

# **EAST LONDON WASTE AUTHORITY**

# **CONSTITUTION**

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# **Part A**

## **Summary and Explanation**



# THE AUTHORITY'S CONSTITUTION

## 1 Introduction

- 1.1 This Constitution sets out how the East London Waste Authority (“the Authority”) operates, how decisions are made and the procedures that are followed to ensure that decisions are efficient, transparent and accountable to local people. Some of the processes are required by law, while others are a matter of local choice.
- 1.2 It aims to:
- (a) explain how the Authority operates, how decisions are made and the procedures which are in place to ensure efficient, effective, transparent and accountable decision taking
  - (b) ensure that high standards of conduct are exercised by Members and officers
  - (c) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions
  - (d) provide a means of improving the delivery of services to the community.
- 1.3 Where the Constitution permits the Authority to choose between different courses of action, the Authority will always choose the option which it thinks is closest to these aims.
- 1.4 The whole Constitution is a lengthy and comprehensive document so this Part gives a very brief overview of the Authority's operation, its make-up and citizens' rights.
- 1.5 The Constitution is then divided into other Parts that explain the elements in more detail.
- 1.6 A copy of the whole Constitution can be inspected at the Authority's offices, 1st Floor, Arden House, 198 Longbridge Road, Barking, IG11 8SY between 9.30 a.m. - 4.00 p.m. Monday to Friday (excluding Bank Holidays). Alternatively, the document can be found on the Authority's web site ([www.eastlondonwaste.gov.uk](http://www.eastlondonwaste.gov.uk)).

## **2 Definitions and interpretation**

- 2.1 “Authority” means the East London Waste Authority and shall where the context so admits include a committee of the Authority.
- 2.2 “Constituent Council” means any of the London Boroughs of Barking & Dagenham, Havering, Newham and Redbridge, collectively forming the Authority.
- 2.3 “Legal Adviser” means generally the London Borough of Barking & Dagenham Legal Practice and more specifically, the lawyer nominated by the said Legal Practice to advise and manage the Authority’s legal affairs.
- 2.4 “Member” means any of the Councillors nominated by the Constituent Councils to be a member of the Authority.
- 2.5 “Officer” means the Authority’s Statutory Officers and all other staff engaged by or on behalf of the Authority to carry out its functions.

## STRUCTURE OF THE AUTHORITY

### 3 The Authority

3.1 The Authority was established on 1 January 1986 as a Statutory Waste Disposal Authority (WDA) by the Waste Regulation and Disposal (Authorities) Order 1985 for the following purposes:

- (a) To make arrangements for the disposal of waste collected by the Constituent Councils,
- (b) To make arrangements for the disposal of waste from civic amenity sites in the Constituent Councils;
- (c) To make arrangements for the storage and disposal of abandoned vehicles.
- (d) 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, under the Environmental Protection Act 1990.
- (e) To recycle and/or compost the required percentage of household waste under the Local Government (Best Value) Performance Indicators and Performance Standards.
- (f) To prepare a joint municipal wastes management strategy, in accordance with the indications in the Government's published strategy in "Waste Strategy 2000".
- (g) The Authority anticipates statutory targets relating to the implementation of the Landfill Directive and possibly the End of Life Vehicle Directive and the Waste Electrical and Electronic Equipment Directive.
- (h) The Authority aspires to encourage, reduction, re-use, recycling, composting and recovery of waste.

### 4 Members

4.1 The Authority is comprised of eight Members, with two Members appointed annually by each of the Constituent Councils and notified in writing to the Authority. These Members are councillors within their respective Boroughs. Although the eight Members of the Authority are appointed by the Councils they are required, when representing the Authority, to act in the interests of the Authority - as a WDA - and its residents and not of their respective Councils or political affiliations.

4.2 All Authority members:

- (a) are, collectively, the ultimate policy-makers and those responsible for strategic and corporate management functions of the Authority as a WDA;
- (b) (participate in the governance and management of the Authority;

- (c) are available to represent the Authority on other bodies; and
- (d) have a duty to maintain the highest standards of conduct and ethics and follow a Code of Conduct.

4.3 Members have rights of access to such documents, information, land and buildings of the Authority as are necessary to enable them to carry out their functions.

4.4 Members will not make public information that is confidential or exempt without the prior consent of the Authority, or divulge information given in confidence to anyone other than an individual entitled to know it. For these purposes, “confidential” and “exempt” information is defined in Article 2 (Access to Information) in Part B of the Constitution.

4.5 Members are entitled to receive allowances for their work with the Authority in accordance with their respective Council’s Members’ Allowances Scheme. Details of each Scheme are available from the respective Constituent Councils.

## **5 The Management Board**

5.1 The Authority has also established a Management Board to maintain a general overview of the state of health of the Authority and its ability to deliver adequate waste disposal arrangements for the area covered by the Constituent Councils.

5.2 The Management Board is made up of the following officers:

- (a) The Managing Director (Chairman)
- (b) The corporate Directors responsible for Environmental issues in each of the four Constituent Councils
- (c) The Finance Director
- (d) The Head of Operations

## **6 Officers**

6.1 The description of the Authority’s Officers, (including its Statutory and Proper Officers) and their respective functions are set out in Part G of this Constitution.

6.2 Officers shall be appointed in accordance with and be subject to the Employment Rules the Employee Code of Conduct referred to in this Constitution.

6.3 Officers shall be appointed in accordance with and be subject to the Employment Rules the Employee Code of Conduct referred to in this Constitution.

## CITIZENS' RIGHTS

### 7 Citizens' Rights

7.1 Citizens have a number of rights in their dealings with local authorities and some are relevant to the Authority. For example, they have the right to:

- (a) contact their local councillor about any matters of concern to them;
- (b) obtain a copy of this Constitution;
- (c) attend the Authority meetings (except when exempt or confidential matters are being discussed);
- (d) see reports and background papers for formal Authority meetings (except in respect of exempt or confidential information) and any record of decisions made at these meetings;
- (e) complain to the Authority about a related service they have received;
- (f) complain to the Local Government Ombudsman if they think the Authority has not followed its procedures properly. (However, they should only do this after using the Authority's own complaints procedure);
- (g) complain to the body responsible for regulating the conduct of Members if they have evidence which they think shows that an Authority Member has not followed the Code of Conduct for Members; and
- (h) inspect the Authority's accounts and make their views known to the Authority's external auditor.

7.2 The Authority welcomes participation by its citizens in its work. In doing so, citizens are asked to act responsibly and must not be violent, abusive or threatening to Members or staff. Also they must not wilfully harm anything owned by the Authority, its Members or staff. In the event of any such behaviour occurring, the Authority may withdraw services to the person concerned and/or pursue legal action against them.

# **MEMBERS**

**20010/11**

Councillor Steven Kelly

Councillor Barry Tebbutt

Councillor Ian Corbett

Councillor Richard Crawford

Councillor Graham Letchford

Councillor Gerald Vincent

Councillor Michelle Dunn

Councillor Virendra Trewari

Chairman and Councillor of the London Borough of Havering

Councillor of the London Borough of Havering

Councillor of the London Borough of Newham

Councillor of the London Borough of Newham

Councillor of the London Borough of Barking & Dagenham

Vice-Chairman and Councillor of the London Borough of Barking & Dagenham

Councillor of the London Borough of Redbridge

Councillor of the London Borough of Redbridge

## OFFICERS AND SENIOR MANAGERS

### Officers (statutory)

Paul Taylor	Managing Director			Tel. 0208 270 4965 E-mail: <a href="mailto:paul.taylor2@lbbd.gov.uk">paul.taylor2@lbbd.gov.uk</a>
Geoff Pearce	Finance Director			Tel. 020 8708 3588 E-mail: <a href="mailto:geoff.pearce@redbridge.gov.uk">geoff.pearce@redbridge.gov.uk</a>
Eldred Taylor-Camara	Monitoring Adviser	Officer/ Legal		Telephone: 020 8227 3344 Email: <a href="mailto:eldred.taylor-camara@lbbd.gov.uk">eldred.taylor-camara@lbbd.gov.uk</a>

### Senior Managers

Mark Ash	Head of Operations			Telephone: 020 8270 4997 Email: <a href="mailto:mark.ash@lbbd.gov.uk">mark.ash@lbbd.gov.uk</a>
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**Part B**  
**Articles**  
**Meetings**



# ARTICLE 1

## AUTHORITY MEETINGS

In terms of Authority meetings, ELWA agrees a programme of meetings for the coming municipal year (May to April) approximately four months in advance. Occasionally it is necessary for additional meetings to be arranged during the year, mainly to consider issues that cannot reasonably wait until the next programmed meeting. Details of ELWA's programme of meetings is available on its website ([www.eastlondonwaste.gov.uk](http://www.eastlondonwaste.gov.uk)) or by contacting the Office Manager on 020 8270 4964.

Authority meetings are open to the public, unless exempt or confidential matters are being discussed (see paragraph 10 of Article 2 of Part B for further details). Attendance by the public is encouraged.

The Managing Director is responsible for ensuring appropriate support for all Member meetings

### **1 Role**

1.1 Authority meetings are the main decision-making forum for ELWA matters. At these meetings, the Authority sets its overall corporate direction, policy framework and financial limits, within which all ELWA's operations and policies are carried out.

### **2 Functions**

2.1 There are certain matters which, by law, can only be carried out by the Authority. These are set out in Part C of the Constitution.

2.2 All local choice functions that the Authority has decided it should undertake itself rather than to delegate to Officers are also set out in Part C.

### **3 Membership**

3.1 Authority meetings shall be attended by the eight Members of the Authority (two appointed by each of the constituent Councils).

3.2 The term of office of each appointed Member of the Authority shall be until the next annual meeting of the constituent Council making the appointment, or until notification in writing by a constituent Council of a change in their appointment(s) before their next annual Council meeting.

### **4 Chairman and Vice-Chairman**

4.1 Meetings of the Authority shall be presided over by the Chairman who shall be responsible for:

- (a) upholding and promoting the purposes of the Constitution, and interpreting it (with the assistance of the Managing Director and the Monitoring Officer).
- (b) ensuring that its business can be carried out efficiently and with regard to the rights of Members and the interests of the community.

- 4.2 The Chairman and Vice-Chairman shall be appointed at each Annual General Meeting of the Authority.
- 4.3 Appointments to the positions of Chairman and Vice-Chairman shall be made by the Authority by resolution passed by a majority of the Members of the Authority [present at the Annual General Meeting] Provided at least one Member from three of the Constituent Councils shall vote in favour]
- 4.4 The appointments of the Chairman and Vice-Chairman shall be the first business transacted at the annual meeting of the Authority.
- 4.5 The Chairman and Vice-Chairman shall each hold office until the next Annual General Meeting of the Authority or until the Authority is notified in writing by the Constituent Council of which the Chairman/Vice-Chairman is a representative that the appointment of the Member occupying the position of Chairman or Vice-Chairman has changed.
- 4.6 Where the Authority is notified in writing by the Constituent Council of which the Chairman is a representative, that the appointment of the Member occupying the position of Chairman has changed, the position of Chairman shall be occupied by the Vice-Chairman who shall remain in office until the next Annual General Meeting of the Authority.
- 4.7 Where the Authority is notified in writing by the Constituent Council of which the Vice Chairman is a representative, that the appointment of the Member occupying the position of Vice Chairman has changed, the Authority shall appoint another Member from among its membership to occupy the position of Vice Chairman until the next Annual General Meeting of the Authority.
- 4.8 In making the appointments to the positions of Chairman and Vice Chairman, the Authority shall endeavour as best as possible to ensure that the positions of Chairman and Vice Chairman are not occupied in any one year by the two Member representatives of the same Constituent Council.
- 4.9 Subject to clauses 4.5, 4.6, 4.7 and 4.8 above, or unless there are other good reasons which the Authority deems necessary the Members holding the positions of Chairman and Vice-Chairman in any one year shall be eligible to be appointed or re-appointed to the positions of Chairman and Vice-Chairman respectively at the next Annual General Meeting of the Authority following their first appointment Provided always that no Member shall be re-appointed to the position of Chairman and Vice-Chairman as the case may be, for any period exceeding two consecutive years.

## **5 Committees**

- 5.1 The Authority may appoint such committees of its membership and for such purposes as it shall deem necessary.
- 5.2 The Authority shall set out the terms of reference of any committee established by it, and shall further determine any powers or functions as shall be delegated to or be exercised by such committee.

## **6 Accessibility**

- 6.1 ELWA wishes to be as open as possible in its dealings and the press and public are encouraged to attend meetings. Occasionally there will be some matters which are legally restricted from the public eye, (for example, if discussing issues concerning a member of staff), but wherever possible issues are discussed in the open forum.
- 6.2 Further details of the types of matters that are considered in private are contained in Article 2.

## **7 Venues**

- 7.1 Meetings are generally held at the Civic Centre, Dagenham but may, from time to time, be held at an alternative venue within one of the four constituent boroughs.
- 7.2 Public accessibility and appropriateness (particularly for people with limited mobility) are key factors in determining the suitability of venues for meetings.

## **8 Calendar and Timing of Meetings**

- 8.1 Where possible, meetings are programmed in advance. A programme of meetings for the coming municipal year is agreed by ELWA approximately four months prior.
- 8.2 Meetings are usually held on Mondays, commencing at 9.30 a.m., and should last no longer than 3 hours.
- 8.3 If business has not been concluded by this time, the proceedings may be extended for a reasonable further period, with the agreement of at least 75% of the Members present. Any unfinished business will be referred to the next meeting.

## **9 Business at Ordinary Meetings**

- 9.1 Ordinary meetings of the Authority will take place in accordance with the programme of meetings. The business carried out at Ordinary meetings may include the following:
- (a) elect a person to preside if the Chairman and Vice-Chairman are not present;
  - (b) receive apologies for absence from Members;
  - (c) approve the minutes of the last meeting;
  - (d) consider and set the Authority's overall priorities, plans, policy framework and related targets;
  - (e) set the annual Levy on the constituent Councils and the Authority's Capital and Revenue budgets. This includes:
    - (i) the allocation of financial resources to different services and projects
    - (ii) proposed contingency and reserve funds and borrowing limits; and

- (iii) the control of its capital expenditure.
- (f) consider and approve issues relating to the Authority's integrated waste management service (IWMS) contract with ELWA Limited;
- (g) approve the Programme of Meetings and agree any changes;
- (h) make any changes to the appointment of representatives to outside bodies and partnerships;
- (i) agree any changes to the Constitution and associated Rules, Schemes, Codes and Protocols relating to the way in which the Authority operates;
- (j) oversee the management of the Authority, including holding all the component parts to account for their actions and performance;
- (k) receive and consider reports from officers as appropriate;
- (l) consider and approve appropriate statutory and non-statutory plans (e.g. the Best Value Performance Plan);
- (m) receive petitions (see paragraph 24);
- (n) consider motions;
- (o) deal with any other matters of significance or importance at the discretion of the Chairman.

9.2 The order of business will be in accordance with the agenda for each meeting. However, at the discretion of the Chairman the order may be varied at the meeting. Any matters which are exempt from publication will generally appear later on the agenda.

## **10 Annual General Meeting (AGM)**

10.1 The AGM of the Authority will be held in May or June of each year.

10.2 At each AGM, the first business shall be the appointment of a Chairman and Vice-Chairman for the coming year from amongst the membership. Once appointed, the newly appointed Chairman shall preside at the meeting.

10.3 To avoid any doubt, the person presiding at the commencement of the AGM shall be the preceding year's Chairman or, in the absence of the Chairman, the Vice-Chairman or, in the absence of both, another Member chosen by those present.

10.4 Following the appointment of the Chairman and Vice-Chairman, the AGM will consider such other business as is included on the agenda.

10.5 The Authority shall at its AGM, nominate from its membership, one Member from each of the constituent boroughs to answer questions on behalf of the Authority, put by other Members of the constituent Councils in the course of council proceedings, pertaining to the discharge of the Authority's functions.

## **11 Extraordinary General or Special Meetings**

- 11.1 An Extraordinary General (otherwise known as “special”) Meeting of the Authority may be called at any time by the Chairman.
- 11.2 Any two Members of the Authority may also, by signed requisition, request the Chairman to call an Extraordinary General Meeting.
- 11.3 If the Chairman refuses to call an Extraordinary General Meeting of the Authority after a requisition for that purpose or without so refusing, does not call such a meeting within seven days of the requisition being presented to him, then on that refusal or the expiry of those seven days, as the case may be, any two Members of the Authority may then call an Extraordinary General Meeting.
- 11.4 The arrangements for these meetings are the same as for ordinary meetings.

## **12 Informal Member Meetings**

- 12.1 From time to time, the Authority may arrange and hold Informal Meetings of all Members.
- 12.2 These meetings are typically arranged in order that consideration can be given, in an all-Member forum, to one or more major issue affecting the Authority which requires deliberation prior to formal consideration being given at an Authority meeting.
- 12.3 Informal meetings do not have any decision-making powers and the provisions of the Local Government (Access to Information) Act 1985 do not apply. In all other respects, the arrangements for these meetings are the same as for ordinary meetings.

## **13 Quorum**

- 13.1 A quorum is the number of Members needed to enable a meeting to proceed. If a meeting is not quorate, the business will be adjourned to the next ordinary meeting or, if necessary, to an Extraordinary (special) meeting.
- 13.2 An inquorate meeting can, if it feels 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.
- 13.3 Subject to paragraph 45 of Schedule 12 of the Local Government Act 1972, no business will be transacted at a meeting of the Authority or any committee set up by it unless at least four Members of the Authority are present and the Members present comprise representatives of at least three of the constituent Councils.

## **14 Agenda Papers**

- 14.1 Unless otherwise stated in the Articles for particular meetings, agenda papers will be in the Managing Director’s name and will indicate an appropriate contact for any queries.
- 14.2 Agendas, reports and minutes will generally be in an agreed corporate style, details of which are the responsibility of the Managing Director.

- 14.3 Notices of meetings and agendas will be circulated in advance having regard (where appropriate) to the requirements of the Local Government (Access to Information) Act 1985 or any subsequent legislation. In general, this means that the papers will be available at least five clear working days before a meeting.

