford Property Services the opportunity to consider and comment on the proposal, and to contribute to any relevant report to the Cabinet. All reports which alter the Council's objectives for land and property shall be reported to the Cabinet prior to adoption.
- 3.4 All services / Corporate Directors have a duty to ensure the efficient and cost-effective use of land they occupy or manage. Where Services have identified objectives involving the use of surplus or under-utilised land and buildings Directors shall raise the issue with Property Services. Property Services will then be responsible for implementing the agreed action in consultation with the relevant corporate board and other relevant officers and subject to Cabinet approval where relevant.

- 3.5 Where land is to be acquired to facilitate a non-Council development this will normally be to meet agreed planning policies. The acquisition or disposal shall be managed and negotiated by Property Services. All decisions as to disposal and acquisition are to be taken in accordance with the Scheme of Delegation. The provision of finance for land acquisitions is subject to the Council's Capital Programme procedures.
- 3.6 For the purposes of clarity the decision related to Compulsory Purchase Orders is reserved to the Cabinet, however, the process required for compulsory purchase order(s), shall be managed by the appropriate Service. The agreement of the level of compensation shall be negotiated by Property Services.
- 3.7 The Commission for Local Administration advises that where the Council's Valuer considers that a proposed disposal is not in the best interests of the Council having regard to the state of the market, the condition of the property and its realisable or anticipated potential, the effects of disposal on retained property, or for any other reason, this should be made clear in a report to the Cabinet giving the reasons in full.
- 3.8 Property Services will ensure that appropriate Service Divisions are kept informed of progress and consulted on all major stages of land transactions, including any proposal to report under paragraph 3.7 above.
- 3.9 Property Services are responsible for compliance with statutory requirements in land transactions, and for securing the most advantageous consideration (both in monetary and non-monetary terms) commensurate with achieving corporate objectives, in any transaction.
- 3.10 The co-ordination of advice on corporate policy for land and buildings shall be guided by PAG and, if necessary, referred to the relevant corporate board to obtain approval to proceed to the Cabinet.
- 3.11 Services proposing the release of the operational land of any service as surplus to requirements, must give adequate notice to Property Services and shall identify adequate budgetary provision for the interim management of the surplus land, pending decision as to its future use. On agreement of the appropriate budget and the transfer of the budget to Property Services, Property Services will be responsible for the future management of the vacant property until it is sold or redeveloped. If the Service Division and the Group Manager with corporate property and asset responsibilities cannot agree the budgetary provision necessary to manage the property, the matter shall be referred to the Chief Financial Officer for final determination.

#### **4. Statutory Responsibilities**

- 4.1 On disposal of land, the Council may not sell at a consideration less than the best that can reasonably be obtained. The exceptions to this general principle are in relation disposal on short leasehold interest (leases for less than seven years), disposal in accordance with the General Disposal Consent (2003) or with the specific approval of the Secretary of State/ Minister for the Department of Communities and Local Government. The approved process

for this is that an Appraisal at Undervalue must be completed and considered by the PAG and if supported referred to the Cabinet for consent.

- 4.2 The price payable by the Council on the acquisition of land is not so closely prescribed by statute. However, the Council is bound by its overall fiduciary duties, and would be acting unlawfully if it did not have clear and supportable reasons for purchases above market value.
- 4.3 Property Services are responsible, on advice from Legal Services where appropriate, for ensuring that the Council's statutory obligations regarding the price to be paid or received for land transactions are met, and for ensuring the validity of any valuation advice received from private sector contractors.
- 4.4 Terms for a transaction shall not be finalised unless supported by a current written recommendation from an appropriately qualified valuation surveyor. The recommendation relied upon and any relevant supporting information shall be deposited and retained in the Property Services transaction file.

## **5. Land Disposal Procedures**

- 5.1 The method used to dispose of land shall be the most effective method to secure the best terms reasonably available, as determined by Property Services.
- 5.2 Where land is to be disposed of by:
  - Auction - a current written valuation shall be obtained, and the sale shall be subject to a reserve price of not less than that valuation;
  - Public Tender - the Council's Contracts Rules relating to tenders for contracts shall apply subject to any necessary adaptation approved by the Chief Financial Officer to meet the requirements of a land disposal (tenderers shall be provided with information about any criteria to be used in evaluating the bids).
- 5.3 Land may also be disposed of by informal tender, or competition, including where specific prospective purchasers are invited to tender. In this case the application of the Contracts Rules will not be appropriate, but participants shall be informed in advance of the procedures and the criteria for assessing proposals on a like for like basis.
- 5.4 Disposal by private treaty (negotiation) may be appropriate in order to respond to development proposals from the private sector, where disposal is to a 'special purchaser' (a purchaser with an interest in an adjoining property or with an inferior or superior interest in the property) or where the end use for the land is of importance to Council policy. However, it is a disadvantage that this method is less capable than others of demonstrating fairness, and that the best price reasonably obtainable has been secured (particularly if negotiations are restricted to a single party). This method must, therefore, be used with caution, and the progress of negotiations shall be recorded in writing and retained on the disposal file in Property Services.

## **6. General**

- 6.1 The Disposal Protocol (approved by the Cabinet, Minute 37, 17 July 2007) shall be complied with as the corporate process for disposals.
- 6.2 Any proposal to buy land for a value greater than or to sell land for a price less than Market Value will require specific authorisation in line with the corporate procedure (as agreed by Cabinet, Minute 322, 8 March 2005).
- 6.3 The procedure approved by the Cabinet for disposal at undervalue is:
- Any proposals to sell or lease at undervalue (whether or not the Secretary of State's consent may be required) should be considered initially by the PAG as an appraisal panel. The recommendations and reasons will be reported to the Cabinet when seeking the necessary consent for disposal of a particular property at undervalue if it is supported by the PAG.
  - The report for making the proposal for a disposal shall be submitted to the PAG and must include the following information:
    - (i) A valuation report undertaken by a valuer who is a member of the Royal Institution of Chartered Surveyors (RICS) setting out the restricted and unrestricted values of the property.
    - (ii) A proposal by the sponsor of the capital value of the proposal to the Council and those benefits of the proposal which are capable of monetary assessment (e.g. operational savings, income generation, levering in additional financial resources etc) together with an assessment with supporting evidence of the value of non-monetary benefits (crime reduction, health improvements, social benefits to the community).
    - (iii) A statement from the sponsor showing how the disposal at undervalue will contribute to agreed Council and Community Priorities and will not adversely affect other priorities and a clear statement showing where and how the scheme fits within service priorities (as they may be required to cover the shortfall of the receipt from their own capital funds).
    - (iv) A clear statement from the sponsor that the benefits cannot be achieved unless the scheme proceeds at undervalue and confirm that no alternative means of funding is available.
    - (v) Confirmation from the Strategic Director, Law and Governance or Chief Legal Officer that the proposal falls within the terms of the revised General Disposal Consent.
    - (vi) A full and detailed financial assessment of the impact of disposing of the asset on both the existing Capital Programme and the Council's Medium Term Financial Strategy provided by the Chief Financial Officer.
- 6.4 The Sponsor, following the appraisal by PAG, would refer the matter to the relevant corporate board for recommendation to the Cabinet for a decision.

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# **Part 5**

## **Codes and Protocols**

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## **Part 5 – Codes and Protocols**

### **Chapter 1 – Councillors' Code of Conduct**

#### **1. Purpose of the Code**

- 1.1 As a Councillor, you have a duty to maintain high standards of conduct. The purpose of this Code of Conduct (the “Code”) is to assist you in the discharge of your obligations to the Council, the local community and the public at large by:
- a) setting out the standards of conduct that are expected of you when you are acting in that capacity, and in so doing
  - b) providing the openness and accountability necessary to reinforce public confidence in the way in which you perform those activities.
- 1.2 The Code applies equally to co-opted members of Council committees who are entitled to vote on any issues coming before those committees.

#### **2. Scope**

- 2.1 The Code applies to you whenever you are acting in your capacity as a member of Barking and Dagenham Council, including:
- (a) at formal meetings of the Council and all of its committees and sub-committees;
  - (b) when acting as a representative of the Council;
  - (c) in discharging your functions as a ward councillor;
  - (d) at meetings with officers;
  - (e) at site visits;
  - (f) when corresponding with the Council other than in a private capacity.
- 2.2 The Code does not seek to regulate what you do in your private and personal lives.
- 2.3 It also does not apply to or seek to regulate the performance, politics or policies of the Council or its individual councillors. These are matters decided by the residents at local elections.
- 2.4 The obligations set out in this Code are also complementary to related Codes and Protocols of the Authority within the Council's Constitution and elsewhere.

#### **3. Public Duties of Councillors**

- 3.1 You have a duty to uphold the law, including the general law against discrimination and the requirements of the Localism Act 2011, and to act on all occasions in accordance with the public trust placed in you.
- 3.2 You have an overriding duty to act in the interests of the London Borough of Barking and Dagenham's area as a whole, but also have a particular duty to represent the views of the residents of your ward.

#### **4. Principles of Good Conduct**

- 4.1 When acting in your capacity as a Councillor you are committed to behaving in a manner that is consistent with the following seven 'principles of public life' identified by the Nolan Committee and endorsed by the Committee on Standards in Public Life:

**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 declare 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.

#### **5. Standards of Conduct**

- 5.1 When you sign up to this Code you must comply with the following standards of conduct and behaviour, which are consistent with the above principles:

- (i) To act solely in the public interest and never seek to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, you family, friend or close associates.
- (ii) Not to place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- (iii) To make all decisions on merit when carrying out public duties, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits.
- (iv) To be accountable for your decisions to the public and to fully submit to whatever scrutiny is appropriate to your office.

- (v) To be as open as possible about your decisions and actions and the decisions and actions of the Council and give reasons for those decisions and actions.
  - (vi) To register as required and declare any disclosable pecuniary interest, and other interests, as set out in this Code.
  - (vii) When using or authorising the use by others of the resources of the Council, to ensure that such resources are not used improperly for political purposes (including party political purposes) and to have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
  - (viii) To behave in accordance with all our legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of Council resources and dealing with confidential information appropriately.
  - (ix) To value and respect colleagues, staff, partners and public, engaging with them in an appropriate manner that underpins the mutual respect between us that is essential to good local government and not to act in a manner that could be deemed as bullying, harassment or intimidation.
  - (x) To promote and support high standards of conduct by leadership and by example.
- 5.2 The principles and standards of the Council's Code of Conduct for Councillors apply to you whenever you act in your official capacity as a Councillor and a failure to comply with this Code or any formal standards investigation, may lead to someone making a complaint against you.
- 5.3 With effect from February 2016, there will be a requirement for Councillors to be subject to a Disclosure and Barring Service (DBS) check in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and Protection of Freedoms Act 2012. The DBS certificate must be provided to the Monitoring Officer within 28 days of the issue date.
- 5.4 The Committee on Standards in Public Life advises that whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (ACAS) have codified a helpful definition: "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient".
- 6. Disclosable Pecuniary Interests**
- 6.1 The Localism Act 2011 sets out specific requirements for certain personal interests of Councillors to be notified to the Monitoring Officer within 28 days of becoming a Councillor. These are called **disclosable pecuniary interests** and must be entered on the Register of Members' Interests. You must also notify the Monitoring Officer if there is any change in those interests.
- 6.2 You have a disclosable pecuniary interest in any business of the Council if it is of a description set out in 6.3 below and is either:

- (a) an interest of yours;
- (b) an interest of a “relevant person” who is defined as either
  - (i) your spouse
  - (ii) your civil partner
  - (iii) a person you are living with as a spouse or civil partnerand you are aware that that person has such an interest.

6.3 A disclosable pecuniary interest is one which relates to or is likely to affect:

- (i) any employment, office, trade, profession or vocation carried on by you or a relevant person for profit or gain;
- (ii) any payment or provision of any other financial benefit (other than from your authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 other than from a registered political party;
- (iii) any beneficial interest in securities of a body where:
  - 1. that body (to your knowledge) has a place of business or land in the area of your authority and
  - 2. either:
    - (a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - (b) the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class.
- (iv) any contract for goods, services or works which has not been fully discharged between you or a relevant person and your authority or a body in which you or they have a beneficial interest;
- (v) a beneficial interest in any land in your authority’s area;
- (vi) any tenancy where to your knowledge:
  - (a) the landlord is your authority and
  - (b) the tenant is a body in which you or a relevant person has a beneficial interest.
- (vii) A licence of any land in your authority’s area (alone or jointly with others) that you or a relevant person occupy for a month or longer.

## **7. Non-Pecuniary Interests**

- 7.1 You have a non-pecuniary interest in any business of the Council where it relates to or is likely to affect either:
- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
  - (b) any body that:
    - 1. exercises functions of a public nature; or
    - 2. is directed to charitable purposes; or
    - 3. one of its 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;
  - (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
  - (d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a person known to you to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, as the case may be, affected by the decision.

## **8. Declaration of Disclosable Pecuniary Interests**

- 8.1 Subject to paragraphs 8.2 to 8.3, where you have a disclosable pecuniary interest in any business of the Council and you are present at a meeting at which the business is considered, you must declare to that meeting the existence and nature of that interest whether or not such an interest is registered on your Register of Interests or for which you have made a pending notification.
- 8.2 Paragraph 8.1 only applies where you are aware or ought reasonably to be aware of the existence of the interest.
- 8.3 Where you have an interest in any business of the Council which would be disclosable by virtue of paragraph 8.1 but by virtue of paragraph 12 (sensitive interests) details of the interest are not registered in the published Register of Members' Interests and that the interest is a disclosable pecuniary interest (if that is the case), you need not disclose the nature of the interest to the meeting.

## **9. Declaration of Interests generally**

- 9.1 Subject to paragraph 10.1, where you have an interest in any business of the Council you also have a declarable interest in that business where the interest is one which a member of the public with knowledge of the relevant facts

would reasonably regard as so significant that it is likely to prejudice your judgment in the public interest.

- 9.2 You do not have a declarable interest in any business of the Council where that business:
- i. does not affect your financial position or the financial position of a person or body described in paragraph 7.1 (a) and (b);
  - ii. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 7.1 (a) and (b); or
  - iii. relates to the functions of the Council in respect of
    - (a) housing, where you are a Council tenant provided that those functions do not relate particularly to your tenancy or lease;
    - (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (d) an allowance, payment or indemnity given to Councillors;
    - (e) any ceremonial honour given to Councillors; and
    - (f) setting Council Tax or a precept under the Local Government Finance Act 1992.
- 9.3 In accordance with Section 106 of the Local Government Finance Act 1992, any Councillor who is two months or more in arrears of Council Tax cannot vote on any item involving the budgetary process, or the expenditure of money during the year or subsequent years and must declare the fact as soon as practicable after the start of the meeting. A Councillor may, however, speak on the issue unless it relates to the process of Council Tax collection and enforcement. A Councillor must be fully aware of his/her own financial matters and must not assume notification by officers before this situation arises. Failure to comply with this rule is a criminal offence.
- 9.4 Under local arrangements, a Councillor who is two months or more in arrears of Council house rent cannot vote on any item involving housing revenue account expenditure but is not required to declare the fact. A Councillor must be fully aware of his/her own financial matters and must not assume notification by officers before this situation arises.

## **10. Effect of Interests on Participation**

- 10.1 Where you are present at any meeting and you have a disclosable pecuniary interest in any matter to be or being considered at the meeting, and you are aware that this condition is met, you must:

- (a) disclose the interest at the meeting;
- (b) withdraw from the meeting room for the relevant item, and
- (c) not participate in any discussion and/or vote on the matter

unless you have received a dispensation from the Council's Monitoring Officer. The dispensation process is set out below in paragraph 14. Further advice can be sought from the Monitoring Officer.

10.2 Additionally you may not:

- (a) exercise executive functions in relation to matters for which you are aware that you have a disclosable pecuniary interest; or
- (b) seek to influence a decision about matters for which you are aware that you have a disclosable pecuniary interest

10.3 If you have an interest other than a disclosable pecuniary interest in any Council business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest and you are present at a meeting at which such business is to be considered or is being considered, you must disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2) and you are aware that this condition is met, you must:

- (a) disclose the interest at the meeting;
- (b) withdraw from the meeting room for the relevant item, and
- (c) not participate in any discussion and/or vote on the matter

In this case it is not possible to acquire a dispensation from the Monitoring Officer.

## **11 Registration of Members' Interests**

11.1 Subject to paragraph 12, you must register in the Council's Register of Members' Interests details of all disclosable pecuniary interests as referred to in paragraph 6 that you are aware of within 28 days of:

- (a) this Code being adopted by or applied to the Council; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Council

11.2 Subject to paragraph 12, you must also provide written notification to the Monitoring Officer within 28 days of becoming aware of any new disclosable pecuniary interest or of any change to any disclosable pecuniary interest already registered.

## **12 Sensitive Information**

12.1 Where you have a disclosable pecuniary interest referred to in paragraph 6 or other interest referred to in paragraph 7 and the nature of the interest is such

that you and the Monitoring Officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the Council's Register of Members' Interests then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s.32(2) of the Localism Act 2011 and/or this paragraph.

- 12.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Monitoring Officer.
- 12.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

### **13 Gifts and Hospitality**

- 13.1 You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with an actual or estimated value of £50 or more which you have accepted as a Councillor from any person or body other than the Council.
- 13.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.

### **14. Dispensations**

- 14.1 If a Councillor has a disclosable pecuniary interest and wishes to seek a dispensation from the restrictions on participating and voting in meetings, they must complete a request for dispensation form and submit it to the Monitoring Officer.
- 14.2 The Localism Act 2011 sets out five grounds when a dispensation can be granted. However in the case of grounds 2, 3 and 5, the Monitoring Officer may refer the matter to the Standards Committee for a decision due to the nature of the circumstances, in which case the Standards Committee decision shall be final.
- 14.3 Grounds for a dispensation:
1. that without the dispensation the number of persons prohibited by section 31(4) Localism Act 2011 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
  2. that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
  3. that granting the dispensation is in the interests of persons living in the Borough,

4. that without the dispensation each member of the Council's Cabinet would be prohibited by section 31(4) from participating in any particular business to be transacted by the Cabinet, or
5. that it is otherwise appropriate to grant a dispensation.

## **15. Management of Complaints relating to Councillors**

- 15.1 All complaints against Councillors and co-opted Members must be made via a completed written complaint in the prescribed form, including the complainant's full name and address, unless special circumstances exist as determined by the Monitoring Officer whose decision is final.
- 15.2 Where the complaint is unclear in terms of particulars such that there is no specific breach of the Councillors' Code of Conduct, the Monitoring Officer shall invite the complainant to clarify:
  - What the breach is that is alleged
  - When it happened
  - Where it happened
  - Names and contact details of witnesses, and
  - To attach evidence relevant to the complaint to support the allegation.
- 15.3 The Monitoring Officer may set a time for a response to rule 15.2 not less than 21 days.
- 15.4 The Monitoring Officer will only act where there is sufficient evidence in their opinion to do so.
- 15.5 Following a period for clarification, the Monitoring Officer may proceed with the complaint and make a determination as to whether the complaint merits a formal investigation and if not, the matter is dismissed. The Monitoring Officer, when making a determination, may consult with the Council's Independent Person.
- 15.6 The Monitoring Officer may dismiss a complaint without resort to further investigation if they are of the opinion that the complaint is (any one of the following or more):
  - a) lacking in evidence
  - b) fails to identify any breach
  - c) politically motivated
  - d) vexatious
  - e) repetitive
  - f) defamatory

- g) has no reasonable prospect of success
  - h) about a Council service. Such a complaint will be referred to the relevant service area in accordance with the Council's complaints policy.
- 15.7 If a matter proceeds to investigation the Monitoring Officer may circulate copies of the complaint form to whoever they consider necessary, including the Member and their representative(s) and outside agencies.
- 15.8 During the investigation the Monitoring Officer may require the complainant to furnish further details or co-operate in terms of disclosure of evidence. If the complainant fails to co-operate in a timely manner or do not make themselves available, the Monitoring Officer may continue their investigation in the absence of the complainant's co-operation, including making a determination to dismiss the complaint.
- 15.9 In the event that the circumstances of a standards complaint are such that there is potential for a conflict of interest regarding investigation of the matter involving the Monitoring Officer such as, for example, the Monitoring Officer is a material witness or has made the complaint, then arrangements will be made by the Chief Executive for another officer of the Authority to discharge the investigatory role or alternatively commission an independent investigator which may be from another local authority.

## **16 Complaints against Councillors - Public Interest Considerations**

- 16.1 The Council's Monitoring Officer is tasked with conducting investigations. The Monitoring Officer in accordance with best practice guidance issued by the Committee for Standards in Public life will not be undertaking investigations that do not support these wider benefits because they will not be in the public interest. In addition, our resources are limited and it is important that the Monitoring Officer focuses on the investigation of significant matters which go to the heart of the relationship between Councillors and the public they serve and not on matters which are either vexatious, trivial, petty, party political, have no realistic prospect of success, without evidence or which have little or no impact on the public. Furthermore, the Council's Monitoring Officer cannot consider complaints about any matters currently before the Secretary of State, an Ombudsman, the courts or tribunals either criminal or civil matters, nor employment issues.
- 16.2 The public interest will be considered in deciding:
- (i) whether a complaint against a councillor can and should be investigated, or
  - (ii) whether an investigation should continue
- 16.3 There is no widely accepted definition of public interest, but it has been described as 'something which is of serious concern and benefit to the public'. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public may find to be of interest, or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the entire population of the London

Borough of Barking and Dagenham. It may refer to a distinct section of the public such as a small community or interest group. The Monitoring Officer in taking a view will consider:

### **1. Seriousness**

The more serious the alleged breach, the more likely it is that the Monitoring Officer will investigate.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the Councillor was responsible for or was to blame for the alleged breach; the circumstances of the complaint; and whether the alleged conduct caused harm to any person.

(a) To what extent was the Councillor responsible for or to blame for the conduct complained of?

Questions of responsibility or blame are likely to be determined by the Councillor's level of involvement; the extent to which the alleged breach was premeditated and/or planned; whether they have previously been investigated or been referred to the Standards Sub-Committee for an adjudication decision on a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the Councillor's length of service; and level of experience/knowledge of the councillor in relation to the issue in question.

(b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?

Although a breach of the Code may affect the public at large, it can also cause harm to individuals or to specific groups or bodies. In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and the Monitoring Officer will take these into consideration. The Monitoring Officer should also have regard to whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor demonstrated hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest investigators should take into account any views expressed by the complainant, or any other person affected, about the impact that the alleged breach has had on them.

### **2. Proportionality**

The Monitoring Officer will consider the cost of the investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. The Monitoring Officer will not decide the public interest on the basis of cost alone, but it is a relevant consideration when making an overall assessment of the public interest.

### **3. Consultation with the Localism Act Independent Person**

The Monitoring Officer may consult with an Independent Person appointed by the Council as to the Public Interest merits of continuing with an investigation, however the Monitoring Officer's decision will be final.

These considerations will assist the Monitoring Officer in identifying the public interest but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one of a number of criteria which must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Code.

## **Part 5 – Codes and Protocols**

### **Chapter 2 – Councillors’ Code of Conduct for Planning Matters**

#### **1. Introduction**

- 1.1 The Council is the Local Planning Authority for Barking and Dagenham.
- 1.2 The Council’s planning decisions must be taken with regard to policies contained in the adopted Development Plan, any supplementary planning guidance and any other material planning considerations. These decisions are made by Committees of elected Members (the Planning Committee) and also by officers under delegated powers.
- 1.3 The current Development Plan comprises the Local Development Framework (LDF), now known as the Local Plan, and the Spatial Development Strategy (the London Plan) set by the Mayor for London. The Development Plan must conform to Guidance from the Government including the National Planning Policy Framework. Planning decisions must be taken in accordance with policies contained in the Plans unless material planning considerations justify a departure.
- 1.4 Many minor applications are dealt with by officers under delegated authority, as provided for under the Council’s Constitution and as a requirement of Government performance standards for planning. Major schemes and those raising substantial objections are determined by the Planning Committee.
- 1.5 This Code of Conduct for Planning Matters sets out the rules and procedures for the Council’s Planning Committee when determining planning applications and considering site specific policy issues both in the lead up to and at a Planning Committee meeting. This Code is supplementary to the Councillors’ Code of Conduct at Chapter 1 of Part 5 of the Constitution.
- 1.6 The law relating to the planning process obliges Members of the Committee to act in a quasi-judicial and independent manner. They are required to consider planning applications and site specific policy issues solely on their own merits, in line with published relevant policy.
- 1.7 The key objectives of this Code are:
  - (i) to protect the Council and individual Councillors from allegations of unfairness, findings of maladministration and legal challenge
  - (ii) to ensure that the role of officers, developers and applicants / members of the public are understood
- 1.8 To ensure these objectives are maintained all Councillors are advised to be familiar with the Code. If there are any concerns or lack of clarity about a planning matter advice will be readily available from officers. This will help avoid potential conflicts of interest, which may occur from time to time. If there should be any risk of unresolved conflicts with this Code, officers have been instructed to raise their concerns with the Chair of the Planning Committee, who will be asked to take appropriate action, including giving specific advice to Councillors.