## **15 Reports**

- 15.1 Reports will provide reasoned options, where appropriate, ensuring that Members are made fully aware of all the implications and alternatives, and the advantages and disadvantages associated with each. Reports will also include, where appropriate, the views of other Members, Officers, constituent Council officers and/or experts (including outside representatives if relevant), together with the professional advice/recommendations of the appropriate lead officer.
- 15.2 Reports will be in the name of the appropriate lead officer but will include the author as the point of contact for further information or queries.
- 15.3 Late reports will generally not be allowed. If there are unavoidable, genuine circumstances, their consideration will be at the discretion of the Chairman. The relevant lead officer will be required to justify the reason for special consideration in writing.
- 15.4 Background papers will be made available for public inspection in accordance with statutory requirements. This responsibility lies with the relevant lead officer.

## **16 Voting**

- 16.1 Decision-making is determined by a majority of the Members present at the meeting.
- 16.2 Voting is generally by show of hands.
- 16.3 The Chairman, or other person presiding, will have a second and casting vote where votes for and against a proposal are equal.
- 16.4 Any Member may ask for a vote to be recorded before it is taken provided they have the support of three other Members. Individual votes will then be taken by way of a roll call and recorded in the minutes. In this situation, Members will be asked to vote "for" or "against"; alternatively they may, if they wish, "abstain".

## **17 Minutes**

- 17.1 Minutes will be concise but sufficiently detailed to enable each matter discussed to be clearly understood by a lay person.
- 17.2 Minutes will be circulated to Members with the agenda for the next meeting for confirmation as a correct record at that meeting.
- 17.3 Minutes of all meetings will generally be confirmed as a correct record at the next scheduled meeting. If appropriate, or if necessary, this may be done at an earlier special meeting. The minutes will be signed by the Chairman, or other person presiding at the meeting, when they are confirmed.

17.4 Minutes will be made available for public inspection in accordance with statutory requirements.

17.5 The minutes will be the formal record of attendance at meetings by Members.

## **18 General Questions**

18.1 Questions relating to any matter on the agenda or otherwise may be raised at the meeting at the appropriate stage, subject to the discretion of the Chairman who will ensure that questions are appropriate and relevant. All Members will be given an equal and fair opportunity to ask questions.

18.2 Wherever possible, answers will be given at the meeting by the appropriate Member or officer. In the event that it is not possible to do so, a written response will be sent to the questioner, with copies to all Members, as soon as possible.

## **19 Conduct/Disturbance at Meetings**

19.1 It is the responsibility of the Chairman to keep order at meetings.

19.2 Members are expected to behave in a professional manner and to respect the ruling of the Chairman.

19.3 If a Member persistently misconducts him or herself by behaving irregularly, offensively or improperly, or by disregarding the Chairman and knowingly or deliberately obstructing the business, the Chairman, or any other Member, may move that the Member no longer be heard. If seconded, the matter will be put to the vote and determined without discussion. The Member concerned cannot vote in these circumstances.

19.4 If the Member concerned continues his/her misconduct, the Chairman may either move that the Member leaves the meeting or that the meeting be adjourned for a period which the Chairman feels will be appropriate to contain the problem. Such motions must be seconded and determined as above.

19.5 If a member of the public interrupts a meeting, the Chairman 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 Chairman can order him/her to leave the meeting. If necessary, the assistance of staff will be sought to escort the person off the premises.

19.6 Where there is a general disturbance in any part of the room where a meeting is being held, the Chairman can, at his/her discretion, order that it be cleared. If the general disturbance is considered by the Chairman 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.

19.7 The Police will be called to assist in any situation, if necessary.

## **20 Members' Interests**

20.1 Having regard to statutory requirements and Members' Codes of Conduct, if a Member has a personal interest in a matter for consideration (i.e. one which

affects the Member more than most other people in the area) they must declare it and say what that interest is before any meeting where the issue is to be discussed or as soon as it comes to light. However, they can still take part in the meeting and vote unless the personal interest is also a prejudicial interest (see below).

- 20.2 A Member with a prejudicial interest in any matter (i.e. where a member of the public would view the personal interest as being so significant that it is likely to prejudice the Member's decision) must declare what the interest is (if they have not already done so) and withdraw from the meeting (by leaving the room).
- 20.3 The minutes will record the declaration and, if appropriate, that the Member left the meeting. A record will also be kept in a book provided for this purpose by the Managing Director for public inspection at ELWA's offices.

## **21 Speaking by the Public at Meetings**

- 21.1 Members of the public will not normally be allowed to speak at meetings. However, members of the public may speak on a specific issue at the discretion of the Chairman.

## **22 Press Briefings**

- 22.1 ELWA wishes to conduct its business in an open and informative manner. Where considered appropriate, press briefings will be arranged through the Managing Director to explain particularly important or sensitive issues and to give an opportunity for questions to be asked.

## **23 Photography, Live Broadcasts and Tape Recordings of Proceedings**

- 23.1 The Chairman has discretion to allow photographs to be taken or for proceedings to be transmitted by television, video recording, radio broadcast or any other means, if this is felt to be appropriate.

## **24 Petitions**

- 24.1 All petitions sent to the Authority which contain at least 50 signatories from separate households will be reported to the Authority.
- 24.2 Before a petition is presented to the Authority, the Managing Director will arrange an informal meeting to discuss the petition and appropriate action in response. The lead petitioners and appropriate Members will be invited to attend. The Managing Director may attend the meeting himself and/or be represented by a relevant officer. The Managing Director will then prepare a report to accompany the submission of the petition to the Authority; this will set out the outcome of the informal meeting and detail any action which has been taken, or which is proposed, in response to the petition.
- 24.3 The lead signatory will be invited to speak at the Authority meeting for the purpose of introducing the petition should he/she wish - a maximum of five minutes will be allowed for this.



24.4 Petitions with fewer than 50 signatories will be accepted by the Managing Director but not reported to the Authority.

## **25 Urgent Action**

25.1 In exceptional circumstances and where delay would be prejudicial to the interests of the Authority, Officers are authorised to take action which is not otherwise delegated to them subject to:-

- (a) consultation with the Chairman and the Vice-Chairman. Should either the Chairman or Vice-Chairman be unavailable, then consultation with the other shall be sufficient. In the event that the necessary decision cannot be obtained through this procedure within 24 hours, the matter may be dealt with provided that at least two other Members are consulted;
- (b) compliance with the Constitution and, in particular, relevant Rules where appropriate; and
- (c) the action taken being reported to the next appropriate meeting.

## **26 Inspection of Documents by Members**

26.1 A Member of ELWA may inspect any document that is in the possession of, or under the control of, the Authority provided that either:

- (a) the Member can justify that it is reasonably necessary to perform his/her duties as a member of the Authority, or
- (b) the document contains material relating to any business to be transacted or which has been transacted at a meeting. They are not, however, entitled to inspect any document if it relates to a matter in which the Member is professionally interested or in which he/she has a direct or indirect financial interest in accordance with the statutory interpretation.

26.2 If the Managing Director is of the opinion that the document in question is not required to be open to inspection under the provisions of the Local Government (Access to Information) Act 1985 (exempt information not to be provided to Members), a Member will not be able to inspect the document.

26.3 This provision does not entitle the Managing Director to refuse a Member access to documents which they have a legal right to inspect.

## **27 Confidentiality**

27.1 Where the contents of any document are expressed to be restricted from publication, Members and officers must respect such confidentiality.

## **28 Attendance at Meetings by Constituent Borough Councillors**

28.1 A Councillor who is a member of a constituent Council but not appointed to ELWA may attend any meeting of the Authority but they cannot vote at that meeting. They may, however, take part in the discussion and may stay for the whole meeting unless asked to leave for specific reasons that will be explained by the Chairman and recorded in the minutes.

- 28.2 Agenda papers for meetings will be circulated to any Councillor at their request subject to the conditions set out in paragraph 26 and to the restrictions around reports dealing with certain human resource issues (see “Protocol - Dealing with Human Resource Issues” at Appendix B).

## **29 Implementing Decisions**

- 29.1 Decisions of the Authority can be acted upon after the meeting subject to any restriction placed at the time.

## **30 Requirement to Attend Meetings**

- 30.1 If a Member fails to attend two consecutive meetings of the Authority, unless the failure was due to a reason approved by the Chairman or Vice-Chairman before the meeting that would constitute the second consecutive such meeting, the Authority may recommend to the relevant Constituent Council that the Member be replaced and not considered for re-appointment by the Council to the Authority for a period of up to two years.
- 30.2 If a Member fails to attend any meeting of the Authority throughout a period of six consecutive months from the date of his last attendance, he shall, unless the failure was due to some reason approved by the Authority before the expiry of that period, cease to be a Member of the Authority.

## **31 Sealing**

- 31.1 The Common Seal of the Authority shall be kept in a safe place in the custody of the Managing Director or his/her nominated postholder.
- 31.2 The Seal shall be attested by the Managing Director or his/her nominated postholder and a register kept recording details of all documents sealed.

## ARTICLE 2

### ACCESS TO INFORMATION

#### **1 Scope**

1.1 These rules apply to all meetings of the Authority.

#### **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 and press are welcome to attend all meetings, subject only to the exceptions set out later in this Article. The Authority will do all that it can to minimise such exceptions so that it can have an open debate in public on most issues.

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

4.1 The Authority will give at least five clear days notice of any meeting by posting details of the meeting at ELWA's offices at Arden House, 198 Longbridge Road, Barking (known as "the designated offices") and, if the meeting is to be held at an alternative location, at the building where the meeting is to be held. If a meeting has to be called at short notice, details will be posted at the earliest opportunity - such instances should, however, be rare and only in cases of absolute urgency.

#### **5 Access to Agenda and Reports before Meetings**

5.1 The Authority will make copies of the agenda and reports of meetings open to the public available for inspection at the designated offices at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection at the time the item is added. Where reports are prepared after the notice of the meeting has been sent out, each report will be made available to the public as soon as it is completed and has been sent to Members.

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

6.1 On request, the Authority 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) any other documents open to public inspection and supplied to Members in connection with an item.

6.2 These papers will be available free of charge to any person at any meeting of the Authority to which the papers relate, or for a reasonable charge when requested at any other time.

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

7.1 The Authority 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, together with reasons, excluding any part of the minutes when the meeting was not open to the public which discloses exempt or confidential information (as defined in paragraph 10 below);
- (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 related 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 that disclose exempt or confidential information.

8.3 Background papers are available for public inspection for four years after the date of the meeting and copies may be requested for a reasonable charge from the Managing Director.

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

9.1 The public has the right to attend meetings and to inspect and copy documents. Those rights are summarised as follows:-

9.2 Members of the public may -

- (a) attend meetings and speak with the permission of the Chairman or in accordance with any special procedures for the meeting concerned (e.g. lead petitioner);
- (b) inspect agendas for each of the meetings;
- (c) inspect minutes of the meetings once they have been confirmed as a correct record;
- (d) inspect a list of background papers used to compile the reports attached to each agenda; and
- (e) make copies, or ask for copies of the whole or part of any such document open to inspection.

9.3 Members of the public may not, however -

- (a) have access to some documents which, by law, are exempt from publication (i.e. private and confidential reports).
- (b) stay at a meeting when private and confidential reports are being discussed - a resolution will be passed at the meeting requiring press and public to leave.
- (c) take photographs at meetings nor record or transmit the proceedings (unless the Chairman chooses to allow these actions in which case this will be announced).

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

- 10.1 Confidential Information - The public has (legally) to be excluded from meetings whenever it is likely that confidential information will be disclosed - Confidential information means information given to the Authority by a Government Department on terms which forbid its public disclosure or information which cannot, by Court Order, be publicly disclosed.
- 10.2 Exempt Information - The public may be excluded from meetings whenever it is likely that exempt information will be disclosed - Exempt information means any of the paragraphs of Part I of Schedule 12A to the Local Government Act 1972 as detailed in Appendix A to this Part.
- 10.3 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 author thinks fit, the Authority may exclude access by the public to reports that 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 the agenda will explain the category of information likely to be disclosed.

## APPENDIX A TO ARTICLE 2

### 1 Exempt Information

- 1.1 Information relating to any individual.
- 1.2 Information which is likely to reveal the identity of an individual.
- 1.3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 1.4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 1.5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 1.6 Information which reveals that the authority proposes:-
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
- 1.7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

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## APPENDIX B TO ARTICLE 2

### PROTOCOL

#### **1 Dealing with Human Resource Issues**

1.1 When Members consider items about the people that are employed solely on behalf of the Authority (e.g. ELWA full-time employees), the Authority must be mindful of a number of matters:

- (a) Employees have rights, on an individual basis, to be treated fairly. (This includes expecting the Authority to maintain confidentiality about an individual's personal and employment details).
- (b) Information relating to employees is often confidential in nature and should not be available widely throughout the organisation (at Member or officer level). Only those who need to know should know.
- (c) Members should have the opportunity to consider, debate and decide upon issues without managers/officers being present.
- (d) A variety of decisions on Human Resource (HR) matters, including the fair treatment of people by their employer, are subject to external scrutiny.

1.2 For these reasons:

- (a) Written information to Members on HR management and/or personal HR matters which address employee issues in respect of an individual, should be restricted to relevant Members and appropriate officers. This information should not be included as part of the usual circulation for a report.
- (b) The meeting considering these matters should be conducted in private and those people who should not be in attendance should be asked to leave the meeting.

#### **2 Guidelines:**

2.1 If there is any doubt as to who should receive copies of the report and who should be allowed to remain at the meeting, the Managing Director should be consulted.

2.2 The Managing Director will have access to all reports and all meetings of Members about Human Resource matters.

2.3 The Managing Director may delegate some matters to an Officer, the relevant Borough Personnel Manager (from the employing Council) and/or Legal Officer, who will have access to appropriate reports and meetings.

2.4 Where there are any financial implications to be considered by the Authority, the Finance Director will have access to appropriate reports and meetings.

2.5 There may be meetings where it is appropriate to invite representatives of the Trades Unions and cognizance must be given to this. If there is any doubt, the Managing Director should be consulted.

**Part C**

**Responsibility for Functions**

**The Authority's Scheme of  
Delegation**



# SCHEME OF DELEGATION

## Introduction

### 1 Statutory Basis

- 1.1 The basis for delegation within the Authority is contained within Section 101 of the Local Government Act 1972.
- 1.2 Section 101 of the 1972 Act generally allows the Authority to arrange for its functions to be carried out at a formal meeting or by an employee. Section 100G(2) requires authorities to keep a list specifying those powers which are exercisable by employees and their respective titles in each case. Section 112 requires authorities to appoint such employees as they think necessary for the proper discharge of their functions.
- 1.3 The Local Government Act 2000 (the “LGA 2000”) requires Councils to be clear within their Constitution who is responsible for functions and where decision-making lies. Although ELWA is not bound by the LGA 2000, it has agreed to follow the spirit of these provisions and this Scheme describes the Delegations within which ELWA will operate.

### 2 Framework

- 2.1 The Authority has agreed that the following principles should be applied to all decisions:
  - (a) proportionality (the action must be proportional to the desired outcome);
  - (b) due consultation and the taking of professional advice from employees;
  - (c) respect for human rights\*;
  - (d) a presumption in favour of openness;
  - (e) clarity of aims and desired outcomes; and
  - (f) the options considered and the reasons for a particular choice will be explained when appropriate
- 2.2 Generally all decisions will also be consistent with relevant law, Contract Rules, Financial Rules, other relevant Rules, and any other requirements set out in this Constitution.
- 2.3 [\* Decisions taken by the Authority, a Member or an employee acting as a tribunal or in a quasi-judicial manner, or determining/considering (other than for the purposes of giving advice) the civil rights and obligations, or the criminal responsibility, of any person, will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights].

### 3 Purpose of the Scheme

- 3.1 The purpose of the scheme is:-

- (a) To define those decisions to be taken by Members of the Authority at formal Authority meetings.
- (b) To identify that all other decisions will be taken by Officers (or nominated post holders as listed), either collectively or individually, and to define these accordingly.
- (c) To define the process by which decisions are monitored to ensure transparency and accountability.
- (d) To define 'Proper Officer' responsibilities.

#### **4 Matters which cannot be delegated**

- 4.1 Certain functions may not, by law, be delegated. As such, they must be dealt with by at formal Authority meetings (subject to the urgency provisions in paragraph 25 of Article 1). These are listed in Section A of this document.

#### **5 Delegation to Officers**

- 5.1 All matters not reserved to Member-level meetings are delegated to the Managing Director and other Officers (or nominated post-holders) .
- 5.2 The Scheme does not define how each decision should be taken, nor does it attempt to list incidental matters that are a part of the Officers' everyday management functions.
- 5.3 The delegation of an authority to an Officer includes the exercise of that authority on his/her behalf by another employee under his/her supervision. Officers are responsible for maintaining a comprehensive list of nominated post-holders, which also identifies specific areas of responsibility. These lists are open to inspection by the public.
- 5.4 Delegations to Officers are split into two parts - powers that can be exercised by (i) all Officers, and (ii) individual Officers.
- 5.5 The Managing Director will clarify any delegation to Officers if necessary.

#### **6 Changes in Legislation**

- 6.1 Any delegation or authority specified in this Scheme (including Proper Officer functions), by reference to any Act or any associated Regulations (e.g. a statutory instrument), includes references to any related re-enactment, consolidation, modification, variation or amendment.

#### **7 Proper Officer Function**

- 7.1 The concept of "Proper Officers" to perform certain tasks or carry out various formal or administrative functions differs from that of delegated powers. Delegated powers may involve the exercise of discretion or choice; the functions of a Proper Officer are generally prescribed by legislation.

## **8 Constitution**

- 8.1 This Scheme forms part of the Authority's Constitution and should be read in conjunction with other Parts.