## **2. How to avoid a conflict of interest and still assist your constituents**

- 2.1 In making their decisions Members of the Planning Committee are required to have a neutral position on any application. This means they cannot be seen to side with either the applicant or the objector/s prior to the hearing of the application when all the relevant facts are known. Adhering to the following rules will ensure that public confidence in the Planning Committee is maintained and also serve to minimise the prospect of non-planning related matters clouding the judgment of Members. This is a requirement of the law and this guidance is aimed to assist Members in complying with this complex area of legislation and case law. Officers are always available to assist Members on these matters.
- 2.2 As their role is quasi-judicial, Members of the Planning Committee must not be involved in the support of, or the opposition to, planning applications. This could be considered as “predetermining” an application for permission that may be considered by the Committee. Similarly, Members of the Committee should not allow themselves to be influenced by members of the public and developers who might approach them and they should not be influenced by party politics or the views of other Councillors. If Members do have particularly strong views on a particular planning matter they should seek advice from the Council’s Monitoring Officer, the Director of Inclusive Growth or the Head of Planning in order to minimise any risk to themselves.
- 2.3 As decision-makers, Members of the Planning Committee should approach all applications with an open mind. If they express a view prior to the decision they could be seen to be predetermining the application, that is to say they have already made their mind up. Members must avoid the appearance of being influenced by those with whom they have a special relationship such as fellow Councillors at any stage prior to determination. Members should similarly avoid making public statements as to their support of, or opposition to, any application. This could be considered to be pre-judging the proposal and as such, could bring into question whether Members are acting independently on the merits of the case. While the Localism Act 2011 provides that that it is not conclusive of a closed mind by the fact that a Member may have said something about an application before hearing, it may be very difficult to avoid giving such an impression.
- 2.4 If Members should receive lobbying material relating to potential applications, they should not respond and should forward it to the Council’s Development Management Manager. If a Member is approached by an individual or an organisation in relation to a particular planning application on the agenda of an upcoming meeting, the Member should explain that they are unable to personally comment on the application but that the person or organisation may:
- Where the application is not yet on the agenda, write to the Planning Officer responsible for the particular application who will take into account any material planning considerations raised in the representations when preparing the report for the Planning Committee;
  - Contact the Governance Services Officer to request to speak at the meeting;

- Contact an alternative Councillor who is not a member of the Planning Committee.
- 2.5 Members should make a written note of any approach made to them and inform the Monitoring Officer accordingly.
- 2.6 If a Planning Committee Member decides to become involved in organising the support of or opposition to a planning application, then that Member should accordingly declare an interest at the beginning of the meeting (see “When to declare an Interest” below) and remove themselves from taking part in the matter. By becoming involved in a planning application prior to the meeting other than to read the Planning Officer’s report and to attend a site visit accompanied by the Planning Officers, the Member risks forfeiting his/her right to take part in the discussion or vote on that particular item.
- 2.7 Ward Councillors who wish to make representations to the Planning Committee should, in particular, note paragraphs 2.2 and 2.3 above on influencing other Members, 4.1 on Declarations of Interest and 7.3 and 7.4. If any doubt exists in a Member’s mind about possible interests they should seek advice from the Monitoring Officer in advance of the meeting.

### **3. Members' Interests in Proceedings – General Principles**

- 3.1 The first general principle is that if a Member taking part at a meeting has an interest in an item of business they must declare it. In accordance with the provisions of the Localism Act 2011 there are two possible interests, that is disclosable pecuniary interests and non-pecuniary interests.
- 3.2 It is strongly recommended that as soon as Members receive their papers they check each application to make sure that they do not have an interest of any kind. If they consider themselves to have an interest they should notify the Governance Services Officer responsible for the Planning Committee as soon as possible in advance of the meeting.
- 3.3 If it later becomes apparent to the Member that he/she has an interest (which may not be until the meeting) this should be declared as soon as the Member is aware. The Member should immediately withdraw from the meeting by leaving the room, thereby taking no further part in that business. If any doubt exists in a Member’s mind, they are advised to seek advice from the Monitoring Officer in advance of the meeting. In the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Member, not with officers.

### **4. Interests and What to do**

#### **4.1 Disclosable Pecuniary Interests**

- 4.1.1 These are defined in the Code of Conduct for Councillors. These are set by law. If an interest is disclosable as defined under the Localism Act 2011 then the Member should not take part whilst that matter is being considered, unless they have been issued with a dispensation. How to get a dispensation is set out in the Code of Conduct for Councillors document.

## **4.2 Non-Pecuniary Interests**

- 4.2.1 These are interests which are not disclosable by law but could still be necessary to be declared. An interest which is not within the disclosable pecuniary category may still prevent Members taking part because it is capable of being seen as bias or prejudicial to a party before the Committee.
- 4.2.2 A Member shall be regarded as having such an interest that would be prejudicial to the proceedings if it related to an item of business and the interest was one that a member of the public with the knowledge of the relevant facts would reasonably regard it to be so significant that it is likely to prejudice the Member's judgement. In such circumstances a Member is advised to leave the room, so that there can be no doubt that they did not influence the Committee in its decision making. In case of doubt, the best advice is to withdraw from dealing with the application.
- 4.2.3 A common potential non-pecuniary interest arises where the Member resides near a development which is the subject of a planning application. While it is for the Member to judge, a useful rule of thumb is "will my enjoyment of my property be affected either positively or negatively by this application?" If the answer is yes, the Member should declare they have an interest and exclude themselves from discussion and voting on that item.
- 4.2.4 If a Member has a concern as to whether they may have such an interest they should seek advice from the Monitoring Officer though ultimately it is for a Member to decide whether or not to declare that they have an interest.

## **5. Decision-Making: Material Planning Considerations**

- 5.1 Members should only consider the planning merits of an application as set out before the Planning Committee in determining whether or not to grant planning permission. Members are not to give weight to non-planning related matters that may be raised by members of the public.
- 5.2 Further, an applicant or objector may not raise any substantial new information at a meeting (including by way of correspondence, other documents, photographs or models) at the Planning Committee meeting without due notice or the consent of the Committee.
- 5.3 Any attempts by applicants or objectors (or their agents) to introduce such information in breach of this Code must not be taken into consideration by Members in arriving at their final decision.
- 5.4 Planning applications are considered with regard to the policies set out in the Development Plan and the National Planning Policy Framework. Applications must be determined in accordance with policy unless there are material planning considerations to indicate otherwise. Material considerations include the site history, appeal decisions, Central and London Government Guidance. All these policies and factors must be weighed together before a decision at Planning Committee level is made.
- 5.5 If a decision of a Planning Committee appears to be made on other than planning grounds it could be open to legal challenge. If it is appealed, and a

Planning Inspector or the Court decides the decision to be flawed, it may be overturned. This could have serious cost implications for the Council.

- 5.6 If the majority of Members on a Planning Committee make a decision which is contrary to the Planning Officer's recommendations, reasons for the decision need to be given. Officers will at this point outline to Members the implications of the decision they are making.

## **6. Site Visits Protocol**

- 6.1 Members will not make any decisions or discuss the merits or otherwise of a case during the site visit but may seek clarification, particularly about the layout of the site, from the accompanying Planning Officers.
- 6.2 The Governance Services Officer will record the time/date of the site visit, Members in attendance and any other relevant information.

## **7. Conduct at Meetings**

- 7.1 Members who are not present throughout an entire item, for whatever reason, must refrain from participating in the discussion on that item and must not vote on it.
- 7.2 As this is a legal process it is vital that Members must be seen to act fairly – Members must not discuss, or appear to discuss, any matter with members of the public during the course of the meeting or in the lead up to it.
- 7.3 Councillors who are not members of the Planning Committee may, with the agreement of the Chair, speak on an application that relates to their ward without the need to give prior notice. Councillors should sit separately from the members of the Planning Committee and they should declare whether they have had any contact with the applicant/objector/property owner or their agents, and whether they are speaking on behalf of a third party, and if so, who.
- 7.4 Councillors who are not members of the Planning Committee must not communicate with those who are in respect of any undetermined planning matter in any other manner than that described above in the lead up to or during the course of the meeting.

## **8. Speaking at Meetings as an interested party or applicant.**

- 8.1 If you have an interest in a matter being discussed at a meeting, you must declare that you have an interest and the nature of that interest as soon as that interest becomes apparent to you. If you have a disclosable pecuniary interest you cannot take part in that matter at all unless you have been granted a dispensation.
- 8.2 You should then leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case if you too are eligible you can also attend the meeting for that purpose only. You should not sit with Members of the Committee and your right to address the Committee is the same as other members of the public.

8.3 In addition, you must not seek to improperly influence a decision in which you have an interest. This rule is similar to your general obligation not to use your position as a Member improperly to your or someone else's advantage or disadvantage.

## **9. Breaching the Code**

9.1 Failure to comply with this Code of Conduct for Planning Matters could lead to a Councillor being in breach of the Councillors' Code of Conduct. Breaches of the Code will be referred to the Council's Monitoring Officer.

## **10. Training**

10.1 Members of the Planning Committee are required to attend planning training organised by the Council at which they will need to demonstrate a level of knowledge to the extent that until they have done so they shall not partake in the decision-making process of the Committee.

10.2 Members are encouraged to attend any other specialised training sessions provided, since these will be designed to extend Members' knowledge of planning law, regulations procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist Members in carrying out their role properly and effectively.

## **Part 5 – Codes and Protocols**

### **Chapter 3 – Councillors' Code of Conduct for Licensing Matters**

#### **1. Introduction**

- 1.1 The Licensing Act 2003 (the "Act") transferred to the Council responsibility for the licensing of the supply and sale of alcohol, and rationalised this with the control of regulated entertainment and late night refreshment. The Council is required to determine applications for licensed premises and personal licences under the Act. There is a set period for consultation. During that period persons can make 'relevant representations'. These representations must relate to the four statutory Licensing Objectives as set out in the Act.

#### **2. The Four Licensing Objectives**

- 2.1 The Act requires that the licensing functions are carried out with a view to promoting the statutory Licensing Objectives of:
- (a) the prevention of crime and disorder
  - (b) public safety;
  - (c) the prevention of public nuisance; and
  - (d) the protection of children from harm
- 2.2 If relevant representations are made and not resolved or withdrawn then the Act requires the application must be determined by a statutory Licensing Committee established under the Act. For Barking and Dagenham, the Licensing Committee functions have been delegated to the Licensing Sub-Committee of the Licensing and Regulatory Committee. The Licensing and Regulatory Committee reserves the right to consider any matter which has been delegated to the Licensing Sub-Committee, in which case any reference to "sub-committee" in this document shall also apply to the Committee.

#### **3. The Hearing**

- 3.1 The determination of licensing applications must be held in a quasi-judicial manner. This means the Sub-Committee must ensure that the application is determined in a fair and impartial manner and in accordance with natural justice. The hearing is further subject to statutory regulation.
- 3.2 If an applicant or person who made relevant representations is dissatisfied with the decision, then they can appeal to the Magistrates' Court within 21 days of receiving written notice of the decision.
- 3.3 Members must be mindful of the requirements of the Councillors' Code of Conduct and to avoid predisposition to a party, predetermination or bias. The Sub-Committee's hearing of applications need to be compliant with these requirements, as alleged breaches could lead to judicial review applications to the High Court or complaints under the Code of Conduct. Members can ensure that challenges are avoided by following a fair and impartial procedure. This means that all parties entitled to address the hearing must be given a full

and fair opportunity to present their case before a committee of Members who have an open mind about the application.

#### **4. Ward Councillors**

- 4.1 The Council's Licensing Policy requires that Members shall not hear cases that relate to premises in their own ward to avoid the impression of bias. Due regard shall be given to this requirement when establishing the membership of the Licensing Sub-Committee.
- 4.2 Should a situation arise where a Member is also a ward councillor for the premises to be considered, the Member must declare they are a ward councillor and step down from the Sub-Committee. The Member may remain in the room but should sit within the public gallery.

#### **5. Members' Interests in Proceedings – General Principles**

- 5.1 The first general principle is that if a Member taking part in a meeting has an interest in an item of business they must declare it. In accordance with the provisions of the Localism Act 2011 there are two possible interests, namely disclosable pecuniary interests and non-pecuniary interests.
- 5.2 To minimise the risk of challenge, Members are strongly recommended that as soon as they receive their papers they should check each application to make sure that they do not have an interest. If they consider themselves to have an interest, they should notify the Governance Services Officer responsible for the Sub-Committee as soon as possible in advance of the meeting.
- 5.3 If it later becomes apparent to the Member that he/she has an interest (which may not be until the meeting) this should be declared as soon as the Member is aware. The Member should immediately withdraw from the meeting by leaving the room, thereby taking no further part in that business. If any doubt exists in a Member's mind, they are advised to seek advice from the Monitoring Officer in advance of the meeting, though in the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Member, not with officers.

#### **6. Interests and what to do**

##### **Disclosable Pecuniary Interests**

- 6.1 These are defined in the Councillors' Code of Conduct at Part 5, Chapter 1 of this Constitution and are set by law. If an interest is disclosable as defined under the Localism Act 2011 then the Member should not take part whilst that matter is being considered, unless they have been issued with a dispensation. The process for seeking dispensation is set out in the Councillors' Code of Conduct.

##### **Non Pecuniary Interests**

- 6.2 These are interests which are not disclosable by law but could still be necessary to be declared. An interest which is not within the disclosable pecuniary category may still prevent Members taking part because it is capable of being seen as bias or prejudicial to a party to the hearing. A

Member shall be regarded as having such an interest that would be prejudicial to the proceedings if it related to an item of business and the interest was one that a member of the public with the knowledge of the relevant facts would reasonably regard it to be so significant that it is likely to prejudice the Member's judgement . In such circumstances a Member is advised to leave the room, so that there can be no doubt that they did not influence the process and decision making. In case of doubt, the best advice is to withdraw from dealing with the application.

6.3 As a guide a Member will be likely to be regarded as having a prejudicial interest in a licensing application if:

- (i) they live near the premises in question, or
- (ii) they are a regular visitor to the premises, or
- (iii) they belong to a lobby group which may be affected by the outcome of the application.

6.4 If a Member has a concern as to whether they may have such an interest they are invited to seek advice from the Monitoring Officer.

6.5 A Member who declares they have a non-pecuniary interest should have regard to the following:

- If the Member is an applicant; or has an interest beyond representing their constituents they will have an interest in a matter being discussed at a meeting.
- A Member is only permitted to be in the room on the same terms as other members of the public who are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case and the Member is also eligible, then they can attend the meeting for that purpose only. A Member should not sit with Members of the Sub-Committee and the Member's right to address the Sub-Committee is the same as those other members of the public.
- In addition, a Member must not seek to improperly influence a decision in which they have an interest. This rule is similar to the general obligation not to use the position as a Member improperly to their or someone else's advantage or disadvantage.

### **Pre-Determined Views and Bias**

6.6 The Council has to ensure that justice is done and seen to be done.

6.7 Predetermination or bias would occur where a Member has a closed mind to the merits of any argument either for or against a particular issue and makes a decision without considering all the relevant facts.

6.8 This means any Member of the Committee must be very careful about what they say in public about the Council's licensing policies or the way in which applications will be determined. While the Localism Act 2011 provides that it is not conclusive of a closed mind of pre-determination by the fact that a

Member may have said something about an application before a hearing, it may be very difficult to avoid such an impression.

6.9 For the avoidance of doubt, simply being a ward councillor in which the premises is located is not, in itself, an interest.

## **7. Councillors' right to address the Sub-Committee**

7.1 Unlike other proceedings of the Council, the right to address the Sub-Committee is set out in legislation. The only persons who may address the Sub-Committee during a hearing of an application are those who have made relevant representations. A Councillor or a local MP may act as a representative and make relevant representations on behalf of any of these individuals or groups if they are specifically asked to do so. In such cases, evidence of the written authority to speak on an individual's behalf should be submitted to the Council's Licensing Officer in advance of the hearing. If you have a disclosable pecuniary interest, you cannot take part in that matter at all unless you have been granted a dispensation.

7.2 Constituents' concerns may be orally presented to the Sub-Committee by a Councillor if they:

- have been specifically asked to represent an interested party as set out above; or
- have either made a relevant representation within the requisite time or represent an interested party who has made a relevant representation within the requisite time.

and are not prevented from so doing by reason of an interest.

7.3 These are the only criteria that can be taken into account and override any provisions in the Constitution enabling a Councillor to address a Council meeting as of right.

## **8. Member Participation and Voting**

8.1 A Member of the Committee who is not present throughout an entire item, for whatever reason, is not permitted to participate in the discussions or decision on that item.

## **9. Breaching the Code**

9.1 Failure to comply with this Code of Conduct for Licensing Matters could lead to a Councillor being in breach of the Councillors' Code of Conduct. Breaches of the Code will be referred to the Council's Monitoring Officer.

## **10. Training**

10.1 Members of the Committee are required to attend training organised by the Council in order to demonstrate a level of knowledge before being permitted to take part in the decision-making process of the Committee. Members are also encouraged to attend any other specialised training sessions provided to assist them in carrying out their role properly and effectively.

## **Part 5 – Codes and Protocols**

### **Chapter 4 – Employees’ Code of Conduct**

#### **1. Introduction**

- 1.1 The public is entitled to expect the highest standards of conduct from all employees of Barking and Dagenham Council.
- 1.2 This Code aims to describe what is and is not acceptable behaviour so that standards are maintained. In particular, all Council employees are required to adhere to the seven ‘principles of public life’ identified by the Nolan Committee and endorsed by the Committee on Standards in Public Life:

**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 declare 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.

- 1.3 This Code applies to all employees of Barking and Dagenham Council, as well as those engaged at the Council as part of a strategic partnership agreement, interim and agency arrangement; on a voluntary basis; or via another organisation to provide services on behalf of the Council. It is recommended to schools with delegated authority for staffing matters, as “Best Practice”.
- 1.4 Adherence to the Code and its provisions is a condition of employment and any breach of the Code may result in action being taken under the Council’s Disciplinary Procedure.
- 1.5 This Code is not an exhaustive list as it is impossible to provide a definitive list of what is or is not acceptable behaviour.

## **2. General standards**

- 2.1 Employees are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality.
- 2.2 Employees are also required to act in accordance with the Council's scheme of delegation, legislation, the constitution and all relevant codes, protocols, standing orders, policies and procedures.
- 2.3 Employees are expected to undertake all mandatory and other training provided relevant to their roles and responsibilities.
- 2.4 The following sections of this code describe how the above principles can be demonstrated by Council employees or people working on behalf of the Council during their day-to-day work, and how they can be enforced by management.
- 2.5 If there are any doubts or queries about what is acceptable conduct, or about anything else in this Code, employees should raise them with their manager.

## **3. Protocol for reporting concerns**

- 3.1 Employees are expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate manager, any significant shortcomings in the provision of an agreed service, or any impropriety, fraud or breach of procedure.

**NOTES:** i) The "appropriate level of management" may vary depending on the particular situation and could be any of the following: Line Manager; Service Manager; Director, Monitoring Officer or Chief Executive.

ii) Where necessary, employees may by-pass their own management structure.

- 3.2 The Council has a Whistleblowing Policy which explains how to report matters of concern, who to and how they will be dealt with. This includes protecting the identity of employees who report concerns. The Council's Whistleblowing Officer is the Monitoring Officer (Chief Legal Officer).
- 3.3 Any employee who, in the public interest, reports an impropriety, breach or suspected breach of the Code, may do so without fear of consequence.
- 3.4 Equally however, employees are reminded that allegations or accusations which are deemed to be malicious may be subject to investigation under the Council's Disciplinary Procedures.

## **4. Attendance and timekeeping**

- 4.1 Employees are expected to adhere to their contractual hours. They are required to know and comply with start and finish times (or adhere to flexible working arrangements, including home working) and operate time recording as required. Absence without leave (AWOL) is a disciplinary offence.

4.2 If employees are unable to attend work for any reason they must adhere to the procedure for reporting absence as detailed in the “Sickness Absence and Reporting Arrangements”. Employees on sickness absence must not undertake any other work or carry out activities that could hinder their return to work, without prior authorisation from their Head of Service.

4.3 Employees are expected to adhere to the requirements of the Sickness Absence Policy and to attend occupational health appointments as required.

## **5. Appearance and presentation**

5.1 The manner in which employees present themselves at work directly affects the Council’s image, colleagues and the service. Employees’ appearance, including personal hygiene, should reflect this responsibility and emphasise their respect for the people they work with and the service they are providing; Working or attending Council premises whilst under the influence of drugs (unless on prescribed medication) or alcohol is a serious disciplinary offence.

## **6. Integrity**

6.1 Employees are expected to conduct themselves in a manner that reflects well on the Council at all times. Unreasonable language, acts of violence, threatening behaviour or verbal abuse to colleagues, managers, service users, the public or elected Councillors will not be tolerated.

6.2 Employees must not deceive the Council by withholding information, giving false information, or destroying, damaging or altering any records or documents without prior authorisation.

## **7. Disclosure of information**

7.1 The law requires that certain types of information must be available to Councillors, auditors, Government departments, service users and the public: employees must be clear about which information may be disclosed, in which circumstances, and must act accordingly.

7.2 Employees must not use any information obtained in the course of their employment for personal gain or benefit, nor pass this on to others who might use it in such a way. Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Council must not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by law.

7.3 The Data Protection Act 1984 places a legal requirement on all employees to refrain from disclosing, or making use of for their private advantage, or the advantage of any third party, any information held on a computer and not available to the public which they may acquire during the course of their employment with the Council.

7.4 Employees should check, with their manager, what sort of information can and cannot be given openly and without specific authority.

## **8. Confidentiality**

- 8.1 Employees must treat all information about employees, customers and service users with the utmost confidentiality and in accordance with the Data Protection Act 1998. This information must not be passed to anyone who is not authorised to receive it unless proper authority has been sought and granted.
- 8.2 Employees must take all reasonable steps to protect and safeguard confidential documents, particularly if they need to be taken outside the usual workplace.
- 8.3 Employees must not communicate directly with the media about their work, or matters concerning the Council, unless specifically authorised to do so in line with the Council's "Social Media Policy" and "Rules for staff on the use of social media sites".
- 8.4 Employees must seek the agreement of the appropriate Head of Service before any information concerning tendering/procurement or best value exercises is released.

## **9. Use of Council property and facilities**

- 9.1 Council property should only be used for Council business and according to instructions. It must not be misused in any way that could undermine public confidence.
- 9.2 Employees should only remove Council property from Council premises if they are authorised to do so in accordance with any local procedure in operation, e.g. seeking prior permission, logging items out, signing for them.
- 9.3 Council property must be safeguarded while it is in employees' care, with any theft, loss or damage reported immediately.
- 9.4 Employees must adhere to the Information Governance Policies and Procedures and other policies covering the standards expected of computer users. Some examples of misuse are:
- installing or downloading unauthorised software, including screensavers;
  - attaching any item or equipment without authorisation from ICT;
  - surfing the internet for prolonged periods of time for non-work-related items;
  - accessing internet sites which could bring the Council into disrepute – this could lead to both disciplinary and criminal action.
- 9.5 Employees must not make frequent or lengthy private telephone calls using either Council or private telephones. It is recognised that sometimes it is necessary to make occasional private telephone calls at work, but it is expected that this should normally be in exceptional situations.

## **10. Bribery Act 2010**

- 10.1 It is a serious criminal offence for employees corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If such an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

## **11. Criminal convictions, cautions and misconduct outside work**

- 11.1 All (external and internal) applicants for jobs within the Council must declare any criminal convictions and cautions where this is a requirement for the post they are applying for. The Council's Recruitment Policies set out further details.
- 11.2 If an individual is arrested or convicted of a criminal offence or given a caution while employed at the Council this may or may not have a bearing on their employment status, depending on the nature and circumstances of the incident and the type of work they do.
- 11.3 Employees must notify their manager or Human Resources of any legal action being taken against them, regardless of whether the alleged act took place during or outside working hours.

## **12. Recruitment and other employment issues**

- 12.1 All selection, appointments and promotions throughout the Council's service are made purely on clear and justifiable job-related criteria. In order to avoid any possible accusation of bias, employees who are related to, or have a close personal relationship outside work with, an applicant, must not take part in the process.
- 12.2 Similarly, employees must not be involved in decisions relating to discipline or pay adjustments for any other employee who is a friend, partner or relative.
- 12.3 Employees must not canvass the support of colleagues for the appointment of a candidate and should resist any attempt by others to canvass themselves.

## **13. Hospitality**

- 13.1 Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the Council at a particular event.
- 13.2 Offers to attend purely social or sporting functions must be accepted only when they are for the benefit of the Council or in connection with a civic or courtesy visit.
- 13.3 All gifts and hospitality offered, whether accepted or not, with a value of £50 or more must be recorded in a register of gifts and hospitality. For officers at or above the level of team manager, a register is maintained by the monitoring officer. For all other officers a register is kept by the relevant Director.

- 13.4 When hospitality has to be declined, those making the offer must be courteously but firmly informed of the procedures and standards operating within the Council.
- 13.5 Employees must not solicit or accept personal gifts, other than ones of a token value such as pens and diaries. Any firm or individual who wishes to make a gesture of goodwill to the Council or its officers should be redirected to the Mayor's Charity Fund.
- 13.6 When receiving authorised gifts or hospitality employees must be particularly sensitive to timing in relation to any decisions which the Authority may be taking in connection with those providing the gift or hospitality. Hospitality which may compromise an officer's impartiality or have the perception of doing so must be declined.
- 13.7 Acceptance of hospitality at conferences and courses is acceptable where (i) it is clear that the hospitality is corporate rather than personal, (ii) the employee's manager gives consent in advance, and (iii) the employee's manager is satisfied that any purchasing decisions are not compromised.
- 13.8 Where authorised visits are required to inspect equipment, meet with prospective service providers etc, officers must ensure that the Council meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

#### **14. Sponsorship**

- 14.1 Where an outside organisation wishes to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 14.2 Where the Council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest.
- 14.3 Similarly, where the Council, through sponsorship, grant aid, financial or other means, gives support in the community, employees must ensure that impartial advice is given and that there is no conflict of interest.

#### **15. Political neutrality**

- 15.1 Employees serve the Council as a whole. It follows that employees must serve all Councillors and not just those of the Majority Group and must ensure that the individual rights of all Councillors are respected.
- 15.2 Employees may be required to advise Political Groups. They must do so in ways which do not compromise their political neutrality. Information communicated to an employee by a Political Group in confidence should not be communicated to other Political Groups.
- 15.3 Employees must follow every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.

- 15.4 Employees must not use their workplace to promote/further personal political issues and must not demonstrate their personal political allegiances in carrying out their duties, nor display any party-political literature in or on Council premises or equipment, Council vehicles etc.
- 15.5 Employees must not raise personal matters concerning their employment directly with councillors or make claims or allegations about other employees directly with councillors.
- 15.6 Employees must be aware of the political restrictions imposed by the Local Government and Housing Act 1989 on certain posts, and how the Council's constitution might affect their work.

**NOTE:** The above requirements do not apply to political assistants appointed in accordance with the Local Government and Housing Act 1989.

## **16. Other employment**

- 16.1 Employees are required to obtain written consent from their manager before undertaking additional work with other employers. Employees may not:
- undertake such work if it conflicts with the Council's interests;
  - use Council equipment, property or contacts in any such work;
  - do any private work during your working hours with Barking and Dagenham Council;
  - undertake any private commitments or activities which may bring the Council into disrepute;
  - opt out from the Working Time Regulations 1998, unless this is agreed with an appropriate manager and Human Resources.
- 16.2 Any goods or services of value which are produced as a result of an individual's employment with Barking & Dagenham will remain the property of the Council.

## **17. Conflict of interest**

- 17.1 Employees should not be involved in any matter in which they may be able to influence the outcome or decision and where they, or their family, friends or close associates, could gain financial or other material benefits. To do so would be a conflict of interest and may result in action being taken under the Council's Disciplinary Procedure.
- 17.2 As soon as it becomes apparent that there is, or could potentially be, a conflict of interest, employees must advise their manager in writing and have no further involvement in the matter. In the event that the manager agrees that there is, or could potentially be, a conflict of interest he/she must reallocate the task and notify the Monitoring Officer for record keeping purposes.
- 17.3 In respect of employment matters, the provisions of paragraph 3, Chapter 3, Part 4 of this Constitution should be followed.