## SECTION A - THE AUTHORITY

### 1 The Authority

1.1 Generally, the Authority may exercise all, or any, of its duties or powers, irrespective of delegation to officers.

1.2 The following powers and functions are reserved to the Authority, either by law and/or statutory guidance (and cannot be delegated) or by local choice:

- (a) adopting and changing the Constitution, or authorising the suspension of any of its Rules;
- (b) approving the annual budget of the Authority;
- (c) determining the annual levy on the constituent Councils;
- (d) appointing representatives to outside bodies and partnerships;
- (e) appointing the Managing Director and Head of Paid Service, the Monitoring Officer and the Chief Financial Officer;
- (f) approving the appointments of all Appointed Officers (i.e. the Managing Director, the Finance Director, the Monitoring Officer);
- (g) initial consideration of any policy or individual employment matters relating to Officers of the Authority, where appropriate;
- (h) promoting or opposing the making of local legislation or personal Bills;
- (i) appointing Members to the following positions:
  - (i) the Chairman and Vice Chairman of the Authority
  - (ii) the 'A' Director of ELWA Limited
  - (iii) any other lead roles as may be considered appropriate by the Authority
- (j) agreeing the Programme of Meetings;
- (k) determining all major issues affecting the Authority, particularly strategic, financial, policy related and corporate management matters;
- (l) agreeing procedures or arrangements relating to the way in which the Authority operates, including Financial Rules, the Scheme of Delegation, Contract Rules, the Protocol for Member-Employee Relations, Rules governing Conferences, Visits and Hospitality, the Code of Practice for Land Acquisitions and Disposals, and any other Rules;
- (m) approving the annual statement of the Authority's accounts;
- (n) setting Authority borrowing limits;

- (o) approving attendance at meetings, visits and conferences where the total cost to the Authority is likely to exceed £1,000;
- (p) determining compensation claims exceeding £5,000;
- (q) approving the acquisition and disposal of land and other significant assets, write-offs and non-recurring virements above delegated authority thresholds;
- (r) delegating functions to another local authority and accepting delegations from another local authority;
- (s) confirming the making of any other statutory Plans and Strategies and, where necessary, their submission to the appropriate Government Department for approval;
- (t) considering and making decisions on reports of the following:
  - (i) the Head of Paid Service
  - (ii) the Monitoring Officer
  - (iii) the Chief Financial Officer
- (u) receiving petitions (subject to the provisions of paragraph 24 of Part B, Article 1);
- (v) receiving reports and recommendations from the Authority's External Auditors, the Ombudsman and Government or other Inspectorates and determining matters where required;
- (w) resolving and determining any disputes of Officers in respect of any delegated authority;
- (x) all other matters which, by law, must be reserved to the Authority;
- (y) Nominating Members from each of the constituent boroughs to answer questions on behalf of the Authority, put by other Members of the constituent Councils in the course of council proceedings, pertaining to the discharge of the Authority's functions
- (z) such other matters that the Authority may from time to time reserve to itself.

## **SECTION B - THE MANAGING DIRECTOR (and Head of Paid Service)**

### **1 The Managing Director (and Head of Paid Service)**

- 1.1 The Managing Director shall have responsibility for all matters relating to the overall administrative and legal arrangements of the Authority, other than those reserved to Authority meetings, including:
- (a) Acting as Clerk, Secretary and Head of Paid Service to the Authority.
  - (b) Fulfilling the role and performing the duties of Proper Officer under the legislation and for the purposes set out in Section E below.
  - (c) Ensuring that there is a strategy and business plan for the Authority.
  - (d) Ensuring the effective governance of the Authority [in consultation with the Monitoring Officer].
  - (e) Commissioning and managing legal work on behalf of the Authority (including prosecutions, contracts and civil litigation).
  - (f) [Ensuring, in consultation with the Monitoring Officer, that the Constitution of ELWA is effectively implemented.
  - (g) Ensuring that effective support is provided to Members, as required.
  - (h) To Chair the ELWA Management Board.
  - (i) As authorised officer on behalf of the Authority, signing, or attesting or witnessing the affixation of the Authority's common seal on all contracts, land sales or other dispositions or acquisitions of land, orders, letters, licences, notices, certificates or any other documents unless authority is specifically reserved to other Officers.
  - (j) Acting as the 'Authority Representative' for the purposes of the IWMS Contract.
  - (k) Sealing documents.
  - (l) Investigating disciplinary matters, with the involvement of an independent person, against the Monitoring Officer and the Chief Financial Officer in conjunction with the relevant Constituent Council.
  - (m) Authorised to agree minor changes to this Constitution and any of its Parts (e.g. the correction of typographical errors, minor amendments required by new legislation and other matters of a purely administrative nature).
  - (n) determining compensation claims up to £5,000;
  - (o) agreeing, in consultation with the Authority's authorised legal representative, financial settlements in Court actions where no alternative is available and the circumstances do not allow for prior consultation with Members;

- 1.2 All matters relating to the overall operational arrangements of the Authority, other than those reserved to Member meetings,
- 1.3 All matters relating to overall human resources functions of the Authority other than those reserved to Member meetings;
- 1.4 All matters relating to the overall technical arrangements of the Authority, other than those reserved to Member meetings
- 1.5 Proper Officer Functions
  - (a) The Managing Director is appointed and shall act as Proper Officer for the Authority in relation to and for the purposes of the following provisions:
    - (i) Under the Local Government Act 1972:
  - (b) Section 96(2) - The Officer who shall record particulars of any disclosure made under Section 94 and of any notice given under Section 96(1) of the Act;
  - (c) Sections 100B(7)(c), 100C(2) and 100F(2) in relation to Access to Information;
  - (d) Section 225(1) - The Officer with whom a document of any description is to be deposited pursuant to the Rules of either House of Parliament or to any enactment or instrument;
  - (e) Section 229(5) - The Officer who shall certify a photographic copy of a document in the custody of the Authority, or of a document which has been destroyed while in the custody of the Authority, or of any part of any such document;
  - (f) Section 234(1) - The Officer who shall sign any notice, order or other document which the local authority is authorised or required to make or issue;
  - (g) Schedule 12, Part I, para. 4(2)(b) - The Officer who shall sign a summons to attend an Authority meeting;
  - (h) Schedule 12, Part I, para. 4(3) - The Officer to whom a Member of the Authority shall give a notice in writing desiring summonses to attend meetings of the Authority to be sent to an address specified in the notice other than his/her place of residence;
  - (i) Schedule 14, Part II, para. 25(7) - The Officer who shall certify a resolution of the Authority under this paragraph; and
    - (i) the Local Authorities (Members Interests) Regulations 1992;
  - (j) under the Local Government and Housing Act 1989 - the Head of Paid Service;
  - (k) responsible for any other Proper Officer function for which no other authorities have been given;

## **SECTION C - THE FINANCE DIRECTOR (and Chief Financial Officer)**

### **1 The Finance Director (and Chief Financial Officer)**

- 1.1 All matters relating to the overall financial arrangements of the Authority, other than those reserved to Member meetings, including:
- (a) Acting as Chief Financial Officer to the Authority
  - (b) To be responsible to the Authority for the proper administration of its financial affairs.
  - (c) Authorised: -
    - (i) To prepare and present the accounts of the Authority.
    - (ii) To keep a general fund for receipt and discharge of liabilities, and to keep accounts and receipts for such discharges.
    - (iii) To borrow in accordance with the requirements of the capital budget and borrowing limits.
    - (iv) To issue levies on constituent Councils of the Authority and take action required for their collection, within the terms of Clause 7 of the Waste Regulation and Disposal (Authorities) Order 1985.
    - (v) To provide Audit services to the Authority.
    - (vi) To provide comprehensive financial advice to the Authority.
    - (vii) To write off losses up to the value of £5,000.
  - (d) To be a member of the ELWA Management Board.
  - (e) In conjunction with the Managing Director:
    - (i) To prepare, present and monitor capital and revenue budgets.
    - (ii) To commission appropriate insurance's.
  - (f) Assisting the Managing Director, when required, to discharge his/her corporate responsibility as Head of Paid Service.

### **2 Proper Officer Functions**

- 2.1 The Chief Financial Officer for the purposes of Section 73 of the Local Government Act 1985.



## SECTION D - ALL OFFICERS

### 1 All Officers

1.1 All Officers are authorised to exercise the following powers and duties of the Authority in respect of the services under their control:

- (a) accepting tenders within the parameters of Part D of this Constitution;
- (b) authorising contracts within the parameters of Part D of this Constitution;
- (c) appointing employees [except for those appointments reserved to the Authority] in accordance with the directions of the Head of Paid Service and any appropriate legislation;
- (d) managing employees and determining appropriate training, development and health safety and welfare for employees;
- (e) collecting charges and fees;
- (f) full responsibility for local health and safety issues;
- (g) approving employees' travelling and other approved expenses;
- (h) maintaining and securing buildings, land and premises;
- (i) issuing of licences;
- (j) disposing of assets with an estimated realisable value not exceeding £2,000, in consultation with Finance Director;
- (k) appointing or authorising employees to implement legislation as appropriate;
- (l) virements (non-recurring) up to £10,000 within approved budgets, in consultation with the Finance Director;
- (m) full responsibility for observing the Authority's Financial Rules and monitoring financial performance;
- (n) full responsibility for ensuring compliance with Employees' Codes of Conduct and other employment related codes and requirements;
- (o) spending within approved budgets including the purchase of all equipment, goods, materials and services;
- (p) employing agency, contract and consultant staff; and
- (q) full responsibility for observing all other aspects and Rules contained within the Authority's Constitution.

# **Part D**

# **Rules**

## PART D1

### CONTRACT RULES

#### **1 Interpretation**

- 1.1 “Authority” means the East London Waste Authority and shall, where the context so admits, include a committee of the Authority and the Relevant Appointed Officer.
- 1.2 “Approved Lists” means a list or lists compiled in accordance with these Rules for Contracts of the particular category or value as the Contract being tendered;
- 1.3 “Commissioning Officer” means the Relevant Appointed Officer.
- 1.4 “Contract” means an agreement intended to be legally enforceable in consideration of an offer made to the Authority by another party to do or abstain from doing anything. This applies whether the offer or acceptance is oral or in writing and includes any order for supplies or services or execution of works or a combination of one or more of these, and also includes an agreement for the provision of supplies, services or execution of works made by deed, but does not mean a contract of employment;
- 1.5 “Contractor” means an Organisation that offers and subsequently enters into legal contractual relations to provide goods, works and/or services to or on behalf of the Authority for consideration.
- 1.6 “Central Government Catalogues” means those lists and procedures known as S-Cat (services), G-Cat (goods), L-Cat (legal) that may be used in accordance with Standing Order 10 or such other Central Government Procurement Catalogue as may be approved from time to time by the Authority.
- 1.7 “Legal Adviser” means generally the London Borough of Barking & Dagenham Legal Practice and more specifically, the lawyer nominated by the said Legal Practice to advise and manage the Authority’s legal affairs.
- 1.8 “Most Economically Advantageous” means the criteria used to determine whether an offer is the most economically advantageous to the Authority shall be determined in each case by the Authority in accordance with any policy of the Authority and these Rules. The criteria will always include price and may include any one or more of the following and such other criteria as the Authority or Appointed Officer may consider fit -
- (a) period for completion or delivery
  - (b) quality
  - (c) aesthetic and functional characteristics
  - (d) technical merit
  - (e) after sales service

- (f) technical assistance
- (g) running costs
- (h) cost effectiveness
- (i) best value/continuous improvement;
- (j) equal opportunities
- (k) sustainability including Fair Trade

- 1.9 “Net Value” means the total aggregate monetary value for the provision of supplies, services or execution of works which the Authority expects to pay under the full terms of the Contract excluding any Value Added Tax;
- 1.10 “Organisation” means an individual or persons, unincorporated association company, partnership, limited liability partnership, charitable trust, incorporated association, other public or local authority, statutory body or government department;
- 1.11 “Relevant Appointed Officer” means the Managing Director or such other senior officer of the Authority to whom authority is delegated by the Authority or the Managing Director for the purpose of these Contract Rules;
- 1.12 “Relevant EU Rules” means all directives and regulations prescribed by the European Union, either having direct effect in the UK or having been adopted into UK legislation affecting the procurement of services works supplies and utilities under these Rules.

## **2 Introduction**

- 2.1 These Rules apply to all Contracts entered into or proposed to be entered into by the Authority unless these Rules provide otherwise. These Rules shall also apply where the Authority is acting on behalf of a partnership or other joint organisation. These Rules may be supplemented by a Procurement Code of Practice which will set out detailed instruction and guidance for all officers engaged in procurement activities. Any Procurement Code of Practice shall have the status of a guide for officers only and shall not be held in substitution of these Rules.
- 2.2 Any change to the Relevant EU Rules or United Kingdom legislation, which affect the procurement of services, works supplies and utilities under these Rules shall take precedence over these Rules.
- 2.3 These Rules are designed to promote efficient and effective procurement within the statutory framework whilst maintaining safeguards of probity and good governance and provide a frame work for the procurement of works, goods and services.
- 2.4 Relevant Appointed Officers shall take all reasonable steps to ensure that the Authority is advised of and consulted upon Contracts of a sensitive nature.

### **3 Orders for Services, Supplies, Works and Utilities**

- 3.1 The Relevant Appointed Officer will be responsible for compliance with these Rules when procuring and/or entering into any contract.

### **4 Aggregation**

- 4.1 A Contract, ordinarily treated, as a single Contract must not be divided into more than one Contract in order to reduce the value of the Contract to below any of the Net Values stated in these Rules or to otherwise circumvent the requirements of these Rules or any relevant EU Rules.
- 4.2 The aggregate value of any contract is to be calculated on the basis of the total value of the consideration estimated to be payable over the entire contract period.

### **5 Prejudicial and Other Interests of Members and Employees in Contracts**

- 5.1 Both Members and Employees must abide by the Member and Employee Codes of Conduct respectively, particularly in relation to their personal and prejudicial or other interests in Contracts, which have been or are to be awarded by the Council.

### **6 Contracts of a Net Value of up to £50,000**

- 6.1 For Contracts with a Net Value up to £10,000, the Relevant Appointed Officer must obtain at least one verbal or written quotation.
- 6.2 For Contracts with a Net Value between £10,001 and £50,000, at least one verbal or written quotation must be obtained and the Relevant Appointed Officer may use their discretion as to whether additional quotations should be obtained having regard to relevant factors that should be taken into account including but not limited to, an
- (a) externally imposed time limit;
  - (b) subject matter or availability of the supplies services works and utilities in question;
  - (c) the Relevant Appointed Officer must record in writing the process used to determine the number of quotations obtained and the reason for selecting Organisation(s) to quote. Such records shall be retained for a minimum of six (6) years from the date of recording.

### **7 Contracts of a Net Value between £50,001 and £150,000**

- 7.1 The following procedures shall apply to all procurement with a Net Value between £50,001 and £150,000, unless otherwise specified in these Rules:-
- 7.2 The Relevant Appointed Officer must arrange for not less than three (3) written quotations to be obtained from appropriate Organisations. In determining the appropriate Organisations from which quotations are to be obtained in accordance with this Standing Order, the Relevant Appointed Officer shall take into account the subject matter of the Contract and any other considerations, which in the Relevant Appointed Officer's opinion are appropriate. The Relevant Appointed

Officer shall record the reason for selecting the particular Organisations to provide quotations in their Scheme of Delegation records. Such records shall be retained for a minimum of six (6) years from the date of recording.

- 7.3 Where, in the Relevant Appointed Officer's discretion it is not practicable for three (3) written quotations to be obtained, fewer than three (3) written quotations may be obtained with the approval of the Authority. Subsequent to such consultation the Relevant Appointed Officer shall record the reason for not obtaining three (3) quotations. Such records shall be retained for a minimum of six (6) years from the date of recording.

## **8 Contracts with a Net Value above the EU threshold for works, services and supplies**

- 8.1 All contracts for works, services and supplies with an aggregate value equal to or in excess of the relevant EU thresholds for such contracts shall be procured in accordance with the provisions of the Public Contracts Regulations 2006 (as amended) and such other UK and EU law and regime as is applicable to public contracts in the UK..
- 8.2 The Relevant Appointed Officer shall consult with and take the advice of the Authority's Legal Adviser and Chief Finance Officer before embarking on any procurement of contracts mentioned in CSO 7 above.

## **9 Reverse Tendering**

- 9.1 Where the Authority or the Relevant Appointed Officer so decide Reverse Tendering process may be utilised. Such process shall provide for an organisation to submit a tender setting out the level of service supplies goods or works it can provide for a pre determined amount of money over a set period of time. The Relevant Appointed Officer shall cause an advertisement to be placed in at least one (1) newspaper and trade publication and on the Council website to invite reverse tenders. The advertisement must set out full details of the services supplies works or utilities works to be procured to include the expected delivery date, the duration of the intended contract and specification.

## **10 Contracts of a Net Value of £500,001 and above**

- 10.1 The requirements and procedures set out in Contract Standing Order 7 must be complied with in all instances. The Authority shall award all contracts with a Net Value above £500,000 save where it has expressly delegated authority to the Relevant Appointed Officer to award the contract .