17.4 Any employee who is at all uncertain should seek advice from the Monitoring Officer.

## **18. Register of interests**

18.1 JNC Officers (e.g. Director level and above) are required to provide written notification, via a Register of Interests form, of any personal and financial interests which could bring them into conflict with the Council's interests. This should be submitted to the Council's Monitoring Officer annually or within 28 days of becoming aware of any new personal or financial interest or change to any personal or financial interest. The Monitoring Officer maintains a register for this purpose.

18.2 Other employees may also be required, at the request of their manager, to complete a Register of Interest form in line with the requirements set out above.

## **19. Relationships**

19.1 Mutual respect between colleagues is essential to good local government. Close personal familiarity between colleagues can damage working relationships and prove embarrassing to others.

19.2 In view of this, close personal relationships within the workplace must be declared to an appropriate manager where there may be a potential conflict of interests.

19.3 The Council has a separate protocol for Councillor/employee relations within this Constitution. Employees who have, or expect to have, contact with councillors should read and understand this protocol.

## **20. Procurement**

20.1 Managers/procuring officers must follow the Council's Contract Rules at all times when considering tendering and throughout the procurement process. It is the manager/procuring officer's responsibility to ensure they understand the Council's Contract Rules and take advice if required on the process to follow before commencing procurement.

### **Contractors**

20.2 Orders and contracts must be awarded on merit in accordance with the Council's Financial and Contracts Rules and no special favour must be shown to businesses run by, for example, former colleagues, friends, partners or relatives in the tendering process. No part of the local community must be discriminated against.

20.3 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with the contractors, must declare that relationship at the earliest opportunity to their manager in line with the 'Conflict of Interest' requirements.

### **Separation of roles during tendering**

- 20.4 Employees involved in the tendering process and who deal with contractors must be clear about the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 20.5 Those employed in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 20.6 Employees who are privy to confidential matters on tenders or costs for either internal or external contractors must not disclose those matters to any unauthorised party or organisation.
- 20.7 Employees contemplating a management buyout must, as soon as a definite intent has been formed, inform the appropriate manager and withdraw from the contract awarding processes.

### **21. Equality Issues**

- 21.1 All employees have a duty to ensure that policies relating to equality issues, as agreed by the Council, are complied with in addition to the requirements of the law. All members of the local community, service users and colleagues have a right to be treated with respect, fairness and equality. The Council's Equal Opportunities Policy and Procedure provides further information.
- 21.2 In particular, employees are reminded that discrimination against or harassment of an employee, a prospective employee, a client or member of the public, on any of the grounds set out in the Council's Equal Opportunities in Employment Policy, will incur action under the Council's Disciplinary Procedure.

### **22. Breach of the Code**

- 22.1 Any breach of this Code may be regarded as a disciplinary offence and will be dealt with under the Council's Disciplinary Policy and Procedure.

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## **Part 5 – Codes and Protocols**

### **Chapter 5 – Protocol for Councillor / Employee Relations**

#### **1. Introduction**

- 1.1 The aim of this protocol is to describe the relationships, roles and behaviours which should exist between elected Councillors and employees in a modern, well run local Council. The protocol provides guidance on how the complementary but very different roles of Councillors and employees should work. Equalities, natural justice and reasonableness are strong underlying intentions throughout.
- 1.2 This protocol is not intended to be definitive and should be read alongside other relevant documents such as the Code of Conduct for Councillors, the Code of Conduct for Employees, conditions of service, the whistle blowing procedures and the Council's Scheme of Delegation.
- 1.3 This Protocol is adopted Council policy and applies to all Councillors and, where relevant, statutory co-opted members, and to all employees of the Council. The protocol has a serious objective which may have significant consequences for those who choose not to follow these principles.
- 1.4 It is also intended that the Protocol should apply to any consultants, contractors or agency personnel working on behalf of the Council and it is the responsibility of the employing manager to ensure that this protocol is brought to the attention of such individuals at the beginning of their employment.
- 1.5 This protocol does not apply to schools unless they have specifically chosen to adopt it.

#### **2. The Distinctive Roles of Councillors and Employees**

- 2.1 The primary role of both Councillors and employees is to serve the local community to the best of their abilities.
- 2.2 To do this most effectively, Councillors and employees need to work together in a manner which combines their essential skills, knowledge and experience in a way which produces the best outcomes for individuals and communities and which is fair, sustainable and responsive.
- 2.3 It is important that both Councillors and employees respect their distinctive roles in order for relations to be clear and appropriate.

##### **Councillors:**

- (i) Councillors are elected democratically. It is their policies, ideas and decisions that people vote for.
- (ii) It is their role to:

- (a) Represent the local community and ensure that its best interests are considered during policy making;
- (b) Set the Council's strategic direction, the policy framework, corporate goals, overall priorities and targets;
- (c) Develop policy proposals with professional advice from employees;
- (d) Monitor the implementation and effect of their decisions;
- (e) Add a political dimension when appropriate.

### **Employees:**

- (i) Employees are employed by the Council to undertake an organisational role. It is their job to:
    - (a) Deliver services to the community according to the policies and requirements set by the Council;
    - (b) Draft policy proposals which accord with the overall framework set by Councillors;
    - (c) Give impartial, professional advice in the course of policy development;
    - (d) Manage the organisation.
- 2.4 Put simply, Councillors are responsible for determining policy and the Council's strategic direction; employees are responsible and accountable for suggesting and implementing policy and delivering services.
- 2.5 Given these roles, employees are employed to work within and pursue Council policies and priorities, unaffected by personal inclinations.
- 2.6 Employees are accountable to their managers and, ultimately, the Chief Executive. They work to the instructions of their manager, and not to individual Councillors - whatever office a Councillor might hold. Councillors should not interfere with matters that are properly the responsibility of employees.
- 2.7 It follows that Councillors should not get involved in any operational situations. If a Councillor considers that something is seriously of concern, they should report the matter to the relevant Director and leave it with them to sort out as necessary. Councillors should not engage with staff on the ground regarding what they perceive to be a problem, nor must they inflame any such problem by engaging with any members of the public who may be in the vicinity at the time.
- 2.8 The Council's Scheme of Delegation explains in more detail where specific responsibilities lie.

## **3. What Councillors Can Expect of Employees**

- 3.1 Councillors can expect employees:

- To do their job effectively and efficiently;
- To strive to provide services which offer best value;
- To behave in a manner which accords with the standards set by the Council;
- To be helpful, respectful and courteous to Councillors;
- To assist Councillors in carrying out their role in connection with Council business (employees cannot, however, assist with party political or campaigning activity, or with private business);
- To deal with Councillors' enquiries fairly and efficiently, in accordance with agreed protocols and timescales;
- To be open and honest with Councillors. To tell the whole story, giving any bad news as well as the good;
- To keep Councillors well informed;
- To work with all Councillors equally and fairly;
- To act lawfully;
- To give advice or recommendations based on reasoned options;
- To ensure that Councillors have all the information necessary to make informed judgements in a timely fashion and presented in a way which is easy to understand in accordance with Plain English guidance wherever practicable;
- To maintain confidentiality where it is proper for them to do so;
- Not to canvass Councillors or otherwise seek to gain favour from them for personal or career advantage;
- To have regard to social hours and generally to be sensible about contacting Councillors at potentially inconvenient times, unless in an emergency or otherwise agreed;
- Not to raise personal issues related to their employment with Councillors.

#### **4. What Employees Can Expect of Councillors**

##### **4.1 Employees can expect Councillors:**

- To accept that employees are accountable to their Manager;
- Not to become involved in the day to day management of the Council;
- To fully consider advice and recommendations for the purpose of making informed judgements;
- Not to ask employees to breach Council policy or procedures, or to act unlawfully, or outside the terms of their job;
- Not to exert influence or pressure, or request special treatment, because they are a Councillor;
- Not to request unauthorised access to resources or information held by the Council;
- Not to attempt to intervene in case management nor attempt to delve into the personal details of individuals and families;
- To accept that employees act independently of political bias;
- To treat employees in a reasonable manner and with respect;
- To be open and honest with employees;
- To act lawfully;

- To maintain confidentiality when appropriate to do so;
- To respect that employees have private lives and not to contact them outside normal working hours or at home (unless the employee is officially working from home), except in an emergency, or if otherwise agreed.

## **5. Political Neutrality and Impartiality of Employees**

5.1 The National Code of Conduct for local government employees states:

“Employees serve the Authority as a whole. They must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected”.

5.2 Councillors should understand that employees will generally operate in a politically neutral capacity. By law, some posts are specifically designated as “politically restricted”, meaning that they cannot be filled by employees who are linked to a political party or group, either through direct involvement or by, for example, canvassing on their behalf. These are mainly posts at a senior level within the organisation or where the post-holders are regularly involved, as part of their work, in advising Councillors.

5.3 Councillors should not discuss party politics with employees nor must they assume that there is an allegiance to a particular party. Councillors should not place employees in an embarrassing situation where, for example, they feel they have to agree with a particular political line, whether this be nationally or locally based, although employees must follow the overall objectives of the Council and must not work against them.

5.4 Within the framework of a formal meeting, however, it is natural that Councillors will make political statements. Employees should have a general awareness of the Council’s political direction and acknowledge that at a strategic level this is bound to have an influence. However, it is not for employees to challenge such direction and they will co-operate with it – unless it is illegal.

5.5 It is not improper that employees may sometimes wish to seek political guidance in framing policy proposals. However, when they write reports or give advice they have a duty to give professional advice and to make Councillors aware of all the options available.

## **6. Political Groups and Officers**

6.1 It is common practice for party groups to give preliminary, informal consideration to Council business in advance of the formal decision-making process. Whilst it is not normal practice, employees may be asked to attend party group meetings to brief Councillors in a professional capacity. However, this is seen as happening rarely, not regularly, and attendance may only occur with the express permission of the Chief Executive. Such attendance will be on the understanding that other party groups will be similarly served should

- they so request. The political neutrality of any employee attending a group meeting must be respected.
- 6.2 Employees will respect the confidentiality of any party group discussions at which they are present and, in particular, not relay any such discussion to another group.
- 6.3 All requests for an employee to attend a party group meeting should be made through the Chief Executive, who will judge which employee is the most appropriate to attend. This avoids any danger of an individual employee being identified with the party concerned. The employee will be at senior (usually Director) level.
- 6.4 Employees must not attend political group meetings in a private capacity without the express permission of the Chief Executive.
- 6.5 Employees may also be asked to give support in other ways such as briefing Chairs or spokespersons prior to a formal meeting. Again, whilst in practice such support is likely to be in most demand from whichever party group is in control of the Council, such support is available to all groups.
- 6.6 In all these instances it is important that Councillors and employees understand the following:
- employee support cannot extend beyond providing information and advice in relation to Council business – employees cannot be involved in party business. Where possible, this rule can be assisted if employees are not present when party business is being discussed – thought should be given to the way in which the business for the meeting in question is structured;
  - party group meetings cannot make Council decisions and any conclusions reached cannot be interpreted as such or acted upon;
  - where employees provide information and advice to a political group this cannot act as a substitute for providing all necessary detail to a formal meeting.
- 6.7 Employees' attendance at Group Meetings will usually take place in the presence of London Borough of Barking and Dagenham Councillors only. Special care is needed where employees are involved in providing information or advice to a party group which includes non-Councillors. Such people are not bound by the Councillors' Code of Conduct (in particular the provisions concerning declaration of interests and confidentiality). Employees may not, therefore, be able to provide confidential detail as they would to a Councillors' only meeting.
- 6.8 Any cases of particular difficulty or uncertainty in relation to employee advice to party groups should be raised with the Chief Executive.

## **7. Councillors' Enquiries**

- 7.1 Councillors are free to approach any Council department for any information, explanation or advice that they need to assist them in carrying out their role as a Councillor.
- 7.2 Contact between Councillors and employees should be via the relevant Director with the exception that all case work should be channelled through a Members' Casework officer, the contact details of whom will be provided to Councillors. The other exceptions are Governance Services officers for day-to-day general support and matters relating to meetings.
- 7.3 Councillors should always contact the Director, or the Council's Monitoring Officer, regarding anything very serious or sensitive.
- 7.4 Care must be taken to ensure that a complaint, as opposed to an enquiry, on behalf of a constituent is put through the official complaints' procedure.
- 7.5 Details of an appropriate contact employee should be given in all written communications with Councillors.
- 7.6 Councillors are required to ensure that Governance Services are provided with an address for the delivery of any hard copy correspondence. As far as possible, however, written communications will be through email. Electronic communications with Councillors will only be via recognised council email addresses.
- 7.7 Where an enquiry imposes a disproportionate burden on employees' work, this should be explained and discussed with the Councillor concerned and senior management should agree an alternative deadline and/or response.
- 7.8 This Councillors' enquiry procedure supplements and does not replace Councillors' statutory and common law rights to information as referred to in the "Summary of Councillors' Rights of Access".
- 7.9 Meetings which take place between Councillors and employees in relation to enquiries are effectively private meetings to discuss Council-related business. Councillors should not therefore invite external visitors such as party officials or workers, commercial representatives or local residents to such meetings without the prior agreement of the employee.

## **8. Roles on Outside Organisations and Groups**

- 8.1 It is natural that some Councillors and employees will be members, in their own right, of organisations or groups (political, voluntary or otherwise), within the community. Some Councillors and employees may work for such bodies.
- 8.2 It is essential that Councillors and employees do not use their Council position to obtain preferential treatment for the organisation or group concerned in a way that a non-Councillor or non-employee could not. To do so would be

totally improper. In particular it would make it very awkward for staff who might find it difficult to suggest that a Councillor should use the proper channels when they are clearly not carrying out constituency work.

- 8.3 If a Councillor or employee has a role on an outside organisation or group, whether it be in a personal capacity or as a result of a position held on the Council, it is important to be aware that this could create a conflict of interest. A Councillor can act in the interest of the external body but must recognise the need not to take part in any Council decisions that affect the organisation or group - whether they be nominated by the Council or not - or to take part in any work associated with the organisation or group which could place them in a situation whereby they might be asked to make a judgement on a Council action.
- 8.4 Councillors and employees should remove themselves from any potential conflict of interest. Where there is doubt, it is always wise to err on the side of caution.

## **9. Familiarity, Friendships and Relationships**

- 9.1 Close personal familiarity, in the office or at meetings, between individual Councillors and employees should be avoided as this can damage working relationships and prove embarrassing to colleagues on both sides. In particular, it could bring into question an employee's ability to deal impartially with other Councillors, and vice-versa.
- 9.2 However, it is recognised that personal, family or business relationships or friendships will exist between some Councillors and employees. Some of these relationships will be disclosable pecuniary interests and must be recorded in the individual's Register of Interests. Other relationships which fall outside of those requirements should be notified to the Chief Executive.
- 9.3 Persons engaged in such friendships or relationships should take special care not to seek, or be seen, to influence their positions through their respective friend or partner. Name dropping to seek advantage is totally unacceptable. People should also go out of their way to ensure that colleagues are not placed in an awkward or embarrassing situation as a result of a friendship or relationship.
- 9.4 Certain informal gestures in a formal work setting may be innocently made but could be perceived by the recipient to be unwelcome or embarrassing. Such gestures should always be avoided. Similarly, jokes or pranks should be avoided.
- 9.5 A Councillor involved in a relationship or otherwise associated with an employee should declare an interest if, on any occasion, they are involved in decision-making directly related to the employee concerned, or the service in which they work. Where appropriate, they should seek to avoid being a member of a related meeting.

- 9.6 Councillors must be careful never to become engaged in any matter related to an individual's employment (except through formal meetings when these are relevant). Any employee attempting to raise such issues with Councillors should be advised to take the matter up with their manager and/or their trade union representative, and the Councillor should take no part in any discussion.
- 9.7 Councillors should not invite or encourage employees to partake in unofficial social activities, irrespective of whether this is outside normal working hours. This could be perceived by the recipient to be unwelcome and may result in them feeling obliged to become involved.

## **10. Social Media**

- 10.1 Councillors and officers interacting via social media must ensure that their actions cannot be construed in any way to bring the Council into disrepute or undermine the political neutrality of officers. Officers should not, therefore, respond to any comments or feeds posted by Councillors which have a political connotation or relate to Council business.
- 10.2 The Council's "Social Media Policy" and "Rules for staff on the use of social media sites" should be followed at all times. Any breach of these rules may result in disciplinary action / sanctions being taken.

## **11. Appointment or Dismissal of Employees**

- 11.1 Councillors should take no part in the appointment or dismissal of an employee nor should they seek to influence in any way the appointment or dismissal of a particular person to a post, other than where this is explicitly provided for in the Constitution (e.g. the recruitment of certain chief officer posts).

## **12. Employees' Personal Life**

- 12.1 Many employees live in the Borough and may wish to attend local events or public meetings in a personal capacity - for example, a Ward Surgery. Councillors should respect this and not regard the individual concerned as an employee at such times.
- 12.2 Anything raised or discussed by an employee (in confidence or otherwise) as a resident at such events should be so respected by the Councillor and not discussed in the workplace.
- 12.3 At public meetings and the like, an employee, as a resident, may wish to voice concerns about certain services or facilities in the area, or to ask questions or make suggestions. This is natural and acceptable to a certain degree. However, that person should not maliciously undermine the Council by adverse or negative comments. At all times, employees must observe the standards set out in the Code of Conduct for Employees. Also, any employees who hold politically restricted posts are generally prohibited from speaking publicly with the apparent intention of affecting support for a political party.

12.4 The area in which an employee lives should have no bearing on their employment and Councillors should not, at any time, show favour to those who live in the Borough or those who originated from the area. Employees should not publicly demonstrate support for a political party in carrying out their duties.

### **13. Councillors and the Use of Council Services as a Resident of the Borough**

13.1 There will be many times when Councillors use Council services as a resident - sometimes the service may be of a sensitive, confidential or personal nature (e.g. a social service, financial benefits etc.) and there may be some awkwardness or embarrassment on either side.

13.2 In all instances, the employee providing the service will maintain full confidentiality where this is appropriate and will treat the Councillor concerned in the same way as any other customer. The Councillor will not seek or expect any preferential treatment.

### **14. Trade Unions**

14.1 The Council has traditionally welcomed and recognised trade union membership and the important role that trade union involvement and participation offers.

14.2 The Employee Joint Consultative Committee provides a forum for effective communication and consultation between employee representatives and the Council. This meeting is represented on the Council side by Councillors and on the employee side by trade union officials. It provides an opportunity to promote and foster good employee relations and prevent or remove any friction or misunderstanding.

14.3 Trade union representatives may sometimes express views on behalf of their union which may be critical of the Council as an employer. This is acceptable in this context and a normal part of trade union negotiations or discussions. The fact that a representative may speak out in this way on behalf of colleagues should not be held against that person in their personal employment.

### **15. Conduct at Meetings and Events**

15.1 Councillors and employees should observe the degree of formality in behaviour that is appropriate to the event.

15.2 A formal approach should generally be applied in open meetings although the use of first name terms is acceptable if there is a consensus. The important issue is that the audience should be able to identify who is speaking or being addressed.

- 15.3 Such formality between Councillors and employees is not usually necessary at social events. However, any event attended as a result of the Councillor or employee's role with the Council should have regard to the fact that close personal familiarity might embarrass others or damage external relationships, and therefore should be avoided. Where there is doubt, a more formal approach is potentially less damaging than a casual one.
- 15.4 Councillors and employees should not undermine each other at meetings or in any public forum, as this would be likely to damage working relationships as well as the public image of the Council.

## **16. Documents and Information - Accessibility and Confidentiality**

- 16.1 Information and documents should be made available on request by officers to Councillors unless:
- a) there is a clearly and properly justifiable reason for declining access, and
  - b) the Councillor in question cannot establish a legal right to the information or documentation.
- 16.2 Councillors are entitled on a "need to know" basis to receive documents and information on request where it is clear that the Councillor concerned requires the documentation or information because of their position within the Council or by virtue of their membership of a committee or sub-committee.
- 16.3 Access to personal data (information about a living individual) is governed by the Data Protection Act. Personal data can be released to Councillors in specific circumstances, such as when they are acting on behalf of a resident. In such cases, the Council does not generally have to obtain the consent of the individual to disclose their personal information to a councillor, as long as:
- The councillor represents the ward in which the individual lives; and
  - The councillor makes it clear that they are representing the individual in any request for their personal information with the Council; and
  - The information is necessary to respond to the individual's complaint/enquiry.
- 16.4 There is no general right of access to personal data held by the Council.
- 16.5 More details of Councillors' rights of access to information can be found in the Access to Information Procedure Rules in Chapter 17, Part 2 of the Constitution.

## **17. Correspondence**

- 17.1 Correspondence (hard copy or email) between an individual Councillor and an employee will not normally be copied (by the employee) to another Councillor. Where the employee feels that this is appropriate, it will be made clear to the original Councillor. Clearly this will not apply to any correspondence which is

marked 'Confidential' unless there are justified reasons which will be discussed with the originating Councillor.

- 17.2 A Cabinet Member has no special right of access to copies of correspondence passing between another Councillor and an employee which relates to the Cabinet Member's portfolio.
- 17.3 When writing to a Councillor, or group of Councillors, the correspondence will clearly indicate the names of any others who have been sent the same correspondence, including any who have been copied in for their information. This is in the spirit of openness and to avoid any surprises or later allegations around 'blind copies'.

## **18. When Things Go Wrong: Dispute Resolution**

- 18.1 The Council's experience is that Councillors and Officers work well together. However, it is still necessary to have a clear process to deal with matters when they are not going well.
- 18.2 The key principle for dispute resolution is that both Councillors and officers are committed to informal, non-adversarial solutions. Where a dispute arises, the first step should be for both parties to seek to resolve any differences informally between themselves or, where necessary, with the assistance of a manager.
- 18.3 When an informal resolution is not possible, the processes referred to below will apply.

### **Complaints by Councillors about employees**

- 18.4 All formal complaints should be marked "private and confidential" and made to the individuals referred to in the following paragraphs, who will determine how best to deal with the matter. The recipient of the complaint may consult with others, as considered appropriate, such as the Chief Financial Officer regarding any matters of financial control or fraud or the Strategic Director, Law and Governance, Chief Legal Officer and/or Director of Workforce Change where legal / procedural advice is necessary.
- A complaint by a Councillor about an employee should be made to the Director of the service in question.
  - A complaint by a Councillor against a Director should be made to the Chief Executive.
  - A complaint by a Councillor against the Chief Executive should be made to the Leader of the Council, copied to the Monitoring Officer.
  - A complaint by a Councillor against an employee (at any level) **and** the Chief Executive should be made to the Leader of the Council, copied to the Monitoring Officer.

- A complaint by a Councillor against an employee (at any level) **and** another Councillor should be made to the Monitoring Officer.
  - A complaint by a Councillor about a former employee should be made to the Director of the former employee's department.
- 18.5 Councillors have a right to know if action has been taken to correct a matter, but they must not either:
- (i) insist, or suggest to insist, that an employee is disciplined; or
  - (ii) influence the level of any disciplinary action which might be taken against an employee.
- 18.6 The matter will be investigated and the Councillor will be informed of its progress and outcome but has no entitlement to detailed information about any disciplinary hearing or its conduct.
- 18.7 The decision to take formal action against an officer and the action taken is the sole responsibility of management. A Councillor's evidence will be considered but the Councillor must:
- (i) respect the confidentiality of the investigation and disciplinary process;
  - (ii) not seek to improperly influence the action taken against an employee;
  - (iii) accept the management decision.
- 18.8 Where a Councillor has had reason to question, criticise or complain about the actions of a particular employee, once the issue has been dealt with through appropriate mechanisms, irrespective of the outcome, professional behaviour is expected from both parties - there must be no grudge to bear on either side. To do so openly or behind the scenes will only fuel continued unrest and is not in the Council's interests. Any such difficulties should be referred by the employee to their Director, or in the case of a Director to the Chief Executive, or by the Councillor to their respective party group leader.

### **Complaints by Employees**

- 18.9 Any complaints by an employee about a Councillor or a former Councillor should be discussed confidentially in the first instance with the employee's Director who, in turn, will discuss with the Monitoring Officer the best course of action. However, where a breach of the Councillors' Code of Conduct is alleged, the complaint must be in writing using the form available on the website ([Complaints about councillors](#)) and must be sent to the Monitoring Officer, marked "private and confidential":

### **Complaints by Councillors about Councillors**

18.10 A complaint in relation by a Councillor about another Councillor should be made in writing marked “private and confidential” to the Monitoring Officer. If the complaint alleges a breach of the Councillors' Code of Conduct the complainant should use the form available for this purpose on the web link above.

### **19. Breaches of the Protocol**

19.1 Relevant Sections offer advice as to how to deal with any difficulties around or breaches of this Protocol. It is hoped that these routes will successfully and quickly resolve any issues.

19.2 A breach of the Protocol by a Councillor may be reported to the Monitoring Officer, who will decide how the matter should be dealt with. Where a breach of the Protocol constitutes a breach of the Councillors' Code of Conduct, the Monitoring Officer will investigate the matter and, if appropriate, refer the matter to a Standards sub-committee.

19.3 The Monitoring Officer will acknowledge receipt of the complaint within five working days and give an indication of how it is proposed to deal with it.

19.4 In instances of a breach of the Protocol by an employee, the matter will be dealt with through the Council's disciplinary or other relevant employee related procedures.

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## **Part 5 – Codes and Protocols**

### **Chapter 6 - Protocol on filming, webcasting, photography and the use of social media at Council meetings**

#### **1. Introduction**

- 1.1 The Council welcomes the filming, photography and the use of social media at its meetings as a means of reporting on its proceedings because this helps to make the Council more transparent and accountable to the local community.
- 1.2 The Council has also made provision within several of its meeting rooms at Barking Town Hall for recording/live transmission, commonly known as webcasting, of meetings that are open to the public.
- 1.3 The overriding objective of this protocol must be the effective running of the meetings and it is important, therefore, that the proceedings of any meetings are not disrupted by filming, photography or the use of media tools by members of the press, the public, Councillors or officers. This is not a legal issue – just a question of judgment about what is and is not appropriate.
- 1.4 Under the Council's Constitution, the Chair of a meeting has authority to deal with issues relating to the conduct of those in attendance to ensure the orderly conduct of the meeting and the efficient despatch of business.
- 1.5 The overriding provision within this Chapter is that filming, photography and the use of social media is subject to the restrictions that apply to any item of Council business which considers confidential or exempt information, as defined by Section 100A of the Local Government Act 1972. In such circumstances, no filming, recording, transmitting or photography will be permitted while the confidential or exempt information is being considered.