## **11 Approved Lists**

- 11.1 The Authority may decide to create and maintain Approved Lists, or, avail itself of external directories or lists that are generally recognised and in common use for the relevant industry.
- 11.2 When creating and maintaining Approved Lists each List shall :-
- (a) be compiled in accordance with

- (i) Standing Order 9.3;
  - (ii) being a directory or list generally recognised and in common use for the relevant industry as representative of the participants in the market for services, works, supplies and utilities relating to that industry.
- (b) contain the names of all Organisations selected by the Authority to be included on each Approved List;
- (c) indicate for which categories or values the named Organisations are approved;
- (d) contain the names of no fewer than three (3) Organisations.
- 11.3 At least six (6) months before an Approved List is first compiled the Relevant Appointed Officer shall cause a public notice to be published in at least one (1) newspaper and appropriate trade publication and on the Authority website. The choice of publication is to be at the discretion of the Relevant Appointed Officer. The public notice shall invite Organisations to make an application to the Authority for inclusion on the Approved List. Such application shall be in the manner and form prescribed by the Relevant Appointed Officer.
- 11.4 The Relevant Appointed Officer shall on the creation of any Approved List cause a financial status check of the named Organisations that will appear on the Relevant Approved List. Any Organisation whose financial status check returns an unsatisfactory result shall be immediately removed from the Approved List.
- 11.5 Each Approved List must be reviewed and compiled at intervals of:-
- (a) not more than four (4) years from the date of compilation or;
  - (b) if the number of Organisations retained on an Approved List falls below three (3);
  - (c) or at such earlier time as the Authority may decide.
- 11.6 At any time that the Approved List is reviewed the Relevant Appointed Officer shall follow the procedure set out in Standing Order 9.3. All Organisations which are on the Approved List being recompiled shall be required to make a fresh application to be considered for a new Approved List.
- 11.7 An Organisation shall be removed from an Approved List at any time by either the Authority or the Relevant Appointed Officer if the Authority or the Relevant Appointed Officer is satisfied that such removal is necessary or justified due to: -
- (a) the unsatisfactory performance of a Contract by the Organisation regardless of any separate action being considered or taken in respect of that individual Contract,
  - (b) Such other reasons as determined by the Authority or the Relevant Appointed Officer, provided that the Authority or the Relevant Appointed Officer shall at all times act reasonably in removing an Organisation from an Approved List.

11.8 Where the Authority or the Relevant Appointed Officer so decides, invitations to tender may be limited to those Organisations on the Approved List, unless the EU Rules apply, in which case the procedure set out in Standing Order 7 shall apply. Not less than four (4) such Organisations shall be sent an invitation to tender. The organisations on the Approved List to be invited to tender in accordance with this Standing Order shall be selected by the Authority or the Relevant Appointed Officer and should be selected in rotation. The basis for selecting the Organisations on the Approved List to which an invitation to tender is to be sent is to be in the Authority or the Relevant Appointed Officer's discretion. If there are fewer than four (4) Organisations on the Approved List, then all of the Organisations on the list shall be sent an invitation to tender. The Relevant Appointed Officer must record in writing the reasons for selecting those Organisations invited to tender. Such records shall be retained for a minimum of 6 (six) years from the date of recording.

## **12 Use of Central Government Catalogues**

12.1 Where the Authority or the Relevant Appointed Officer so decide, the Central Government Catalogues may be used and orders issued in accordance with the relevant catalogue procedure as follows: -

12.2 Where utilising the S-Cat procedure the Relevant Appointed Officer shall obtain:

- (a) for any procurement of a Contract with a Net Value of up to £50,000 at least one (1) quotation from those Organisations appearing on such list; or
- (b) for any procurement of a Contract with a Net Value of £50,001 or more a minimum of three (3) quotations from those Organisations appearing on such list and a "mini-tendering exercise" as described in the S-Cat procedure shall be conducted;
- (c) the Relevant Appointed Officer must record in writing the process used to determine the number of quotations obtained and the reason for selecting Organisations to quote. Such records shall be maintained for a minimum period of six (6) years from the date of recording.

12.3 Where utilising the G-Cat procedure the Relevant Chief Officer shall obtain:

- (a) for any procurement of a Contract to a Net Value of up to £50,000 at least one (1) quotation from those Organisations appearing on such list; or
- (b) for any procurement of a contract with a Net Value of £50,001 or more a minimum of three (3) quotations from those Organisations appearing on such list and a "mini-tendering exercise" as described in the G-Cat procedure shall be conducted.

12.4 In the case of procurement of legal advice and assistance from external legal services providers (excluding Counsel), the L-Cat procedure may be utilised through instruction of the Authority's Legal Adviser only. Where utilising the L-Cat procedure, the Relevant Appointed Officer shall instruct the Authority's Legal Adviser to obtain: -



- (a) for any procurement of legal services to a Net Value of up to £50,000 at least one (1) quotation from those Organisations appearing on such a list; or,
- (b) for any procurement of legal services exceeding the value of £50,001 a minimum of three (3) quotations from those organisations appearing on such list and a mini-tendering exercise satisfying all appropriate financial and legal service requirements.
- (c) shall be retained for a minimum of six (6) years from the date of recording.

### **13 Framework/Consortium Arrangements**

- 13.1 Before promoting the procurement of a new or joining a pre-existing framework or consortium arrangement, the Relevant Appointed Officer must be satisfied that such an approach represents the most economically advantageous solution for a service work, supply or utility provision and with regard to the Relevant EU Rules on the use of such arrangements.
- 13.2 Before procuring or entering into a framework or consortium arrangement, the Relevant Appointed Officer shall be satisfied that:
  - (a) the term of the arrangement shall be or is for a period of no longer than four years duration;
  - (b) the terms and conditions of the arrangement do not compromise the Authority's contractual requirements in Standing Order 27;
  - (c) the parties to the arrangement are recognised public bodies or providers from the private sector as approved by the Authority;
  - (d) full, open and proper competition in respect of the creation of the framework or consortium arrangement has taken or will take place in accordance with the relevant EU Rules and/or these Rules;
  - (e) the arrangement is within the powers of the Authority.

### **14 Relevant EU Rules**

- 14.1 The Relevant Appointed Officer shall take advice from the Authority's Legal Adviser to determine if the Relevant EU Rules apply to any procurement.
- 14.2 Where the Relevant EU Rules apply to a procurement the Authority or the Relevant Appointed Officer shall ensure that the requirements set out in the Relevant EU Rules are followed and those Relevant EU Rules shall take precedence over these Rules in such cases.

### **15 Other Contracts**

- 15.1 Counsel/Barrister
  - (a) Instructions to, or a Brief to Counsel shall only be prepared and issued by the Authority's Legal Adviser in respect of any matter.

- (b) Before instructing or briefing Counsel, the Authority's Legal Adviser shall take all reasonable steps to obtain an oral quotation from Counsel's clerk. Where the Authority's Legal Adviser anticipates that the Net Value of Counsel's fees will exceed £50,000, the Authority's Legal Adviser shall take all reasonable steps to obtain fee quotations from three (3) different Counsels' Chambers for Counsel of comparable experience and seniority unless, in the opinion of the Authority's Legal Adviser it is not practicable or appropriate to do so.
- (c) The Authority's Legal Adviser must record in writing the number of quotations obtained and the reason for selecting those Organisations to provide quotations.

## 15.2 Solicitors

- (a) The Authority's Legal Adviser, upon the instructions of the Authority or the Relevant Appointed Officer, may instruct external solicitors in respect of any particular matter. The procedure set out in Standing Order 5, 6, 7 or 8 shall be followed in such cases. The Contract shall be awarded in accordance with Standing Order 24.1; or
- (b) The L-Cat procedure referred in Standing Order 10.4 may be followed and appointment made by the Authority's Legal Adviser and the Managing Director.

## 15.3 Consultants

- (a) Before engaging a consultant, the Relevant Appointed Officer shall follow the procedure set out in Standing Order 5, 6, 7 or 8, depending on the value of the Contract. The Contract shall be awarded in accordance with Standing Order 24.

## 16 Assignments and Novations

- (a) In circumstances where the Authority's Contractor has made an application for consent to assign or novate its rights and obligations under a contract or in the event of a Contractor's insolvency or bankruptcy an administrator or other appointed official seeks consent to assignment or novation of the rights and obligations of a Contract, the Relevant Appointed Officer may, taking all information into account and with advice from the Finance Director and the Authority's Legal Adviser;
- (b) Consent to assignment by the Contractor of the benefit of the Contract to another Organisation without variation but subject to payment of all properly incurred costs and the honouring by the assignee of all and any warranties indemnities or similar as deemed appropriate, OR
- (c) agree to novation of the Contract without variation subject to payment of the Council's properly incurred costs.
- (d) Consent to assignment by the Contractor of the benefit of the Contract to another Organisation without variation but subject to payment of all properly

incurred costs and the honouring by the assignee of all and any warranties indemnities or similar as deemed appropriate, OR

- (e) agree to novation of the Contract without variation subject to payment of the Council's properly incurred costs.

## **17 Tender Documentation**

17.1 All invitations to tender (are paragraphs 5 and 6 tenders?) shall include the following documents and information as appropriate:-

- (a) conditions of contract;
- (b) Specification or Statement of Requirements;
- (c) the schedule of rates and/or bill of quantities and/or prices;
- (d) drawings and/or plans as applicable;
- (e) the selection criteria (if appropriate);
- (f) the evaluation criteria for contract award;
- (g) the last date, time and method by which tenders may be submitted;
- (h) such other information or documents as specified in the invitation to tender or as may be required by the Relevant EU Rules that the Council is not bound to accept the lowest or any tender;
- (i) state that the Authority is not liable for the cost of tender documentation of any Organisation for participating in any tender whether or not a contract is awarded, or awarded to another Organisation;
- (j) where electronic tendering is utilised detail such as the electronic address and tender reference for submission of the tender is made known;

17.2 The Relevant Appointed Officer shall take all reasonable steps to ensure that no order is placed or no services, supplies, works or utilities are received until contract documentation has been completed or commencement has otherwise been authorised in writing by the Relevant Appointed Officer.

## **18 Failure to Sign Contract**

18.1 If after acceptance of its tender an Organisation fails within a reasonable period and without reasonable justification to sign or enter into a written Contract after acceptance of its tender, the Authority may refuse to proceed with the Contract.

## **19 Standards and Proprietary Names**

19.1 Where a relevant British standard specification or British standard Code of Practice is specified in the tender it shall require that any services, works, supplies and utilities provided or executed shall accord with that defined standard or the European equivalent.

19.2 No tender documentation shall make reference to materials, goods or any other item of a specific make, source or to a particular process, or references to trade marks, patents, origin or means of production where such reference has the effect of discriminating between any particular organisation.

## **20 Communications or Attempted Communications Between Tenderers and Members**

20.1 No Member of the Authority shall have or allow any interview or communication or any attempted interview or communication with any Organisation or any representative of any Organisation proposing to tender or Contract with the Authority at any stage of the procurement process on any subject matter except with the prior authority of the Authority. If any such interview or communication or attempted interview or communication does occur the Member must report it to the Monitoring Officer (Authority's Legal Adviser) immediately.

## **21 Receipt, Opening and Recording of Tenders**

21.1 All invitations to tender must state that no tender will be accepted except in a plain sealed envelope bearing the word "Tender" or in accordance with Standing Order 20 by electronic tender to the electronic address given followed by the subject to which it relates. Any tenders bearing any name or mark indicating the sender will not be considered. Envelopes shall remain in the custody of the Authority's Office Manager until their appointed time for opening.

21.2 Tenders shall all be opened at the same time, and where requested but at the sole discretion of the Relevant Appointed Officer, in the presence of the Managing Director. Where these include electronic tenders these shall be opened using appropriate information technology in the presence of the same Member and officers. Such tenders shall be recorded as received electronically. All tenders shall be recorded.

21.3 The Authority's Legal Adviser shall maintain a record of Tenders, where a tender process has been followed.

## **22 Electronic Tendering**

22.1 At the discretion of the Relevant Appointed Officer, requests for quotations and invitations to tender may be either issued and/or received by electronic means. In circumstances where the Relevant Appointed Officer elects to either issue and/or receive tenders by electronic means the following conditions shall apply: -:

- (a) The Relevant Appointed Officer shall ensure that evidence that the transmission was successfully completed is obtained and recorded;
- (b) Electronic tenders received are kept in a separate secure folder under the control of the Relevant Appointed Officer or with prior agreement and facilities being made available to the Authority's Legal Adviser;

## **23 Tender Evaluation**

23.1 The Relevant Appointed Officer shall cause tenders to be evaluated to establish the most economically advantageous tender. Following evaluation, the Relevant

Appointed Officer shall, if appropriate, make recommendations to the Authority or the Managing Director as to the award of the contract.

- 23.2 The Relevant Appointed Officer shall cause an appraisal of financial standing to be carried out on all contractors where the Net Value of the Contract is in excess of £100,000, or there are significant financial or information technology system risks involved in the contract. The appraisal will form part of the process for the selection of all such contractors and take place before the recommendation or decision to award the contract is made. In order to award the contract, the outcome of the appraisal must show that the financial standing of the contractor is adequate for the Net Value of the contract being let.
- 23.3 Any contractor who appears on an Approved List, whose financial status is deemed to be unsatisfactory, shall be removed from that Approved List on which it appears until such time as it is again satisfactory.

## **24 Alterations and Negotiation of Tenders**

- 24.1 The introduction of factors other than price into tender evaluations will broaden the scope for post tender negotiations as qualitative factors and different approaches are explored and clarified with all tenderers. This section provides basic ground rules to protect officers from accusations of malpractice.
- 24.2 While not seeking to constrain innovative approaches, it is again important that officers should proceed with caution. For example, if contracts have been let within European “restricted” procedures, then the scope for changing tender specifications is extremely limited. European rules effectively prohibit post-tender negotiations.
- 24.3 In any event, the contract specification must not be so radically transformed in post tender negotiations that the authority is left vulnerable to the charge that it has tendered on one basis and let the contract on a different basis. In any such case, the Authority’s Legal Adviser shall be consulted prior to negotiations taking place..
- 24.4 If fundamental changes to contract specifications are sought then officers must consider re-tendering the contract. In all such cases the Authority’s legal adviser shall be consulted prior to any changes being made.
- 24.5 The appropriate Commissioning Officer may only allow alteration of a tender in accordance with the Contract Rules.
- 24.6 No negotiations may be conducted without the prior approval of the Authority and on the advice of the Authority’s Legal Adviser. The results of all negotiations shall be reported to the Authority.

## **25 Negotiation**

- 25.1 In cases where tenders exceed budgetary provision, there may be a need for post tender negotiations.
- 25.2 Where price is not to be the sole determinant of supplier selection, there will be a need to discuss the qualitative aspects of the tender submission. For example,

the tender process may require the submission and discussion of method statements or may provide for alternative methods of service delivery to be considered.

- 25.3 This all adds considerably to the scope for post tender negotiations. In order to safeguard the Authority, in all cases when tenders are being negotiated, the following procedures shall be adopted:-
- (a) negotiation should take place on premises determined by the Commissioning Officer in normal working hours;
  - (b) meetings with contractors should be attended by at least two Authority representatives of whom at least one should be technically qualified;
  - (c) minutes of meetings should be recorded and signed by all attendees; and
  - (d) negotiations should be based on, or clearly derived from, the original tender specification.
- 25.4 European legislation is restrictive in the extent to which tenders may be changed during a period of negotiation. Indeed post tender negotiations are substantially prohibited for contracts in excess of European thresholds let under restricted procedures.
- 25.5 Under no circumstances should negotiations fundamentally change the scope or content of the original tender. It is not acceptable to tender on one basis and award the contract on a different basis.
- 25.6 Where alternative specifications or conditions are allowed for within the tender documentation and such alternatives are submitted by tenderers, officers shall conduct any necessary negotiations in confidence in order to establish, so far as it may be possible, common criteria between tenders in order to ascertain the most advantageous offer for the Authority.
- 25.7 In doing so, officers shall ensure that all tenderers have equal opportunity to consider the alternatives and are given the chance to make their offers in the light of such alternatives. Officers shall further ensure that no tenderer be given an opportunity to obtain an unfair advantage over competitors.

## **26 Adjustment of Errors**

- 26.1 In all cases, tenders and the priced bills of quantities (where appropriate) supporting the lowest tender under consideration, shall be examined by the Commissioning Officer. If errors are detected a tenderer may be given the opportunity to amend or correct genuine errors.,
- 26.2 Any amendments correcting an error shall be made in writing by the tenderer and attached to the contract documentation.
- 26.3 If the tenderer elects not to amend the tender offer, an endorsement shall be added to the contract documents indicating that all rates or prices (excluding preliminaries, contingencies, prime cost and provisional sums) inserted by the

tenderer shall be considered as adjusted in the same proportion as the corrected total of priced items exceeds or falls short of the original total for such items.

26.4 The endorsement shall be signed by the parties and form a part of the Contract.

## **27 Allocation and Award of Contracts to More Than One Contractor**

27.1 In cases where it is intended that more than one contractor will be used on identical work, the following steps should be followed:

27.2 the results of the tender process shall be reported to the Authority;

27.3 the additional costs of using contractors at prices other than the lowest tender should be identified together with the implications of giving the work solely to the lowest tenderer;

27.4 the Authority shall consider whether (i) the tender prices should be paid, (ii) officers should negotiate with the tenderers, or (iii) the work should simply be awarded to the lowest tenderer;

27.5 the results of any subsequent negotiations should be reported back to the Authority before any contractual commitments are made.

## **28 Award of Contract**

28.1 In accordance with Standing Order 5, Contracts with a Net Value of up to £10,000 shall be awarded and entered into at the discretion of the Managing Director.

28.2 Those contracts with a value between £10,001 and £50,000 shall be awarded and entered into by and at the discretion of the Managing Director .

28.3 The acceptance of a quotation obtained in accordance with Standing Order 6 and award and entry into a Contract with a Net Value between £50,001 and £150,000 shall be at the discretion of the Managing Director..

28.4 The Managing Director may accept a tender with a Net Value between £150,001 and £500,000 provided it is the most economically advantageous tender and it is within the budgetary provision allowed for the Contract;

28.5 Only the Authority may accept a tender with a Net Value of more than £500,000 or a tender which is not the most economically advantageous tender whatever the value of such tender may be.

## **29 Purported Authority**

29.1 No Officer shall purport to act on behalf of the Authority in respect of any Contract or proposed Contract except with the prior approval of the Authority. Where the need arises to act as a figure-head then the Managing Director may so act.

29.2 No Member shall be involved in, or directly or indirectly influence the procurement process and in particular the short-listing selection of invitees to tender, evaluation of tenders or terms of appointment except with the prior authority of the Authority.

29.3 No Member shall enter into any Contract on behalf of the Authority or purport to bind the Authority .

### **30 Contracts Registers**

30.1 The Relevant Appointed Officer shall ensure that Contracts are recorded on the Contracts Register.

30.2 It shall be the responsibility of the Managing Director to maintain and keep current a register of the Contracts, which shall contain a brief description of all Contracts entered into by the Authority.