#### **2. Use of mobile phones at meetings**

- 2.1 Mobile phones may be used to film or take photographs at meetings. Anyone seeking to use a mobile phone in such a manner should refer to sections 5, 6 and 7 of this protocol.
- 2.2 Mobile phones may be used to access and use social media applications in line with sections 3 and 4 of this protocol.
- 2.3 Mobile phones must be switched to a "silent" mode during a meeting to avoid any disruption being caused to proceedings. The use of a mobile phone to either make or receive calls must be undertaken outside the room in which a meeting is taking place.

#### **3. Use of Social Media by the public and press at meetings**

- 3.1 There will be no restrictions placed on members of the press or public using Twitter, blogs or Facebook when attending meetings, provided that their actions do not affect the conduct of the meeting and/or interfere with the audio system.

#### **4. Use of Social Media by Councillors when at meetings**

- 4.1 Councillors are in a different position to members of the public and their actions affect the reputation of the Council. Councillors who are members of a committee have an obligation to pay close attention to the proceedings and demonstrate that they are playing an active part. This is in addition to the general point of showing respect and courtesy to other participants.
- 4.2 Care should be taken in using social media during meetings and the use avoided in particular during quasi-judicial meetings such as the Planning Committee and Licensing and Regulatory Committee (and its Sub-Committee), as evidence of use of texting or social media by committee members could lead to a risk of complaints and/or appeals.
- 4.3 As a general rule, Councillors should avoid the following:
- (i) Accessing social media sites through a live feed to make personal comment on other individuals;
  - (ii) Taking and sending or posting electronic images of a meeting;
  - (iii) Extended and unreasonable periods of use that suggest that insufficient attention is being paid to the meeting.

#### **5. Filming and/or Photography at meetings**

- 5.1 Members of the press and public wishing to film or photograph the proceedings of a meeting should contact the Council's Communications Team at [press@lbbd.gov.uk](mailto:press@lbbd.gov.uk) at least 24 hours before the meeting. The Chair of the meeting will then be consulted and his/her agreement sought to any request made. If permission to film or take photographs during a meeting is denied the reasons for refusal will be given.
- 5.2 The Communications Team will advise anyone making a request to film or photograph the proceedings of the following:
- (i) Whether the meeting concerned is subject to the Council's own recording / live transmission, in which case an additional request to film would most likely be refused;
  - (ii) Any filming, recording or photography must take place from positions in the Council Chamber or Committee Rooms that have been approved by the Chair of the meeting. This must be agreed before the meeting commences in order to ensure the view of members, officers, public and media representatives is not obstructed;
  - (iii) The use of flash photography or additional lighting may be allowed provided it has been discussed prior to the meeting and agreement reached to ensure that it will not disrupt proceedings.
- 5.3 Members of the press and public must agree to ensure that any film or photographs will not be edited in a way that could lead to misinterpretation of the proceedings. This includes refraining from editing the views being expressed in a way that may ridicule or show a lack of respect towards those being filmed or

photographed.

- 5.4 Members of the press and public must agree to share the film or photographs in their original and unedited form with the Council's Communications Team on request.
- 5.5 To comply with the Data Protection Act 1998, the Council must be satisfied that the consent of parents or guardians has been sought before filming any children or young people who may be in attendance at a meeting.

## **6. Announcement of Filming, and/or Photography at meetings**

- 6.1 The Chair will announce at the beginning of the meeting if any pre-agreed filming or photography will be undertaken.
- 6.2 The Chair will ask any members of the public whether or not they agree to be filmed or photographed. This will be done on an 'opt-in' rather than an 'opt-out' basis to ensure individuals do not feel pressurised. Individuals who enter a meeting after the Chair has asked the question of those present will be deemed as having consented to being filmed or photographed unless they indicate otherwise, in which case the Chair shall direct them to the appropriate area.
- 6.3 The Chair will direct anyone not wishing to be filmed or photographed to seating that shall not be covered by the cameras.
- 6.4 At all times the wishes of those who choose not to be involved will take precedence [Councillors and officers are excluded from this provision in accordance with the Openness of Local Government Bodies Regulations 2014].
- 6.5 If the Chair is of the opinion that the filming or photography is disrupting the meeting in any way or any pre-meeting agreement has been breached, the operator of the equipment will be required to stop.
- 6.6 If the operator of the equipment refuses to stop recording when requested to do so, the Chair will ask the person to leave the meeting. If the person recording refuses to leave then the Chair may adjourn the meeting or make other appropriate arrangements for the meeting to continue without disruption. These will be in line with disorderly conduct procedures set out in the Constitution.
- 6.7 Anyone asked to leave a meeting because they have refused to comply with the Chair's requests may be refused permission to film or photograph meetings in the future.
- 6.8 The Chair has a right to withdraw any consent to film or photograph at any time during the meeting. The Chair also has the discretion to request the termination or suspension of any live transmission if he/she is of the view that continuing would prejudice the proceedings of the meeting. This would include:
- (i) Public disturbance;
  - (ii) Exclusion of the public and press.

## **7. Exclusion of the press and public from meetings**

- 7.1 The press and public may only be excluded from a meeting in respect of business relating to confidential or exempt information if a resolution is passed under Section 100A of the Local Government Act 1972.
- 7.2 The press and public will be told about the nature of the exclusion relating to the business to be discussed. No filming, recording or photography will be permitted during this exclusion.
- 7.3 With the exception of Council equipment, all cameras, recording and sound equipment must be removed from the meeting room at any meeting where the press and public have been excluded under Section 100A of the Local Government Act 1972.

## **8. Archiving of Webcasts**

- 8.1 Subject to 8.2 below, all webcasts will be available to view via the Council's website for a period of 12 months (<https://modgov.lbbd.gov.uk/Internet/ieDocHome.aspx?Categories=-14062>) .
- 8.2 The Monitoring Officer may remove all or part of the content of a webcast from the Council's website if he/she considers that it is, or is likely to be, in breach of any statutory provision or common law doctrine, for example Data Protection and Human Rights legislation, or provision relating to confidential or exempt information.

## **Part 5 – Codes and Protocols**

### **Chapter 7 - Politically Restricted Posts**

#### **1. Introduction**

- 1.1 This protocol applies to employees who occupy or are appointed to politically restricted posts and sets out the application process for exemption from or inclusion on the lists of politically restricted posts maintained by the Council, and the process of appeal for a direction on whether a post is politically sensitive.
- 1.2 The main provisions regarding politically restricted posts are set out in Part I of the Local Government and Housing Act 1989 (the LGHA 1989) as amended by the Local Democracy, Economic Development and Construction Act 2009 and the Localism Act 2011.
- 1.3 The law aims at ensuring the political impartiality of local government staff.
- 1.4 The Council is required to maintain an up-to-date list, which shall be open to public inspection, of its politically restricted posts.

#### **2. Categories of Politically Restricted Posts Requiring Political Neutrality**

- 2.1 Posts are considered to be politically restricted if they fall into the following two broad categories:
  - Specified Posts
  - Sensitive Posts
- 2.2 **Specified posts** are automatically subject to restrictions on public political activity. These posts are listed as follows:
  - The Head of Paid Service
  - The statutory Chief Officers
  - Non-statutory Chief Officers
  - Deputy Chief Officers
  - The Monitoring Officer
  - The Chief Finance Officer
  - Officers exercising delegated powers, i.e. those posts with functions delegated to them under the Scheme of Delegation to Officers set out in this Constitution, or which may be set out in the individual schemes of delegation of each Director.
  - Assistants to political groups
- 2.3 **Sensitive posts** are those which meet one or both of the following duties-related criteria:

- Giving advice on a regular basis to the Authority, to any committee or sub-committee of the Authority or to any joint committee on which the Authority is represented, or to the Cabinet or its sub-committees or to any Member of the Cabinet; and / or
- Speaking on behalf of the Authority on a regular basis to journalists or broadcasters.

2.4 Teachers, headteachers and lecturers are all exempt from political restrictions under Section 2 (10) of the Local Government and Housing Act 1989 and will not be regarded as holding politically restricted posts, whatever their role.

### **3. Effects of Political Restrictions**

3.1 The effect of including a post on the list of politically restricted posts debars the Council employee holding that post from having any active political role either in or outside the workplace, in particular:

- a) standing for candidature for public elected office, unless the employee resigns prior to announcing his/her candidature in accordance with paragraph 5 below;
- b) acting as an election agent or sub-agent for any candidate for election;
- c) holding office in a political party;
- d) canvassing at elections (not restricted to the Borough of Barking & Dagenham);
- e) speaking or writing publicly (other than in an official capacity) with the intention of affecting public support for a political party (does not include the display of a poster or other document at the postholder's home or in their car or other personal possessions).

3.2 The cumulative effect of these restrictions is to limit the incumbents of politically restricted posts to bare membership of political parties, with no active participation within the party permitted.

### **4. Rights of Appeal**

4.1 There is no right of appeal in respect of Specified Posts described in paragraph 2.2.

4.2 Sensitive Posts, as described in paragraph 2.3, may be subject to a right of appeal to the Chief Executive in the following cases:

- (i) Where an individual believes that they can demonstrate that the criteria do not apply to a post included in the Council's list of politically restricted posts.
- (ii) Where an individual wishes to seek a direction as to whether a post should be included in the Council's list of politically restricted posts.

4.3 It is the post to which an exemption may be granted, not the postholder (although in the majority of cases, the application will be made by a post

holder who wants to carry out political activities).

- 4.4 The Chief Executive will consider applications from employees for exemption from political restriction or appeals for a direction as to whether a post is politically sensitive.
- 4.5 If the Chief Executive determines that the duties of the post do not fall within the remit of paragraph 2.3 above, he/she will direct that, for a specified period, the post is not to be regarded as politically restricted and be removed from the list of politically restricted posts maintained by the Council.
- 4.6 If the Chief Executive considers that the duties of the post fall within the remit of paragraph 2.3 and that the post is not currently included in either the list of politically restricted posts or in the Scheme of Delegations to Officers, then the Chief Executive shall include it in the list of politically restricted posts.

## **5. Employees standing for election**

- 5.1 Notwithstanding the period of notice referred to in contracts of employment, prior to announcing their candidature for election as a Member of the House of Commons, the European Parliament, the Scottish Parliament, Welsh Assembly or any Local Authority (excluding parish/town Councils), holders of politically restricted posts must, by notice in writing, addressed to their Manager and the Chief Executive, resign with immediate effect. It is left to the discretion of the Chief Executive whether or not to reinstate an employee who resigns his/her post, and then consequently fights and loses an election.
- 5.2 If standing for election, it is in the interests of those applying for exemption from political restriction or appealing for a direction as to whether their post is politically sensitive, to ensure that they make an application for a 'Certificate of Opinion' and then to submit their application/appeal to the Chief Executive for consideration in sufficient time to allow the matter to be considered before the Notice of Election is issued in respect of the election they intend to contest.

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## **Part 5 – Codes and Protocols**

### **Chapter 8 – Indemnities for Councillors and Officers**

#### **1. Introduction**

- 1.1 Under Section 265 of the Public Health Act 1875 councillors and local authority officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for the actions they take. The Act provides for an indemnity in relation to potential liabilities and also costs.
- 1.2 The Local Authorities (Indemnities for Members and Officers) Order 2004 gives a specific power for authorities to grant indemnities and/or take out insurance to cover the potential liability of councillors, co-opted members and Independent Persons (collectively referred to as 'members' in this chapter) and officers in a wider range of circumstances than under the 1875 Act. Each local authority has the discretion to decide whether to use the powers, and to decide the extent of such indemnities and insurance.
- 1.3 At the present time members may incur personal liability, or have to defend themselves where allegations are made that:
  - (a) They acted outside the powers of the authority;
  - (b) They acted in bad faith, or fraudulently or out of malice;
  - (c) Their actions constitute a criminal offence;
  - (d) They made a defamatory statement.
- 1.4 They may also be liable, or attract allegations, for
  - (a) Activities where they are appointed to or working with outside bodies in their role as a member;
  - (b) Action taken for an alleged failure to comply with the Councillors' Code of Conduct. (The Order requires the member to reimburse the Council if there is a finding of breach of the Code or the member admits non-compliance with the Code).
- 1.5 In relation to officers, Councils have always been able to indemnify officers and take out insurance cover where an officer acts within his or her powers for the Council, in order to protect the Council in the event of an officer's actions or inactions giving rise to a claim. The 2004 Order allows Councils to indemnify officers where they have acted outside the powers of the authority but reasonably believe that the action was within the powers at the time they were taken, or where they are acting on outside bodies for the Council.
- 1.6 Given the wide range of Council activities, the complexity of issues members and officers' face, and the demands made on their time, it may be considered appropriate for the Council to provide an indemnity where a member/officer inadvertently acts outside the powers given whilst believing he/she is acting in the interests of the Council or other body. However for both members and officers, the 2004 Order restricts the provision of indemnities so that they

cannot cover any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, or the cost of pursuing a defamation claim. In such cases any costs incurred under an indemnity would normally have to be repaid to the Council or insurer.