### **31 Agency Arrangements and Partnerships**

31.1 The term “partnership” is applied to a variety of contexts in both the public and private sector. This section is concerned with public sector partnerships in which the Authority participates as a constituent participant or lead authority within a separate organisation.

31.2 The Contract Rules recognise that these partnerships may be effectively separate legal entities with their own rules which may, on occasion, take precedence over the Authority’s rules when applied to the work of the partnership.

31.3 When the Authority acts as an agent, any instructions or requirements issued to the Authority under the agency agreement from another legal entity take precedence over these Rules, subject to the overriding requirements of the legislation, regulations, orders and directives of the United Kingdom and European Economic Community.

31.4 When a body or person acts on the Authority’s behalf then it shall where appropriate, be a term of the agreement that these Rules and the Constitution of the Authority shall prevail.

31.5 From time to time the Authority may enter into joint-working, partnering, or agency arrangements with other public sector bodies (“Partnerships”). In such circumstances, the decision whether to join such Partnership may be made by the Managing Director, where appropriate, in consultation with the Finance Director and the Authority’s Legal Adviser, except where the cost of participating in the arrangement exceeds £50,000 in which case the matter will be decided by the Authority.

31.6 Subject to the prior agreement of the Authority, when the Authority participates in a Partnership which is a separate legal entity, the Rules and Financial Regulations of the Partnership may take precedence over these Rules. In these cases, the Partnership’s governing body may assume the powers and responsibilities of the Authority

### **32 Written Contracts**

32.1 All Contracts with a Net Value of £10,001 or more must be in writing unless the Authority decides otherwise.

32.2 Every written Contract to be entered into by the Authority shall specify: -



- (a) the services, works, supplies and utilities to be provided or executed;
- (b) the Net Value of the Contract;
- (c) the time within which the Contract is to be performed.

32.3 Every Contract shall provide that the Authority or the Managing Director may terminate the Contract and recover from the contractor any resulting loss, if the contractor has behaved in a corrupt manner, committed an offence under the Prevention of Corruption Acts 1889-1916 or has given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972. No such contract shall be terminated without the approval of the Authority's Legal Adviser.

32.4 Every Contract shall require the contractor to indemnify the Authority against any civil liability arising as a result of a breach of any statutory duty by the contractor or any of its employees, agents, sub contractors or suppliers

32.5 Every Contract shall draw attention to the contractor's obligations under the following statutes where applicable:

- (a) The Health and Safety at Work etc Act 1974;
- (b) The Sex Discrimination Act 1975;
- (c) The Race Relations (Amendment) Act 2000
- (d) The Data Protection Act 1998;
- (e) The Computer Misuse Act 1990;
- (f) Freedom of Information Act 2000 and to any amendments or re-enactments, any subsidiary legislation (such as Regulations) and to any future Acts of a similar nature.

32.6 Liquidated Damages

- (a) Wherever possible a contract with a Net Value of £50,001 or more shall include clauses allowing the Authority to claim liquidated damages. The amount of liquidated damages shall be a genuine pre-estimate of loss that would be suffered by the Authority should a breach occur. The right to liquidated damages may attach to certain preset milestones occurring under the Contract.
- (b) The Relevant Appointed Officer shall have the discretion as to whether a liquidated damages clause is appropriate in specific contracts taking into account all relevant factors and advice from the Authority's Legal Adviser.

32.7 Security

- (a) The Authority or the Relevant Appointed Officer may, where appropriate, require sufficient security to be determined by the Relevant Appointed Officer in consultation with the Finance Director, for the due performance of

Contracts for the execution of works or for the provision of supplies or services.

- (b) The security shall be released as specified in the contract, or if not so specified on or before the completion of the contract provided that the Relevant Appointed Officer, after consulting with the Finance Director, is satisfied that to do so will not be detrimental to the interests of the Authority.
- (c) Where the Authority is acting as an agent for a statutory authority and that authority is meeting the cost of the Contract or a specific part of it, the Authority shall comply with the requirements of that authority with regard to the taking of security for due performance of the Contract or part.

## 32.8 Variations and Extensions

- (a) Subject to any statutory restrictions and compliance with the Financial Rules of the Authority, the Relevant Appointed Officer may authorise the following extensions and variations to an existing contract up to a maximum Net Value of £50,000.
  - Either:
    - (i) an extension for a particular period provided for within the terms of the contract (but subject to satisfactory performance). Or,
    - (ii) a single extension of the contract up to 12 months, or half the contract term (whichever is less);
  - and any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms.
- (b) In any other circumstances, the Authority may vary or extend a contract providing that to do so is consistent with financial controls and is not a breach of these Rules or EU or UK legislation.
- (c) In addition, the Managing Director may authorise variations to a contract where either delay would incur substantial cost penalties to the Authority or the proposed variations are unavoidable and/or essential for the contract to proceed or continue, and the additional cost of such variations does not exceed 25% of the value of the contract, up to a maximum of £50,000 (fifty thousand pounds). Variations above this level may be authorised by the Managing Director, where the Managing Director considers that circumstances require such authorisation, as long as such variations are reported to the Authority at the earliest opportunity.
- (d) In all circumstances, variations and extensions must be recorded in writing and the decision to vary or extend must be recorded in writing with full explanation of the basis of such variation or extension. The Deed of Variation or Novation is to be retained with the original contract documentation
- (e) In all circumstances where variations and extensions to Contracts are being considered, the Authority's Legal Adviser must first be consulted.

- (f) No Contract shall be varied or extended where the Authority's Legal Adviser advises that such variation or extension will result in a breach of UK or EU law.

### 32.9 Final Account

As may be required by the Relevant Appointed Officer, on completion of the Contract, the Contractor shall provide a detailed Final Account in respect of the work done or supplies or services provided together with all receipted vouchers, invoices, time sheets and other documents as may be requested. In the case of construction contracts, this shall be requested and supplied within the defects liability period.

### 32.10 Assignment

- (a) The Contractor shall either be prohibited from directly or indirectly transferring, assigning or sub-letting any portion of the Contract or doing so without the prior written consent of the Authority.

### 32.11 Default

- (a) Every Contract for the provision of supplies or services with a Net Value of £10,001 or more shall provide that, in the event of default by the Contractor, whether in whole or in part, the Authority may without prejudice to any other remedy for breach of contract:-
  - (i) terminate the Contract;
  - (ii) purchase other supplies or services from a third party to make good the default;
  - (iii) recover from the Contractor any loss, expense and/or additional expenses incurred as a result of such breach.

## 33 Termination of Contracts

- 33.1 If in the opinion of the Relevant Appointed Officer a contractor is not performing satisfactorily on any contract or for any other reason appears to be unable to meet the terms of the contract, the officer shall consider whether the contract should be terminated. In all cases the decision to terminate must be approved by the Managing Director or, the Authority (in the case where the Contract was approved or awarded by the Authority), and in each case, on the advice of the Authority's Legal Adviser and the Chief Financial Officer.

## 34 Waiver of Rules

- 34.1 The Authority may authorise exceptions from compliance with any of these Rules. Every such exception shall be reported in the minutes of the Authority meetings specifying the reason and justifying the exception and recorded in the appropriate register.

## PART D2

### FINANCIAL RULES

#### GENERAL APPROACH

#### 1 Corporate Framework

- 1.1 In approving the Financial Rules, the Authority has sought to provide a strong corporate framework for conducting the financial affairs of the Authority, incorporating appropriate controls and providing those responsible for delivering services with financial responsibility and flexibility. All financial and accounting procedures of the Authority will take place in accordance with these Financial Rules.

#### 2 Definitions

For the purposes of the Financial Rules, the following words shall have the following meanings:

Budget	means a plan for the Revenue and Capital expenditure and income relating to activities of the Authority.
Capital Programme	means the Capital Budget approved by the Authority for the forthcoming Financial year together with the indicative programme of Capital Schemes for the subsequent two Financial years.
Capital Strategy	means the set of policies that determine the Authority's priorities and approach to Capital Investment.
Officers	Means the Managing Director or any officer acting within the Scheme of Delegation
Financial year	means the Authority's accounting period which runs from 1st April to 31st March
Authority	means the East London Waste Authority, or a Committee with appropriate decision-making powers.
Statement of Accounts	The statutory report of the Final Accounts for each Financial Year as defined in the Accounts and Audit Regulations 2006
Three Year Financial Plan	means the Revenue Budget approved for the Council for the forthcoming Financial Year together with indicative figures for the subsequent two Financial Years.

#### 3 Rights of External Bodies

- 3.1 The Finance Director will be the first contact within the Authority for the External Auditor who has rights of access to all documents and information necessary for audit purposes.
- 3.2 The Authority may, from time to time, be subject to audit, inspection or investigation of its financial systems by other external bodies such as HM Customs and Excise and the Inland Revenue who have statutory rights of access to financial records. The Finance Director will be the principal contact within the Authority on such matters.

#### Main Responsibilities of the Finance Director

#### **4 Proper Administration of the Council's Financial Affairs**

- 4.1 The Finance Director is the Officer responsible for the proper administration of the Authority's financial affairs under Section 73 of the Local Government Act 1985, the Accounts and Audit Regulations 1996, Section 114 of the Local Government Finance Act 1988 and Section 27 of the Local Government Act 2003.
- 4.2 The Finance Director has a duty under Section 114(2) of the Local Government Finance Act 1988 to make a report if it appears that the Authority is about to or has already carried out either:
- (a) decision which involves or would involve the Authority in incurring expenditure which is unlawful, OR
  - (b) a course of action which if pursued would be unlawful and likely to cause a loss or deficiency to the Authority
- 4.3 The Finance Director has a duty under Section 114(3) of the Local Government Finance Act 1988 to make a report (in consultation with the Managing Director 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. It is the duty of Officers to notify the Finance Director of any situations that might be considered:
- (a) unlawful and/or
  - (b) might exceed available resources in light of the above responsibilities.
- 4.4 In discharging this responsibility, the Finance Director will ensure that arrangements for financial and accounting matters and the security of financial assets are efficient and effective.
- 4.5 The Finance Director can require Officers to provide any timely and relevant information that to enable him/her to carry out his or her functions and to give proper advice.
- 4.6 All financial systems, procedures, records and controls and changes to them must be agreed in advance with the Finance Director, who may issue formal instructions or guidance from time to time.<sup>32</sup> Financial Advice

#### **5 Financial Advice**

- 5.1 The Finance Director will advise the Authority on any matter containing financial implications. Such advice may be included in the reports of other Officers.
- 5.2 Officers will ensure that the Finance Director has the opportunity to comment on all proposals containing financial implications at the earliest practical stage before the dispatch of a report and in any event no less than ten Working Days before the dispatch of a report.
- 5.3 Officers carrying out functions under delegated powers must ensure that they seek and receive such financial and legal advice as may be necessary on the consequences of a course of action before taking a decision on such action.

5.4 The Finance Director is responsible for advising Officers where relevant on the financial implications of guidance and relevant legislation issued by appropriate bodies as it applies.

5.5 The Finance Director is responsible for advising Officers on relevant taxation issues (including other funds such as the Pension Fund) and liaising, negotiating and where necessary taking appropriate action to promote and protect the Authority's financial position.

## **6 Accounting**

6.1 The Finance Director will determine the format and maintain the Authority's principal accounting records and will be the Authority's adviser on all accounting and financial matters. Officers are responsible for making sure that financial records are maintained in a manner determined in advance by the Finance Director.

6.2 The Finance Director will ensure that the Authority's accounting records are kept in accordance with appropriate accounting standards and mandatory guidance and that the Statement of Accounts is prepared in line with the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice.

6.3 The Finance Director will ensure that the Authority's Annual Statement of Accounts is prepared and made available in accordance with the statutory timetable.

(a) The Finance Director shall issue procedures and a timetable for the closure of the accounts in accordance with good accounting practice.

(b) Officers are responsible for making sure that the timetable referred to in (a) above is complied with.

(c) The Authority is responsible for approving the draft Annual Statement of Accounts by the statutory date following the end of the financial year on 31st March.

## **7 Providing Information and Financial Returns to Statutory External Bodies**

7.1 The Finance Director will make arrangements for completing the Authority's tax returns and other statutory financial returns and providing relevant information to external bodies on the financial activities of the Authority as a whole.

## **8 Internal Audit and Control**

8.1 The Accounts and Audit Regulations 2006 require the Authority to maintain an adequate and effective internal audit. The Finance Director will commission on behalf of the Authority a suitable internal audit of its accounting records and control systems.

8.2 The Finance Director or their representative shall have access to all documents and records in the possession of the Authority and shall be afforded all facilities and co-operation by Members; Officers and members of their staff, who shall

provide whatever information and explanation are deemed necessary. This will include liaising with the Chief Financial Officers within the constituent Councils in respect of all documents and records in the possession of the Councils that relate to the Authority's business.

## **Planning and Budgeting**

### **9 Three Year Plan – Strategy and Resource Targets**

- 9.1 The Finance Director, in conjunction with Officers, will produce a Three Year Financial Plan and report to the Authority each year on the financial prospects for the current financial year and forecasts for future financial years.
- 9.2 The Authority, with the advice of the Managing Director and the Finance Director will propose a Medium Term Financial Strategy to a meeting of the Authority, including Budget priorities for the forthcoming financial year, which will be published by 30th September.
- 9.3 The Authority will make arrangements to consult on the proposed Revenue and Capital Budget Strategy. This will include obtaining the views of the constituent councils.

### **10 Annual Revenue and Capital Budget**

- 10.1 The Finance Director, in consultation with Officers will prepare a detailed proposed Budget of Revenue and Capital expenditure and income for the forthcoming financial year.
- 10.2 The Finance Director, in conjunction with Officers, will present to the Authority for decision: -
- (a) a statement of the projected Revenue and Capital Outturn for the current financial year compared with the approved Budget. This, if agreed by the Authority, will be the amended Budget for the rest of the current financial year;
  - (b) monitor and report upon the adequacy of the Authority's reserves under the terms of Section 27 of the Local Government Act 2003; and
  - (c) a proposed Revenue and Capital Budget for the next Financial year.
- 10.3 The Authority will:
- (a) Consider the Revenue and Capital Budgets that are proposed for the Authority's services.
  - (b) Consider the results of the consultation with the constituent councils as described in 36.3 above.
  - (c) Consider funding for the constituent Councils for services provided by them on behalf of the Authority, the need for Central Reserves and Contingencies, the Level of Balances and the grants available from the Government.

- (d) Consider and make recommendation to the Constituent Councils on the method of apportionment of the Authority's levy on the constituent Councils; and
- (e) After taking the above matters into account, approve the Revenue and Capital Budget for the forthcoming financial year and determine the levy on the constituent councils. The Authority must give its decision not later than 15 February preceding the year in which the levy is to be issued.

## **11 Capital Programme**

- 11.1 Further to Financial Standing Order 36 as set out above, the Authority will approve a Capital Programme taking account of guidance on the Capital Budget or Targets for the next financial year taking account of the Capital Strategy of the Authority, capital financing and expenditure authorisations available and the revenue implications involved.
- 11.2 Officers will implement and keep under review the Authority's agreed Capital Programme for services under their control covering schemes in progress, schemes commencing in the current and forthcoming financial years and the revenue implications of those schemes.
- 11.3 The Authority may approve the inclusion of any new scheme or delete or amend any scheme in the Capital Programme providing that it accords with the Budget and can be funded from resources available to the Authority, including those funded from grants.

## **Spending of Budgets**

### **12 Amendment of Approved Budgets**

- 12.1 Subject to 39.2 below, the approved Revenue Budget may be amended by:
  - (a) The Authority authorising transfers to or from the contingencies (including reserves and balances), or
  - (b) The Finance Director authorising budget transfers (virements) to or from any contingency for changes in pay and prices.
  - (c) The Officers in accordance with delegated powers (see Part C - Scheme of Delegation).
- 12.2 In making additions to the approved Revenue Budget, the Authority, Finance Director and Officers must:
  - (a) have regard to the Financial Plan approved by the Authority, and
  - (b) be satisfied that an amendment to the Revenue Budget can be offset by additional income, contingencies (including reserves and balances) or savings elsewhere within the Budget.
- 12.3 Any proposed changes to Revenue Budgets under Financial Standing Order 39.2 as set out above should be subject to the advice of the Finance Director.



### **13 Spending of Revenue Budgets**

- 13.1 A Revenue Budget approved by the Authority may be spent without further reference to the Authority.
- 13.2 No power is delegated to any Officers to spend above the Approved Revenue Budget for their service unless or until the Authority has approved in advance the spending or virement has been approved.
- 13.3 Officers may not transfer any Revenue Budget between Budget Heads but may vire budgets within individual budget heads within their control for any lawful purpose relating to the areas for which they are responsible providing that: -
- (a) (the transfer is within a Budget Head sum approved by the Authority, and
  - (b) the reason for the transfer accords with the policies and strategies of the Authority, and
  - (c) no commitment to a higher overall level of expenditure in future financial years is entered into, and
  - (d) the amount in question does not exceed £100,000 at any one occasion; and
  - (e) the transfer is between account codes within the same Budget Head; and
  - (f) no other service or Officer is affected.
- 13.4 Any transfer of Revenue Budget not falling within the criteria detailed in Financial Rules 40.3 as set out above will require the prior approval of the Authority.
- 13.5 Where the above criteria 40.3 (a-e) apply in relation to Budget Transfers between Budgets controlled by two or more Officers the approval of the Finance Director will not be required provided that both Officers concerned agree the transfer. In the event that the respective Budget holders do not agree the transfer, the approval of the Authority will be required.
- 13.6 Any proposed changes to Revenue Budgets should be fully discussed with the Finance Director.

### **14 Approval to Apply the Budgets within the Capital Programme**

- 14.1 Subject to 41.2 below, the approval of the Authority will be required before expenditure is incurred for each individual Scheme included in the Capital Programme. The Authority will be provided with: -
- (a) An estimate of the cost of the Scheme.
  - (b) An estimate of any consequential expenditure or income, whether capital or revenue.
  - (c) If the Scheme is part of a larger Scheme, an estimate of the cost and any other information as may be necessary to permit full consideration of the proposal.

- 14.2 Capital Schemes which are included in the Capital Programme may be progressed by the relevant Appointed Officer before receiving the approval of the Authority, provided that expenditure on each Scheme in any one financial year does not exceed £10,000.
- 14.3 No power is delegated to any Officer to incur expenditure on any Scheme or provision not included in the Capital Programme or to spend above the approved amount unless or until approval has been given by the Authority.
- 14.4 Subject to Standing Order 41.5 below, the Authority may agree to transfer budgets to other schemes within the Capital Programme.
- 14.5 In making amendments to the approved Capital Programme, the Authority must:
- (a) have regard to the Budget and Policy Framework approved by the Authority, and resolutions of the Authority, and
  - (b) be satisfied that an amendment to the Capital Programme can be offset by available income, Government grants, usable reserves, credit approvals or reductions elsewhere within the Capital Programme,
  - (c) be satisfied that any revenue budget consequences of the amendment can be offset by additional income, contingencies (including reserves and balances) or savings elsewhere within the Budget, and
  - (d) only include additional schemes in the Capital Programme approved by the Authority to the extent that they can be funded from additional Government grants, grants or contributions from other external bodies or Supplementary Credit Approvals.
  - (e) Any proposed changes to the Capital Programme under Financial Rules 41.3, 41.4 and 41.5 as set out above should be subject to the advice of the Finance Director.

## **15 Treatment of Unspent Budgets**

- 15.1 The Finance Director must apply to the Authority in order to earmark any unspent resources or savings for a planned purpose in a future financial year. Any unspent resources at the end of the financial year can be carried forward to the following financial year provided it is earmarked for a specified purpose.
- 15.2 The Authority may agree the use of any under spending in any one financial year to be used in the following financial year for a purpose consistent with the Authority's Three Year Financial Plan, subject to the advice of the Finance Director as to the overall financial position of the Authority.

## **16 Action on Overspent Capital and Revenue Budgets**

- 16.1 Where it appears that an approved Revenue Budget may or will overspend by £50,000 or 5% of the Gross Budget for the service concerned (whichever is the smaller) or an approved Capital Scheme will overspend by any amount, then the Managing Director will notify the Finance Director and the Authority and will immediately take steps to investigate the reason and to rectify the situation.

- 16.2 Where it appears that no action by Officers can prevent an overspend of the total budget for the service, the Managing Director will make a report to the Authority to this effect within 3 months from the first notification of the overspend.

## **Review and Reporting of Performance**

### **17 Review of Performance**

- 17.1 The Authority will ensure that the approved Budget is implemented and will receive reports from the Managing Director and/or Officers to enable it to do so.
- 17.2 The Managing Director and Officers will be responsible for the performance of services under their control against financial and non-financial performance targets including performance against the Budget, and will undertake an ongoing review of performance against these targets.
- 17.3 The Managing Director and Officers will ensure that they have access to such financial or non-financial information as they may reasonably require to undertake their service responsibilities and will consult the Finance Director accordingly.
- 17.4 The Finance Director will support and advise the Managing Director and Officers in ensuring that financial management information is adequate for management purposes.
- 17.5 The Managing Director and Officers, with the assistance of the Finance Director, will be responsible for monitoring the overall spending of their service areas and reporting to the Authority on any significant variances.

### **18 Reporting of Performance**

- 18.1 The Managing Director, with the Finance Director, will prepare and present to each meeting of the Authority a report detailing actual and forecast performance against the targets set in Financial Standing Order 43.2 as set out above.
- 18.2 Expenditure in these reports should include all known financial commitments entered into by the Authority, which specifically includes goods and services awaiting a supplier's invoice.
- 18.3 The Finance Director will be responsible for monitoring the overall spending of the Authority.

## **Other Financial Rules**

### **19 Review of Financial Limits**

The financial limits in these Financial Rules will be reviewed periodically by the Finance Director with due consultation. The prior approval of the Authority will be required for any amendments.

### **20 Payment of Invoices, VAT Payments, Wages, Salaries, Pensions and Allowances**

- 20.1 Invoices for payment will be properly completed, certified and paid in accordance with procedures and guidance issued by the Finance Director. The Finance

Director will make available up-to date guidance on the proper treatment and accounting for VAT which includes a timetable for preparation and submission of the claim that ensures VAT payments are fully and promptly recovered from Customs and Excise. It is the duty of Officers to comply with these procedures and time-scales and to notify the Finance Director if there are or may be any problems.

- 20.2 The Managing Director will make arrangements for payment of wages, salaries, pensions and allowances and Officers will provide any information that is required in carrying out this function.
- 20.3 It is the responsibility of Managing Director to ensure that proper procedures in respect of financial implications have been established and are operating effectively. The Officers' Scheme of Delegation should identify staff authorised to act on the Managing Directors behalf, or on behalf of the Authority, in respect of payments, income collection and placing orders, together with the limits of their authority.
- 20.4 The Finance Director will maintain records of all persons authorised to initiate financial transactions on behalf of the authority.
- 20.5 It is the duty of Managing Director to give required details for a new signatory to the Finance Director and to promptly notify any changes.

## **21 Collection of Income**

- 21.1 The Managing Director will seek prompt collection of all monies due to the Authority in accordance with arrangements approved by the Finance Director.

## **22 Review of Charges**

- 22.1 The Managing Director will review charges for goods and services no less often than once a year in consultation with the Finance Director and, except where authority has been delegated, will submit proposals to the Authority for approval, save that no approval will be required from Authority where charges are changed as the result of a budget proposal or changes are broadly in accordance with inflation as set out as part of the Authority's annual budget process.

## **23 Custody of Assets**

- 23.1 The Managing Director and officers will be responsible for the safe custody of all Authority assets under their control.
- 23.2 The Managing Director will ensure that a physical check which adequately documents all assets with a total estimated value over £2,000 is undertaken at least annually, and will provide the Finance Director as soon as is reasonably practicable with details of any anomalies.
- 23.3 The Managing Director will provide such information as may be required by the Finance Director as to the value of stock holdings at the end of the Financial year.

- 23.4 The Managing Director will be responsible for maintaining an inventory of furniture, plant, other equipment, tools and other individual items of over £500 and all computer equipment, in a form approved by the Finance Director.
- 23.5 The Managing Director, in consultation with the Finance Director, is authorised to dispose of surplus, damaged or scrap stocks, materials or equipment on the best possible terms provided that where the estimated realisable value exceeds £1,000 either quotations will be invited, or the Authority will be consulted on an alternative method of disposal.

## **24 Write - Offs**

- 24.1 The Authority is responsible for approving procedures for writing off losses.
- 24.2 The Finance Director may write off losses up to the value of £6,000 for any one item in respect of: -
- 24.3 losses arising when property of the Authority is lost, stolen, damaged or destroyed and the loss is not recoverable from insurance or other sources;
- 24.4 losses upon disposal of stock at a price less than the book value at the time of disposal; and
- 24.5 money due to the Authority which has become irrecoverable or is thought no longer cost effective to recover.
- 24.6 Provided in each case that proper steps have been taken to mitigate the loss and to prevent a recurrence.
- 24.7 The Finance Director will keep records of all such write-offs in a form approved in advance by the Finance Director.
- 24.8 Any write-offs exceeding £6,000 must be approved in advance by the Authority.

## **25 Banking and Cash Handling**

- 25.1 The Finance Director will be responsible for all arrangements relating to the operation of the Authority's bank accounts.
- 25.2 The Managing Director will ensure that the collection and banking of monies is undertaken in accordance with any instructions issued by the Finance Director.
- 25.3 Petty Cash imprest accounts will be operated in accordance with instructions issued by the Finance Director.
- 25.4 The Managing Director and Officers must inform the Finance Director when £50,000 or more cash is expected to be received as he/she needs to know about this to enable him/her to carry out this function.

## **26 Insurance and Risk Management**

- 26.1 The Finance Director in conjunction with the Managing Director is responsible for preparing the Authority's Risk Management Policy, promoting it throughout the Authority and advising the Authority on appropriate insurance cover. The

Authority is responsible for approving the Risk Management policy. The Managing Director is responsible for promoting and implementing this policy.

- 26.2 The Managing Director and Officers will keep under review all risks within the areas under their control. They must make every effort to reduce the risks.
- 26.3 The Managing Director and Officers will notify the Finance Director annually in accordance with the Risk Management Policy and any guidelines issued by him/her, of all risks and assets valued at over £10,000 indicating their cost or value, and of any material changes in these risks or assets as they arise. The Finance Director will then make appropriate arrangements for insurance cover, payments and administration.
- 26.4 The Managing Director and Officers will notify the Finance Director immediately of any event which may give rise to an insurance claim, and will provide estimates and any other information required for the settlement of the claim.
- 26.5 The Managing Director and Officers should notify the Finance Director of any acquisitions, enhancements or disposals over £10,000.

## **27 Treasury Management**

- 27.1 The Finance Director has adopted the key principals and key recommendations of CIPFA's revised Code for Treasury Management in Public Services 2009 (the Code), as described in Sections 4 and 5 respectively of that Code.
- 27.2 Accordingly, the Authority will adopt and maintain, as the cornerstones for effective treasury management:
- 27.3 A Treasury Management Policy Statement, stating the policies, objectives and approach to risk management of its treasury management activities. A copy of the Authority's Treasury Management Policy is attached at paragraph 55.
- 27.4 Suitable Treasury Management Practices (TMP) setting out the manner in which the Authority will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- 27.5 The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of this organisation. Such amendments will not result in the organisation materially deviating from the Code's key principles.
- 27.6 This Authority will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close, in the form prescribed in its TMPs.
- 27.7 The Authority delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to the Finance Director, and for the execution and administration of treasury management decisions to Finance Director who will act in accordance with the Authority's policy

statement and TMPs and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.

- 27.8 The Authority nominates the Management Board to be responsible for ensuring effective scrutiny of the treasury management strategy and policies.

## **28 Treasury Management Policy Statement**

- 28.1 The Authority defines the policies and objectives of its treasury management activities as the:
- 28.2 management of the organisation's cash flows, its banking, money market and capital market transactions;
- 28.3 effective control of the risks associated with those activities;
- 28.4 pursuit of optimum performance consistent with those risks.
- 28.5 The Authority regards the successful identification, monitoring and control of risk to be the prime criteria by which the effectiveness of its treasury management activities will be measured. Accordingly, the analysis and reporting of treasury management activities will focus on their risk implications for the organisation.
- 28.6 The Authority acknowledges that effective treasury management will provide support towards the achievement of its business and service objectives. It is therefore committed to the principles of achieving best value in treasury management, and to employing suitable performance measurement techniques, within the context of effective risk management.
- 28.7 Any action taken will not override the disciplinary procedures of the constituent councils or the corporate Whistle blowing Scheme.

## **29 Pension Fund**

- 29.1 56.1 The Finance Director has a duty to ensure that satisfactory pension arrangements are made for employees of the Authority. This duty will include the selection of a third party provider to manage and administer the fund
- 29.2 56.2 The decision on the pension provider will be made in accordance with ELWA's contract Rules.

## **30 Financial Irregularities**

- 30.1 The Finance Director is responsible for the development and maintenance of an Anti-Fraud and Anti-Corruption Policy. The Authority is responsible for approving it. Officers are responsible for promoting and implementing the Anti-Corruption Policy.
- 30.2 The Finance Director and the Authority's legal advisor shall be notified immediately of any suspected irregularity relating to both private and Authority funds, including cash, stores, property and any material weakness which has been identified in any system or control. In all cases involving a employee, the Authority's legal advisor should also be notified immediately.

- 30.3 The Managing Director, in consultation with the Finance Director, will take such action as they deem appropriate.
- 30.4 The Managing Director shall consult the Finance Director and the Authority's legal advisor in advance for all cases that are going to be or may be formally reported to the Police. They will advise relevant Member(s) of these cases.
- 30.5 Any action taken will not override the disciplinary procedures of the constituent councils or the corporate Whistle blowing Scheme.

## **31 Private Funds**

- 31.1 Private Funds shall mean those funds held in an official capacity by Authority employees such as trust funds, voluntary grant aided funds etc.
- 31.2 Where Private Funds exist in connection with Authority activities, officers responsible for administering these funds will bring them to the attention of the Finance Director and, where one exists, the managing body.
- 31.3 Proper accounts, which should follow the guidance of the rest of these Financial Rules, will be kept of such Private Funds, which will be audited annually by at least one independent, competent person (who shall be approved by the Finance Director.) The Finance Director will determine any additional guidelines or requirements that may be necessary.

## **External Arrangements**

### **32 Partnerships and External Funding**

- 32.1 The Authority is responsible for approving the frameworks when the Authority enters partnerships arrangements. The Authority is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 32.2 The Authority may delegate executive functions, including those relating to partnerships, to Officers. These are set out in the Officers Scheme of Delegation that is in Part C of the Constitution.
- 32.3 A named person or persons will represent the authority on partnership and external bodies. A named Officer should wherever possible be appointed to be the Lead Officer in relation to any partnership.
- 32.4 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to administration in partnerships that apply throughout the authority. He/she must also consider the overall corporate governance arrangements and legal issues when arranging partnerships with external bodies.
- 32.5 The Finance Director must ensure that the accounting arrangements that are to be adopted relating to partnerships and joint ventures are satisfactory, and must ensure that the financial risks have been fully appraised before contracts and other relationships are entered into with external bodies.



32.6 Officers are responsible for ensuring that any negotiations are in accordance with the Contract Rules in relation to contracts with external bodies.

### 33 Revision of Financial Limits

Section/ Paragraph	Old Limit	New Limit	Comment
5	Up to £50,000	Up to £50,000	No change
6	See comment	£50,001 to £150,000	Current proposal is for Relevant Officer to procure and Managing Director to award.
7	See comment	£150,001 to £500,000	Current proposal is for Managing Director to authorise previously this required Authority Authorisation
8	See comment	£500,001 and above	No change
10	See comment	Various	Central Government Catalogues - New
13	See comment	Above £50,000	Other Contracts - New
23.1	See comment	Up to £10,000	Current proposal is for Managing Director to award - New
23.2	See comment	£10,001 to £50,000	Managing Director - New
23.3	See comment	£50,001 to £150,000	Current proposal is for Relevant Officer to procure and Managing Director to award.
23.4	See comment	£150,001 to £500,000	Current proposal is for Relevant Officer to procure and Managing Director to award.
23.5	See comment	£500,001 and above	No change
26.6	Above £50,000	Above £50,000	No change
27.1	See comment	Above £10,000	Contracts in Writing - New
27.6	See comment	Above £50,000	Liquidated Damages - No Amount Previously Set
27.8	See comment	£50,000	Relevant Officer - New
40.3	£50, 000	£100,000	Scheme of Delegation approved in Feb only allows for £10,000
41.2	£50, 000	£50, 000	Previous draft version had £10,000

Section/ Paragraph	Old Limit	New Limit	Comment
43.1	£10,000	£50, 000	
50.2	£2,000	£2,000	No change
50.4	£500	£500	No change
50.5	£2,000	£5,000	Previous draft version had £1,000
51.2	£5,000	£5,000	No change - Previous draft version had £6,000
51.4	£5,000	£5,000	No change - Previous draft version had £6,000
52.4	£50, 000	£50, 000	No change
53.3	£2,000	£10,000	
53.5	£2,000	£10,000	
65.3	£3,000	£3,000	No change
74.4	Above £25	Above £25	No change
75.1	Above £100	Above £100	No change

## **PART D3**

### **EMPLOYMENT RULES**

#### **1 Personnel, Payroll and Pensions**

- 1.1 The Managing Director in consultation with the Financial Director, shall make proper and appropriate arrangements for personnel advice and support, payroll and pension services.
- 1.2 The staffing structure of the Authority is shown elsewhere in the Constitution.
- 1.3 Also refer to protocol on dealing with Human Resource Issues at Appendix D3.

#### **2 Appointment of the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer**

- 2.1 The Authority shall make appointments to the positions of Head of Paid Service, Monitoring Officer and Chief Financial Officer.

#### **3 Recruitment, Selection and Appointment of Other Officers**

- 3.1 The Head of Paid Service (the Managing Director) will be responsible for all other appointments including making any necessary arrangements in respect of job evaluations and specifications, the placing of advertisements, recruitments and selection policies etc.

#### **4 Disciplinary Action and Dismissal**

- 4.1 The Head of Paid Service, the Monitoring Officer and the Chief Financial Officer are legally protected due to their statutory position. They may be suspended whilst an investigation takes place into alleged misconduct pertinent to their statutory role. That suspension will be on full pay and last no longer than two months.
- 4.2 No other disciplinary action may be taken in respect of any of those statutory officers except in accordance with a recommendation in a report made by a designated independent person.
- 4.3 The Managing Director is responsible for ensuring appropriate employment policies are in place.

# PROTOCOL

## 1 Dealing with Human Resource Issues

1.1 When Members consider items about the people that are employed solely on behalf of the Authority (e.g. ELWA full-time employees), the Authority must be mindful of a number of matters:

- (a) Employees have rights, on an individual basis, to be treated fairly. (This includes expecting the Authority to maintain confidentiality about an individual's personal and employment details).
- (b) Information relating to employees is often confidential in nature and should not be available widely throughout the organisation (at Member or officer level). Only those who need to know should know.
- (c) Members should have the opportunity to consider, debate and decide upon issues without managers/officers being present.
- (d) A variety of decisions on Human Resource (HR) matters, including the fair treatment of people by their employer, are subject to external scrutiny.

1.2 For these reasons:

- (a) Written information to Members on HR management and/or personal HR matters which address employee issues in respect of an individual, should be restricted to relevant Members and appropriate officers. This information should not be included as part of the usual circulation for a report.
- (b) The meeting considering these matters should be conducted in private and those people who should not be in attendance should be asked to leave the meeting.