### **Terms of Indemnity**

- 1.7 Subject to the exceptions set out below, the Council will indemnify each of its members and officers against any loss or damage suffered by the member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council.
- 1.8 This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - (a) any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or officer;
  - (b) Any act or failure to act by the member or officer otherwise than in his/her capacity as a member or officer of the Council, or
  - (c) failures by the member to comply with the Councillors' Code of Conduct.
- 1.9 Subject to the exceptions set out below, the Council will indemnify each of its members and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or code of conduct proceedings to which he/she is subject.
  - (a) "Criminal proceedings" includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom
  - (b) "Code of Conduct proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Councillors' Code of Conduct
- 1.10 This indemnity will not extend to any advice or representation in respect of any claim or threatened claim in defamation to be brought by a member or officer, but will extend to defending a claim for defamation.
- 1.11 Where any member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Code of Conduct proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or officer has made use of this indemnity, -
  - (a) The member or officer is convicted of a criminal offence in consequence of such proceedings, or
  - (b) A Case Tribunal or Audit and Standards Hearing Sub-Committee determine that the member has failed to comply with the Councillors' Code of Conduct

and the conviction or determination is not overturned on appeal, the member or officer shall reimburse any expenditure incurred by the Council under the indemnity.

- 1.12 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 5 shall apply as if references to the Council were references to the insurer.
- 1.13 For the purpose of these indemnities, a loss or damage is deemed to have arisen to the member or officer “in his/her capacity as member or officer of the Council” where:
  - (a) the act or failure to act was outside the powers of the Council, or outside the powers of the member or officer, but the member or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the member or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;
  - (b) the act, or failure to act, occurred not in the discharge of the functions of the member or officer as a member or officer of the Council but in their capacity as a member or employee of another organisation, where the member or officer is, at the time of the action or failure to act, a member or employee of that organisation either –
    - (i) In consequence of his/her appointment as such member or officer of that organisation by the Council, or
    - (ii) In consequence of his/her nomination for appointment as such member or officer of that organisation by the Council; or
    - (iii) Where the Council has specifically approved the appointment of the member or officer of that organisation for the purpose of these indemnities.
- 1.14 The Council undertakes not to sue (or join in action as co-defendant) an officer in respect of any negligent act or failure to act by the officer in his/her capacity as an officer of the Council, subject to the following exceptions:
  - (a) any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
  - (b) Any act or failure to act by the officer otherwise than in his/her capacity as a member or officer of the Council.
- 1.15 These indemnities and undertaking will not apply if a member or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the resolution.
- 1.16 These indemnities and undertakings are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.

- 1.17 These indemnities and undertakings apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or officer has ceased to be a member or officer of the Council as well as during his/her membership of or employment by the Council.

## **Part 6**

# **Members' Allowances Scheme**

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## **Members' Allowances Scheme 2022/23**

The Council of the London Borough of Barking and Dagenham, pursuant to the Local Authorities (Members' Allowances) (England) Regulations 2003 ("the Regulations"), hereby makes the following scheme.

### **1. Introduction**

- 1.1 The Members' Allowances Scheme ("the Scheme") is approved each year by the Assembly at its annual meeting. The Assembly shall have regard to any recommendations made by an independent remuneration panel before making or amending the Scheme, except where allowances are to be increased in accordance with an approved index or where no increase is proposed, subject to a review every four years.

### **2. Types of Allowances**

- 2.1 The allowances payable are:
- a) Basic Allowance;
  - b) Special Responsibility Allowance;
  - c) Co-opted Members' Allowance;
  - d) Travelling and Subsistence Allowance;
  - e) Dependants' Carers' Allowance;
  - f) Other allowances as described in the Scheme.

### **3. Effective Date**

- 3.1 This Scheme has effect from 26 May 2022.

### **4. Definitions**

- 4.1 "Approved duties" means attendance by a Councillor or Co-opted Member at any:
- a) formally convened meeting of any committee or body to which the individual has been appointed or nominated by the Authority, including any sub-committees or working parties thereof;
  - b) conference, training session and presentation organised by or on behalf of the Authority which the individual is required to attend;
  - c) meeting with a Strategic or other Director where the Councillor's attendance has been requested in writing or by e-mail or where the Councillor is a member of the Cabinet.
- 4.2 "Co-opted Member" means any co-opted, added or independent Member of a Committee or other body to which this scheme relates regardless of whether or not the Co-opted Member receives a Co-opted Members' Allowance.

## **5. Basic Allowance**

- 5.1 A Basic Allowance shall be paid to each Councillor in accordance with Appendix 1 to this Scheme.

## **6. Special Responsibility Allowances**

- 6.1 Special Responsibility Allowances shall be paid in accordance with Appendix 1 to this Scheme.
- 6.2 Where a Councillor would otherwise be entitled under the Scheme to more than one Special Responsibility Allowance, the entitlement shall only be to the highest allowance.
- 6.3 In the event of a person receiving a Special Responsibility Allowance being absent or substantially unable to act for a period of at least three months, the Council may resolve to reduce the level of Special Responsibility Allowance payable to that person and instead resolve to pay the allowance, or part of it, to any person appointed as a deputy or vice-chair for such period as it determines.

## **7. Travelling and Subsistence Allowances**

- 7.1 Travelling and subsistence allowances in respect of Approved Duties undertaken by Councillors and Co-opted Members are payable in accordance with Appendix 1 to this Scheme.
- 7.2 The provisions relating to eligibility to Travelling and Subsistence Allowances apply only to Approved Duties undertaken outside the Borough. Councillors and Co-opted Members are not permitted to claim Travelling and Subsistence Allowances for any activities undertaken within the Borough.

## **8. Dependants' Carers' Allowances**

- 8.1 Dependants' Carers' allowances in respect of Approved Duties undertaken by Councillors and Co-opted Members are payable in accordance with Appendix 1 to this Scheme.
- 8.2 The carers' allowance may be claimed towards the cost of care for children or other dependants within the household who have a recognised need for care.
- 8.3 The allowance will not be payable to a member of the immediate family or household.
- 8.4 The maximum period of the entitlement will be the duration of the approved duty and reasonable travelling time.

## **9. Co-opted Members**

- 9.1 Co-opted Members shall be paid in accordance with Appendix 1 to this Scheme.

## **10. School Appeal Panel Members**

- 10.1 School Appeal Panel (Admissions and Exclusions) members shall be entitled to an allowance as set out in Appendix 1 to this Scheme but shall not be eligible to receive travelling, subsistence or Dependants' Carers' allowances.

## **11. National Insurance and Income Tax**

- 11.1 Payment of allowances shall be subject to such deductions as may be statutorily required in respect of national insurance and income tax.

## **12. Local Government Pension Scheme (LGPS)**

- 12.1 In accordance with the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, Councillors are not eligible to be members of the LGPS.

## **13. Renunciation**

- 13.1 A Councillor and/or Co-opted Member may, by notice in writing to the Chief Executive, elect to forgo all or any part of his/her entitlement to an allowance under this Scheme.

## **14. Payments and Claims**

- 14.1 Payment of Basic and Special Responsibility Allowances shall be made in instalments of one-twelfth of the amounts specified on a monthly basis, unless other arrangements are agreed.
- 14.2 Where an individual takes office part way through a year, a proportionate part of any applicable allowance is payable, unless the allowance is a Special Responsibility Allowance for serving on a committee which is appointed for a period of less than a year.
- 14.3 The Council may determine that an allowance or a rate of allowance will not come into effect until a date other than the effective date of this Scheme. In such circumstances, the alternative date that the allowance shall be payable from shall be specified in Appendix 1 to this Scheme.
- 14.4 Claims for travelling, subsistence and dependants' carers' allowance should be completed monthly and no later than three months from the date that the expenditure was incurred.

## **15. Councillors who are Members of another Authority**

- 15.1 Any Councillor who is also a Member of another Authority shall only receive allowances from one Authority in respect of the same duties.
- 15.2 In such instances, the Councillor shall be required to nominate the Authority from whom he/she wishes to receive the allowance(s) and advise the Chief Executive accordingly.

**16. Record of Allowances Paid**

- 16.1 A record of the payments made by the Authority to each Councillor and Co-opted Member shall be maintained and published in accordance with the Regulations.

**17. Publication of Scheme**

- 17.1 As soon as practicable after the making or amendment of this Scheme, arrangements shall be made for its publication within the Authority's area in accordance with the Regulations.

London Borough of Barking and Dagenham  
Schedule of Allowances for 2022/23

Type	Allowance (per annum unless otherwise stated)
<b>BASIC ALLOWANCE</b> (for all Councillors)	£12,014
<b>SPECIAL RESPONSIBILITY ALLOWANCES</b>	
Leader of the Council	£50,500
Deputy Leader(s) of the Council	£30,000
Other Cabinet Members	£20,666
Deputy Cabinet Members	£7,500
Chair, Overview and Scrutiny Committee	£13,000
Deputy Chair, Overview and Scrutiny Committee	£6,500
Chair, Planning Committee	£10,000
Deputy Chair, Planning Committee	£5,000
Chair, Assembly Chair, Audit and Standards Committee Chair, Health Scrutiny Committee Chair, Licensing and Regulatory Committee Chair, Pensions Committee Chair, Personnel Board Chair, Policy Task Group	£5,438
Deputy Chair, Assembly Deputy Chair, Audit and Standards Committee Deputy Chair, Health Scrutiny Committee Deputy Chair, Licensing and Regulatory Committee Deputy Chair, Pensions Committee Deputy Chair, Personnel Board Deputy Chair, Policy Task Group	£2,719
Leader(s) of the Minority Groups	£372 per seat (with a minimum of £1,207 per Leader)

<b>Type</b>	<b>Allowance</b> (per annum unless otherwise stated)
Mayor's Allowance (payable under section 3(5) of Part I of the Local Government Act 1972)	£13,052
<b>CO-OPTED MEMBERS' AND OTHER ALLOWANCES</b>	
Independent Member (to Audit and Standards Committee for audit functions)	£500 per meeting
Independent Persons (to Audit and Standards Committee for standards functions)	£500
School Appeal Panel Members (Admissions and Exclusions)	£20 per session (up to four hours)
<b>TRAVELLING ALLOWANCES</b>	
Mileage Rates	<ul style="list-style-type: none"> <li>• Car: 45p per mile</li> <li>• Motorcycle: 24p per mile</li> <li>• Bicycle: 20p per mile</li> </ul>
<b>SUBSISTENCE ALLOWANCES</b>	
Meal Allowances	<ul style="list-style-type: none"> <li>• Breakfast (away between 7.00am and 11.00am) - £4.92</li> <li>• Lunch (away between 12.00 noon and 2.00pm) - £6.77</li> <li>• Tea (away between 3.00pm and 6.00pm) - £2.67</li> <li>• Evening (away between 7.00pm and 11pm) - £8.35</li> </ul>
Overnight (continuous period of 24 hours involving absence overnight)	<ul style="list-style-type: none"> <li>• Normal - £79.82</li> <li>• Greater London, AMA Annual Conference or other approved Association conferences - £91.04</li> </ul>
<b>DEPENDANTS' CARERS' ALLOWANCE</b>	£11.95 per hour effective from 22 September 2022 (equivalent to minimum London Living Wage)

## **Part 7**

# **Review, Revision, Suspension, Interpretation and Publication of the Constitution**

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## **Part 7 – Review, Revision, Suspension, Interpretation and Publication of the Constitution**

### **1. Duty to monitor and review the Constitution**

- 1.1 The Monitoring Officer will monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.
- 1.2 A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution and to make recommendations to the Assembly on ways in which it could be enhanced to better achieve its purpose. In order to do this, the Monitoring Officer may:
  - observe meetings of different parts of the Member and officer structure;
  - undertake an audit trail of a sample of decisions taken at both Member and officer level;
  - record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders;
  - compare practices in this Authority with those in other comparable authorities or national examples of best practice.

### **2. Revisions to the Constitution**

- 2.1 All changes to the Constitution shall be approved by the Assembly, with the exception of the following which may be made by the Monitoring Officer:
  - a) changes to give effect to any decisions of the Council;
  - b) changes in the law;
  - c) minor amendments such as to correct errors; and
  - d) to ensure that the Constitution is maintained up-to-date.
- 2.2 Any such changes will be communicated to all Councillors.
- 2.3 In the event of a proposed change from the current strengthened Leader and Cabinet form of executive, the Council will take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.
- 2.4 The Monitoring Officer shall consult with relevant officers, including the Chief Finance Officer on any finance related issues, prior to making, or recommending the making of, any amendments to the Constitution.

### **3. Suspension of the Constitution**

- 3.1 The rules and protocols within the Constitution may not be suspended except in exceptional circumstances. The power to suspend cannot be used where the matter is subject to overriding legal provisions or in respect of voting,

including in relation to the election of or no confidence in the Leader, or regarding the required meeting quorum.

- 3.2 Other rules and protocols may be suspended by the body to which they apply (or if no such body then by the Assembly) to the extent permitted within those rules and the law.
- 3.3 The extent and duration of suspension should be proportionate to the result to be achieved.

#### **4. Interpretation**

- 4.1 The ruling of the Chair as to the construction or application of this Constitution or as to any proceedings of the meeting shall not be challenged at any meeting. Such interpretation will have regard to the purposes of this Constitution and the law. Before making a ruling the Chair shall have regard to the advice of the Monitoring Officer.

#### **5. Publication**

- 5.1 The Monitoring Officer will ensure that:
  - a) each Member of the Council is provided with the Constitution at the commencement of his/her term of office and with any subsequent updates;
  - b) copies are available for inspection at the Town Hall, Barking, the Council's website (<https://modgov.lbbd.gov.uk/Internet/ieListMeetings.aspx?CId=626&Year=0>) and can be purchased by the press and public on payment of a reasonable fee;
  - c) the summary of the Constitution is made widely available within the area and is updated as necessary.