## 2 Guidelines

2.1 If there is any doubt as to who should receive copies of the report and who should be allowed to remain at the meeting, the Managing Director should be consulted.

2.2 The Managing Director will have access to all reports and all meetings of Members about Human Resource matters.

2.3 The Managing Director may delegate some matters to an Officer, the relevant Borough Personnel Manager (from the employing Council) and/or Legal Officer, who will have access to appropriate reports and meetings.

2.4 Where there are any financial implications to be considered by the Authority, the Finance Director will have access to appropriate reports and meetings.

2.5 There may be meetings where it is appropriate to invite representatives of the Trades Unions and cognisance must be given to this. If there is any doubt, the Managing Director should be consulted.

## PART D4

### CONFERENCES, VISITS AND HOSPITALITY RULES

#### 1 Introduction

- 1.1 The way that Members are expected to behave is set out in the constituent Councils' agreed Codes of Conduct. The key principles behind these Codes include the need to act with integrity, and, in particular, not to do anything which could call into question the validity of an action. The public's perception of the way that Members and staff act is very important and these rules should ensure appropriate, reasonable and accountable actions when Members and staff are involved in certain events. It is particularly important that actions are transparent and therefore the rules do require certain registers and records to be kept for possible inspection or scrutiny.
- 1.2 Any claims for reimbursement by Members of expenses or for allowances are submitted to the respective constituent Councils and must be in accordance with the individual schemes operated by the Councils.
- 1.3 The Managing Director is responsible for maintaining the ELWA Officer Code of Conduct.

#### 2 Meetings, Visits and Conferences

- 2.1 The rules apply to the following meetings, conferences and visits involving attendance by Members and/or staff:
- 2.2 Conferences relating to a particular profession or service usually held outside the ELWA area;
- 2.3 Visits outside the ELWA area to explore policy or service initiatives, or to develop partnership relations; and
- 2.4 Discretionary meetings and conferences usually held within or near the ELWA area to address specific issues, or to return hospitality received.
- 2.5 In the rest of the rules, any of these will be referred to as "the event".
- 2.6 If the total cost is likely to exceed £3,000, the event must be approved by the Authority - in advance where possible. The annual conference of the Institute of Waste Management should be considered as an approved event, but subject to normal reporting requirements.
- 2.7 Where a programme of events is involved the approval of the Authority should be obtained at the beginning of the year.
- 2.8 In exceptional cases where timescales prevent prior approval, the Managing Director has authority, in consultation with the Authority's legal advisor, to approve the event but must submit a report to the Authority at the earliest opportunity.

- 2.9 The relevance of the event and the expected benefits of attendance must be explained in the report. The names of those planning to attend should also be given with appropriate justification.
- 2.10 Numbers attending must be kept to a minimum and attendance limited to those who have a relevant interest.
- 2.11 If a Member or staff wish to attend any event in a private capacity, that capacity should be made clear from the beginning to all involved. If the potential exists for a conflict of interest between private involvement and official duties, the Managing Director should be notified before the event takes place.
- 2.12 Attendance at events by spouses and partners is generally not allowed as this can create the wrong impression, particularly when attendance and allowances are being claimed. However, it is recognised that there may, rarely, be exceptional occasions when such attendance is appropriate or where special circumstances apply and such circumstances must be agreed by the Authority.
- 2.13 When reasonable grounds for special attendance by spouses/partners do exist, the Managing Director should maintain a record of this, together with details of any additional costs.
- 2.14 Additional costs will be recovered from the individuals concerned as soon as possible. The calculation is not always easy but the objective should be to demonstrate that spouses or partners have not been paid for or subsidised by the Authority. Where any doubt exists the matter should be discussed with the Finance Director.
- 2.15 The Managing Director shall also keep a separate register of the details of attendance on visits abroad where any part of the event is funded by the Authority. Any reciprocal arrangements are recorded in the same register.

### **3 Expenses**

- 3.1 Incidental expenses should be kept to a minimum.
- 3.2 Official meetings between Members, Members and staff, or staff must take place in appropriate Authority/Council premises, (i.e. administrative accommodation), unless unavoidable (for example, at the invitation of an independent third party).

### **4 Working Lunches and Out of Hours Meetings**

- 4.1 Discretionary meetings between Members and/or staff should be arranged, where possible, during normal working hours. Out of hours and lunch hour meetings should be exceptional.
- 4.2 Food should only be provided where no reasonable alternative is available. When food is provided or funded by the Authority, the relevant Appointed Officer should authorise it and record the justification. The Authority should not be seen to be unnecessarily subsidising meals. The amount and standard of provision should be kept to a reasonable level.

## **5 Accommodation**

- 5.1 An event should be organised to minimise the extent of overnight stay.
- 5.2 Where practical, accommodation should not exceed a three star rating (or its equivalent when foreign travel is involved). Anything in excess should be justified in writing by the relevant Appointed Officer (for example, where alternative accommodation is not available or additional travel costs would be incurred).

## **6 Travel Arrangements**

- 6.1 The choice of travel should be made with a view to keeping the cost of the visit as low as possible. People should share vehicles and travel together where practical. However, cheaper methods of transport should not be considered if this results in an additional overnight stay and greater overall cost.
- 6.2 First class or club class travel is not normally provided for Members or staff, but in exceptional circumstances the Managing Director may approve it. In the case of either Members or staff, specific justification must be documented.

## **7 Allowances**

- 7.1 Subsistence should be seen as a reimbursement rather than as an allowance. Expenditure should be documented with supporting receipts where possible. Where possible, one individual should be nominated to keep all receipts relating to a particular event.
- 7.2 Where meals and accommodation are paid for by the Authority or others, subsistence cannot additionally be claimed.
- 7.3 In cases where staff organise petty cash advances for a group event, they should inform accompanying Members and staff at the beginning.
- 7.4 Travel claims should only be submitted by those Members or staff who provided the transport or paid for the tickets.

## **8 Employee Overtime**

- 8.1 Overtime will only be paid for approved duties, and only for time reasonably spent outside of normal office hours. For example travelling to and from the venue, or for work linked to the event. Alternatively, time off in lieu, rather than overtime, may be granted.

## **9 Financial Issues**

- 9.1 The funding of events should be finalised as far as possible in advance. This should allow most bills to be paid in advance and minimise the amount of cash that needs to be carried.
- 9.2 When a cash advance is sought, the intended use should be clearly documented. Both receipts and unspent cash must be returned at the end of the visit with a list of all expenditure.



## **10 Review Arrangements**

- 10.1 At the end of each event requiring Authority authorisation, a further report should be made to the Authority giving:
- 10.2 a brief summary of the event and the benefits of attendance
- 10.3 the full costs (including a comparison with the original estimates)
- 10.4 where relevant, the value of attending in the future.

## **11 Hospitality and Gifts Received**

- 11.1 If gifts are offered to Members or staff in a personal capacity, they should not be accepted if they have anything more than a token value (for example pens, calendars and diaries). Any significant gifts received in an official capacity should be reported to the Monitoring Officer with a recommendation for their disposal, and recorded in a gifts and hospitality register. If considered appropriate, the Monitoring Officer will advise that the matter be reported to the Authority for consideration.
- 11.2 Decisions on whether to accept hospitality should be made by the following tests of reasonableness:
- 11.3 the scale and type of hospitality should not bring into question the motive of the person or organisation offering it. If it gives the appearance that it might be intended to influence judgement, or could be viewed as such, the hospitality should not be accepted.
- 11.4 the proposed hospitality should be limited to Members or staff who have a relevant interest.
- 11.5 the hospitality should be directly linked to Authority business and/or the well being of the local community
- 11.6 All hospitality and gifts received by Members and staff must be recorded in a register held by the Monitoring Officer, which is available for inspection to the public.
- 11.7 The Monitoring Officer must be advised in writing of anything received by Members over the value of £25.
- 11.8 Where hospitality received includes meals and accommodation, subsistence must not be claimed.

## **12 Hospitality and Gifts Given**

- 12.1 The approval of the Authority should be sought before any gifts are purchased with a value over £100. The value and purpose should be clear. The recipient should be clearly associated with Authority business.
- 12.2 The provision of hospitality to visitors should follow similar tests of reasonableness to those discussed in Section 73 above. All participants should have a link to the event. Whenever possible, constituent Council facilities should be used.

- 12.3 The level of hospitality provided should be on a scale relevant to the normal conduct of Authority business. Existing subsistence allowances offer a reasonable guide in respect of hospitality funded by the Authority. It is accepted that there might be a need for some flexibility in respect of schemes funded by the European Union where the nature of the scheme presumes a reciprocal level of funding for “networking” and other forms of international co-operation. For these activities the level of hospitality given should be similar to that normally received but remain at a reasonable level.
- 12.4 A financial ceiling for such expenditure should be agreed in advance by the Authority.
- 12.5 All hospitality given by Members and staff must be recorded in a register held by the Monitoring Officer, which is available for public inspection.

### **13 Fees Received**

- 13.1 Where Members or staff receive a fee for speaking or otherwise assisting at an event as a representative of the Authority, it should be credited to an Authority budget. The Finance Director should decide which budget is most appropriate.

### **14 Records and Registers**

- 14.1 It is essential that records and registers are kept up to date and accessible for inspection or scrutiny if necessary.
- 14.2 The Monitoring Officer is responsible for ensuring that all records/authorisations/justifications etc. relating to events are kept on one file and that staff are aware of this and where to find the hospitality registers.

## **PART D5**

### **LAND ACQUISITIONS AND DISPOSALS RULES**

#### **1 Background**

- 1.1 The acquisition and disposal of land by local authorities is controlled by statute, and was the subject of reports by the Audit Commission (1980) and the Commission for Local Administration (1995). These reports highlighted the various pressures that can influence local authorities, and their Members and employees, in dealing with land, and set out guidelines to encourage best practice.
- 1.2 The guidelines placed emphasis on adopting procedures that are transparent and consistent and therefore fair and proper. These Rules embody those guidelines.

#### **2 Application**

- 2.1 The Rules apply to all relevant land acquisitions and disposals except where any provision is waived by the Authority, or by urgent action. The reason for any such waiver shall be set out in the appropriate minutes of the Committee.
- 2.2 References to land in the Rules include any property constructed on land. The terms "acquisition" and "disposal" apply to any relevant interest in land, including freehold, leasehold, easements, options, etc.
- 2.3 All proposals for change of use of Authority land must in the first instance be submitted for valuation and development opportunity advice, prior to submission to the Authority for any land use decision. The seeking of this advice is the responsibility of the Managing Director who will appoint the Head of Asset Strategy and Capital Delivery of the London Borough of Barking and Dagenham to act on the Authority's behalf.

#### **3 Control by Members**

- 3.1 The Audit Commission recommends the appointment of a land management committee, and that no land disposal shall take place except on the recommendation of the committee after due consideration of reports from the Authority's valuer, legal adviser and Finance Director. However, in view of the limited land holdings of the Authority all land management decisions will be dealt with at Authority meetings.
- 3.2 Land is a valuable resource, which by its management or disposal may achieve a variety of corporate objectives. The use of the land must, therefore, be determined corporately.
- 3.3 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 Authority's Capital Programme procedures.

## **4 Employee Responsibilities**

- 4.1 The Managing Director is responsible for seeking professional advice to the Authority on valuation and land matters, and for supplying or procuring valuation services to implement land sales or purchases. These services may include surveying, security, ground investigations, valuation and negotiation. No other officer shall initiate these activities, nor make any contact with another party during active negotiations, in relation to a land transaction.
- 4.2 The Commission for Local Administration advises that where the Authority's Valuer considers that a proposed disposal is not in the best interests of the Authority having regard to the state of the market, the condition of the property and its future potential, the effects of disposal on retained property, or for any other reason, the Valuer should make this clear in a report giving the reasons in full.
- 4.3 The Managing Director is responsible for compliance with statutory requirements in land transactions and for securing the most advantageous price, commensurate with achieving corporate objectives, in any transaction.

## **5 Statutory Responsibilities**

- 5.1 On disposal of land, the Authority may not sell at a consideration less than the best that can reasonably be obtained, except for short leasehold disposals, or with the general or specific Government consent.
- 5.2 The price payable by the Authority on the acquisition of land is not so closely prescribed by statute. However, the Authority 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.
- 5.3 The Managing Director is responsible, on advice from the Authority's appointed legal adviser where appropriate, for ensuring that the Authority'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.
- 5.4 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 by the Managing Director.

# **Part E**

## **Codes of Conduct for Members and Employees**

# MEMBERS' CODE OF CONDUCT

## 1 Introduction

- 1.1 The Local Government Act 2000 imposes a duty on all Councils to adopt a Code of Conduct for their Members. Although Councils may produce their own Code of Conduct, the Code must include the mandatory provisions of the Local Authorities (Model Code of Conduct) (England) Order 2001 (“the Model Code”).
- 1.2 Each of ELWA’s four constituent Councils have adopted the mandatory provisions of the Model Code. Redbridge Council have additionally extended the mandatory provisions to include local provisions. ELWA is not required to adopt a Code of Conduct for its Members as it is not included in the list of authorities required to do so by the Local Government Act 2000. However, the Members of the four constituent Councils who are appointed to serve as Members of ELWA, are bound by their respective Council Codes when acting in their official capacity on ELWA. All councillors are required, on accepting office as a local councillor, to declare that they will be guided by the Code.
- 1.3 Any breach or alleged breach by a Member of the Code of Conduct arising from activities in that Member’s capacity as a Member of ELWA will be referred by the Managing Director to that Member’s constituent borough for action in accordance with its Code of Conduct.
- 1.4 Full copies of each Council’s Members’ Code of Conduct are available from the respective Council. The contact officers are:

Barking & Dagenham                      John Dawe, Group Manager (Democratic Services)  
(tel. 020 8227 2135)

Havering                                      Christine Dooley, Assistant Chief Executive, Legal & Democratic Services  
(tel. 01708 432484)

Newham                                        Barry Ray, Member Services Manager (Cabinet & Statutory)  
(tel. 020 8430 3328)

Redbridge                                      Simon Goodwin, Borough Solicitor and Secretary  
(tel. 020 8708 2201)

# EMPLOYEES' CODE OF CONDUCT

## 1 Introduction

- 1.1 The public is entitled to expect the highest standards of conduct from all employees who work for the East London Waste Authority (ELWA). In recognition of this, and to avoid uncertainty in the matter, ELWA has adopted this Code of Conduct (the Code) which sets out the guidelines to help maintain and improve standards.
- 1.2 Equally, the Code is designed to protect employees from misunderstanding or criticism which may be unjustly levelled at them.
- 1.3 The Code is applicable to all ELWA employees, who share responsibility for its effectiveness. Adherence to its provisions is therefore a condition of employment for all and any breach of the Code may result in action being taken under ELWA's Disciplinary Procedure.

## 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 members, directors and fellow employees with impartiality.
- 2.2 Employees are expected to bring to the attention of the Managing Director, Head of Operations (ELWA) or Human Resources Manager (at the London Borough of Barking and Dagenham) any concerns about the provision of services by the Authority.
- 2.3 Employees must report to the appropriate level of Management (listed in 2.2 above) any impropriety, breach, or suspected breach of this Code.
- 2.4 Any employee who, in good faith, reports an impropriety, breach or suspected breach of the Code, may do so without fear of consequence.
- 2.5 Equally however, employees are reminded that allegations or accusations which are deemed to be malicious will be subject to investigation under ELWA's Disciplinary Procedures.

## 3 Constitution

- 3.1 Employees should abide by the Constitution.

## 4 Health and Safety

- 4.1 Employees have a responsibility to comply with Health and Safety guidelines as outlined in their Contracts of Employment. This applies to both the workplace and on operational 3rd party sites.

## 5 Use of Financial Resources

- 5.1 Employees must ensure that public funds entrusted to them are used in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid any risk of legal challenge to the Authority.

5.2 Employees must abide by Financial Rules and appropriate financial procedures.

## **6 Disclosure of Information**

6.1 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 Authority.

6.2 The law requires that certain types of information must be available to auditors, government departments, service users and the public: employees should seek advice about which information may be disclosed, in which circumstances, and must act accordingly.

6.3 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, except where such disclosure is required or sanctioned by the law.

## **7 Off Duty Hours and Outside Commitments**

7.1 Employees' off duty hours are their personal concern but they must not put themselves in a position where official duty and private interests conflict.

7.2 Private work which might involve any dealings with the Authority must be disclosed and can only be done with the express consent of the Managing Director.

7.3 Employees graded on the Senior Officer level and above must not engage in any other business or take up any other appointment without the express consent of the Managing Director.

7.4 Employees must declare and record any financial interests which could conflict with the Authority's interests.

7.5 Employees must declare to the Managing Director any non-financial interests that they consider could bring about conflict with the Authority's interests, for example involvement with any organisation or pressure group which may seek to influence the Authority's policies; etc.

7.6 Employees must declare to the Managing Director membership of the Freemasons or any other organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.

## **8 Political Neutrality**

8.1 Employees serve the Authority as a whole. Employees who are required to advise political groups must do so in ways which do not compromise their political neutrality.



**8.2** Employees, whether or not politically restricted, must follow every lawful expressed policy **of the Authority and must not allow their own personal or political opinions to interfere with their work.**

8.3 Note: The above requirements do not apply to political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989.

## **9 Monitoring Officer**

9.1 Employees must understand and support the role of the Monitoring Officer (see Constitution).

## **10 Chief Finance Officer (Section 151)**

10.1 Employees must understand and support the role of ELWA's Finance Director.

## **11 Relationships**

11.1 Employees must always remember their responsibilities to the local community and service users, and must ensure courteous, efficient and impartial service delivery at all times.

11.2 Employees must disclose all relationships of a business or private nature with external contractors, or potential contractors. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour shown to businesses run by, for example, friends, partners or relatives in the tendering process. Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, must declare that relationship.

11.3 All selections, appointments and promotions throughout ELWA'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.

11.4 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 Equality Issues**

12.1 All members of the local community, customers and other employees have a right to be treated with fairness and equality and all employees must ensure that policies relating to equality issues, as agreed by the Authority, are complied with in addition to the requirements of the law.

12.2 In particular, employees are reminded that discrimination against or harassment of an employee, a prospective employee, a client or member of the public, would come under ELWA's Disciplinary Procedure.

## **13 Supervision of Contracts**

- 13.1 Employees involved in the tendering process and dealing with contractors must be clear on the separation of client and contractor roles. They must also exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 13.2 Employees who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information to any unauthorised party or organisation.
- 13.3 Employees must ensure that no special favour is shown to current or recent former employees or their partners, friends, relatives or associates, in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **14 Confidentiality**

- 14.1 Employees should adhere to any confidentiality clause in their contracts of employment and also in the IWMS contract between ELWA and ELWA Ltd. An extract of this is attached at Annex A.

## **15 Corruption**

- 15.1 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.

## **16 Gifts and Hospitality**

- 16.1 Employees must treat with extreme caution any offer or gift, favour or hospitality that is made to them personally, as the organisation or person making the offer may be doing or seeking to do business with the Authority, or may be applying to the Authority for planning permission or some other kind of decision.
- 16.2 Employees must not accept significant personal gifts from contractors and outside suppliers, but may keep insignificant items of token value such as pens, diaries etc.
- 16.3 Employees must complete the hospitality book if accepting gifts from contractors and outside suppliers.
- 16.4 Offers of hospitality should only be accepted if there is a genuine need to impart information or represent the Authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the Authority should be seen to be represented, and must always be properly authorised and recorded.
- 16.5 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the Authority gives consent in advance and where the Authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees

should ensure that authorities meet the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

- 16.6 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the Authority may be taking affecting those providing the hospitality.
- 16.7 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the authority.
- 16.8 Note: Where there is any doubt about the significance of gifts or hospitality, or about the intentions of contractors and outside suppliers who make such offers, these should always be refused and the matter discussed with the appropriate level of management.
- 16.9 Guidance notes on Gifts and Hospitality are attached at Annex B.

## **17 Travel and subsistence expenses**

- 17.1 If employees attend relevant conferences or events they should claim reasonable costs for accommodation, travel, food and refreshments in accordance with financial rules and guidelines. An extract from LBBB guidelines are attached at Annex C.

## **18 Sponsorship - Giving and Receiving**

- 18.1 Where an outside organisation wishes to sponsor or is seeking to sponsor an ELWA 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. Any sponsorship of significance should be cleared with the Managing Director.
- 18.2 Proposals concerning sponsorship by the Authority should be considered by the Managing Director.

## **19 IT Equipment**

- 19.1 Employees should follow guidelines for acceptable use of IT equipment.

## **20 Registration of Interests**

- 20.1 In line with the Code, employees have a duty to disclose any interest, financial or otherwise, which may conflict with those of the Authority.
- 20.2 These interests will be recorded in ELWA's Register of Employees' Interests, which is confidential and not open to members of the public.

## **21 Whistle – Blowing**

- 21.1 ELWA will take seriously any complaint or concern raised by employees, the public and/or clients. In keeping with the Code, serious or sensitive concerns about wrongdoings as described in Annex D may be raised by adhering to ELWA's policy on Whistle-Blowing.

Annexes		
A	Confidentiality	
B	Gifts and Hospitality Guidance notes	
C1	Expenses	
C2	Expenses – Car users	
D	Whistle blowing	
Other documents		
	Document	Location of Hard copy
A	Employment policies	Contract of employment
B	Employment policies – other	Administration Office
C	Constitution and Financial Rules	Administration Office
D	Register of Interest (gifts / hospitality	Administration Office
E	Equality and Diversity	Contract of employment

## EXTRACT FROM IWMS CONTRACT (13.02.03)

### 65 Information and Confidentiality

65.1 Subject to the Authority's statutory responsibilities and Clause 44 (Information to be Submitted to Third Parties) the Parties shall keep confidential all matters relating to this Contract and Project Documents and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Contract.

65.2 This Clause 65 shall not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under the Contract;
- (b) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause;
- (c) any disclosure (but then only on a need to know basis to the extent reasonably necessary to allow an informed determination to be made) to enable a determination to be made pursuant to the DRP;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- (e) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- (f) any disclosure of information to the Funders or the Funders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor or the Funders (including those institutions involved in syndication) to that person or their advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to:
  - (i) any proposed Incoming Contractor, its advisers and lenders, should the Authority decide to re-tender the Contract;
  - (ii) any person in connection with Clause 29 (Best Value); or
  - (iii) any registration or recording of the Consents and property registration required;
- (h) any disclosure of information by the Authority to any other department, office or agency of the Government;

- (i) any disclosure by the Authority of any document or part thereof related to the Contract to which it is a party and which the Contractor (acting reasonably) has agreed with the Authority contains no Commercially Sensitive Information; and
- (j) any disclosure for the purpose of:
  - (i) the examination and certification of the Authority's or the Contractor's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

65.3 Where disclosure is permitted under this Clause 65 (other than pursuant to Clause 65.2 above) the recipient of the information shall be placed under a binding obligation of confidentiality the same (*mutatis mutandis*) as that contained in this Contract.

65.4 For the purposes of the Audit Commission Act 1998, the Contractor acknowledges and agrees and shall procure that each Sub-contractor acknowledges and agrees that the Authority's auditors may examine such documents as such auditors are permitted by law to demand without consent in the exercise of and in compliance with their statutory powers which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under the Audit Commission Act 1998 and all relevant Legislation thereto in relation to the Contractor is not a function exercisable under this Contract.

65.5 The provisions and obligations set out in this Clause 65 shall survive and remain in force upon and following the termination of this Contract for a period of five (5) years.

65.6 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the prior written consent of the Authority which it may withhold at its absolute discretion.

65.7 Where the Contractor, in carrying out its obligations under this Contract, is provided with information from or by a third party, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that third party, and has obtained the prior written consent of the Authority.

65.8 On or before the Expiry Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to Staff and users of the Waste Management Facilities including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority, and the Authority shall be entitled to make such reasonable checks and enquiries as are necessary to ensure that all records have been so delivered up.

# GIFTS & HOSPITALITY GUIDANCE

## 1 Introduction

- 1.1 It is not uncommon for suppliers to offer "thank you" gifts to staff by way of a gift or hospitality. As public employees we have to be very careful about how we respond to such offers, while, of course, not wanting to be discourteous.
- 1.2 The Authority's rule is that where gifts are offered to staff in their Authority role they should not be accepted if they have anything more than a token value (for example, bottles of wine, boxes of chocolates, flowers, pens, calendars, diaries, etc.) Money of any value must never be accepted.
- 1.3 More significant gifts should be refused where practicable to do so and where refusal would not offend. Where this is not possible the gift may be kept provided the value is considered to be worth less than £25, but a record must be entered in the gifts and hospitality register kept within each department.
- 1.4 Any gifts considered to be worth over £25 must be reported, in writing, to the Managing Director or Monitoring Officer, with a recommendation for their disposal in a manner which is not to the sole advantage of the person who received the gift. Again details must be recorded in the gifts and hospitality register.
- 1.5 Similarly, care must be taken with any hospitality which may be offered, particularly from customers or contractors. You should always consider the following tests of reasonableness:
  - the scale and type of hospitality should not bring into question the motive of the person or organisation offering it. If there is any doubt at all about the motive, or if the hospitality could be viewed as intending to influence judgement, the hospitality must not be accepted;
  - the proposed hospitality should be limited to those who have a relevant interest;
  - the hospitality should be directly linked to Authority business and/or the well being of the community.
- 1.6 Tickets for major sporting events or the opera/ballet and so on are examples of hospitality which should never be accepted as this kind of activity has no relevance to Authority business. Meals are slightly different in that Authority business could be conducted during a meal, but be extremely careful if this type of offer comes your way as this could easily be perceived as a company or individual seeking to influence a situation or obtain preferential treatment.
- 1.7 Like gifts, any hospitality accepted must be recorded in the appropriate register.
- 1.8 Whilst this article is sent with the coming festive season in mind, please note that these rules apply all year round.
- 1.9 Regular monitoring of the register does take place. Also please note that these rules are in line with the Employees' Code of Conduct and the Authority's Conferences, Visits and Hospitality Rules. Anyone found to be in breach of these could be subject to action under the disciplinary procedures.

# HUMAN RESOURCES

## Payment Matters – Guidance - March 2009

### 1 Staff Expenses

- 1.1 If employees incur additional expense in the course of their work, in respect of travel, meals or overnight accommodation should be reimbursed. You must provide appropriate evidence of this expenditure in order to receive full reimbursement. If receipts are not produced a claim can be made through the member of staff's salary, however the amount will be subject to National Insurance deductions.

### 2 Travel Expenses

- 2.1 If you required to travel to a place other than their normal place of work in the course of work (including undertaking training activities), they are entitled to receive reimbursement for any additional costs. If you are in receipt of a car allowance and choose to use your car for this journey that will be reimbursed using that system (also see Car Users) If you do not receive this allowance or choose not to use your car, the cost of second class public transport should be reimbursed to you for the journey. As mentioned above, tickets should always be retained.

### 3 Subsistence Allowance

- 3.1 If you are required to work (including undertaking training activities) in a place other than your normal place of work, which is outside of the Borough, you are entitled to receive a subsistence allowance. Receipts for subsistence should always be retained, there are however maximum levels of allowance as detailed below:

- Breakfast - £4.92
- Lunch - £6.77
- Afternoon Tea - £2.67
- Evening meal - £8.35

- 3.2 Managers will need to assess what allowances you should receive in accordance with the times that you are required to be at the different, out of Borough, place.

### 4 Overnight Accommodation

- 4.1 If you are required to make overnight stays in the course of you work (including undertaking training activities), you will be reimbursed out of pocket expenses, including travelling expenses, the cost of the overnight accommodation and subsistence allowances (as detailed above if not included in the overall cost of accommodation). These expenses should be approved in advance. As previously you should retain all receipts and tickets.



## **5 Forms and Letters**

- [Travel Expenditure Claim Form](#)
- [Claim Form for Reimbursement of Interview Expenses](#)
- [Travelling Expenses and / or Subsistence Allowance Claim Form](#)

## **6 Car Users**

6.1 Some employees will be required to use their car to assist in the efficient performance of their duties, if this is the case they will be entitled to receive an allowance for using their car. The Human Resource Manager can authorise the attachment of a car allowance to a post where appropriate. There are two types of allowance, the details of which are as follows:

### **7 Essential Car User Allowance**

- Essential car users are those whose duties are of such a nature that it is essential for them to have a car at their disposal whenever required.
- Essential car users receive a monthly lump sum allowance and a payment for the miles they undertake in the course of performing their duties.
- The lump sum and payment per mile varies according to the engine capacity of the car, and is changed in accordance with the National pay increases.
- The lump sum is payable in full to all essential users regardless of their hours of work. This is a non-taxable element of pay and will be reported on your P11D.
- Where a car is not in use as a result of a mechanical defect or the absence of the employee through illness or maternity leave (providing the employee has stated their intention to return to work) the monthly lump sum should remain being paid in full for the month the car stopped being used, and for the following 3 months. For the next 3 months, if the car remains to be unused, payments should be made at 50% of the monthly lump sum payment.
- Essential car users should submit a claim form for the mileage undertaken every month, even if they do not undertake any mileage they must still submit the form in order to activate the monthly lump sum.
- Mileage can only be claimed from the employee's place of work to the required destination.
- Employees must ensure that their car insurance has been arranged to provide cover for journeys undertaken in the course of performing their duties.

### **8 Casual Car User Allowance**

- Casual car users are those for whom it is desirable that a car should be available when required.
- Casual car users receive a payment for the miles they undertake in the course of performing their duties.

- The payment per mile varies according to the engine capacity of the car, and is changed in accordance with the National pay increases.
- Casual car users should only claim for their mileage when they have made relevant journeys, if this is regularly, claims should be made on a monthly basis.
- Mileage can only be claimed from the employee's place of work to the required destination.

8.1 The Payroll section is currently in the process of reviewing several Payroll procedures, with particular attention to the way Car Mileage Claims are processed.

8.2 **With effect from the 1st July 2007**, the Payroll Department will be implementing a time limit on the date of claim submission in relation to the mileage having been undertaken of **3 calendar months**. This will mean that any mileage undertaken more than 3 months **prior to the date of the claim will not be included in the payment** of the claim.

8.3 The Head of Strategic Finance and Audit has further advised that Managers should be aware that when they authorise car mileage, they are confident that as, with any other payment, they have assurance that they are authorising a claim that is properly due and payable - that the claims accurately reflect journeys undertaken and that the employee is entitled to the payment. This assurance might be obtained by sample checking of mileage claimed, knowledge of the employees' movements and evidence that she/he is entitled to either essential or casual car allowance evidenced by the appropriate documents. Car mileage, as with any other council payment, will be subject to review by internal audit. But it is manager's responsibility to ensure that they are properly authorising claims.

## 9 Where is further advice available from?

- [Car Allowance Rates and NI Dispensation](#)
- [The Payroll Service](#)

# ANTI FRAUD AND CORRUPTION STRATEGY

## Whistleblowing Procedure

### **1 Information for Employees and People who have dealings with the Authority**

1.1 The purpose of this procedure is to enable you to raise your concerns with the Authority in confidence without any fear of reprisal. We can learn a lot from what you tell us. Your information is important to us and we are looking to ensure that the highest standards of conduct and services are maintained. We therefore ask that you do not take your concerns outside the Authority other than as stated at the end of this leaflet. All outside enquiries about any investigation relating to your concern must be referred to the Finance Director. When raising your concern you must declare any personal interest you have in the matter.

1.2 This procedure will help employees to:

- Discuss in confidence with a Senior Officer, any concerns you may have regarding a serious malpractice in the Authority
- Seek reassurance that any proven malpractice will be stopped
- Be safe in the knowledge that you will not be victimised

### **2 What is Whistleblowing?**

2.1 All of us at one time or another have concerns about what is happening at work or within a particular organisation. Usually these concerns are easily resolved. However, when they are about serious malpractice like financial irregularities, dangerous working conditions, discrimination or fraud, it can be difficult to know what to do.

2.2 You may be worried about raising such issues or may want to keep concerns to yourself, perhaps feeling that it is none of your business or that it is only a suspicion. You may feel that raising your concern would be disloyal to colleagues, managers or the organisation. You may decide to say something but find that you have spoken to the wrong person or raised the issue in the wrong way.

2.3 The Authority has therefore a procedure to enable you to raise your concerns about serious malpractice at an early stage. We want you to say something when it is a concern rather than wait for proof.

2.4 It is impossible to give an exhaustive list of the activities that constitute misconduct or malpractice but, broadly speaking, we would expect you to report the following:

- Criminal offences
- Failure to comply with legal obligations or miscarriages of justice
- Actions which endanger the health or safety of staff or the public
- Actions which cause damage to the environment

- Actions which are intended to conceal any of the above

*If in doubt – raise it!*

- 2.5 This procedure is a central part of the Authority's programme to improve the delivery of services to the public, and it provides us with an opportunity to address a potentially serious problem before it is too late. We will do everything possible to protect your confidentiality if required.
- 2.6 This procedure should not be confused with the Authority's Complaints Procedure which should be used where a customer has a specific complaint about the quality of service delivery, or the Grievance Procedure which should be used when an employee is aggrieved about their own employment situation.

### **3 As An Employee, How Do I Raise My Concerns?**

- 3.1 Where you have a concern, we hope you will be able to raise it with your manager within the Authority or with the relevant Waste Manager, Chief Finance Officers, Chief Auditors or Chief Personnel Officers in your employing Constituent Council (Switchboard contact numbers are shown below). This may be done verbally or in writing.
- 3.2 If you feel unable to follow that route, because they are in some way involved, your concern may be discussed in confidence with, or addressed to, either of the following ELWA Chief Officers. Both are based in Lynton House, Ilford.

Alan Perry is the Chief Auditor of both the London Borough of Redbridge and ELWA:

Tel: 0800 633 5267 (24 hr answerphone)

e-mail: alan.perry@redbridge.gov.uk

Geoff Pearce is the Finance Director of both the London Borough of Redbridge and ELWA:

Tel: 020 8708 3588

Email: geoff.pearce@redbridge.gov.uk

### **4 As A Member Of The Public, How Do I Raise My Concerns?**

- 4.1 Where you have a concern, we hope that you will be able to raise it at the relevant ELWA location. This may be done verbally or in writing. If you feel unable to do that because they are in some way involved, your concern may be discussed in confidence with, or addressed to, either of the following Chief Officers.

Alan Perry is the Chief Auditor of the London Borough of Redbridge and ELWA:

Tel: 0800 633 5267 (24 hr answerphone)

e-mail: alan.perry@redbridge.gov.uk

Geoff Pearce is the Finance Director of both the London Borough of Redbridge and ELWA:

Tel: 020 8708 3588

Email: geoff.pearce@redbridge.gov.uk

## **5 Whistleblowing Procedures**

- 5.1 Separate to this (ELWA) Whistleblowing procedure, our Constituent Councils and our Contractor have their own Whistleblowing procedures. Copies of these can be obtained as follows:

London Borough of Barking and Dagenham Tel: 020 8592 4500

[www.lbbd.gov.uk](http://www.lbbd.gov.uk)

London Borough of Havering Tel: 01708 434343

[www.havering.gov.uk](http://www.havering.gov.uk)

London Borough of Newham Tel: 020 8430 2000

[www.newham.gov.uk](http://www.newham.gov.uk)

London Borough of Redbridge Tel: 020 8554 5000

[www.redbridge.gov.uk](http://www.redbridge.gov.uk)

Main Contractors - Shanks East London Tel: 01708 634540

[www.shanks.co.uk/eastlondon](http://www.shanks.co.uk/eastlondon)

## **6 What Happens Next?**

- 6.1 Having alerted to us your concern, it is our responsibility to investigate the issue. The initial stage will be to discuss the issue with you, and then assess what further action may be taken. If you want feedback on the action we have taken we will contact you in due course, however if you wish to remain anonymous you can telephone us at a later date.
- 6.2 Where the issue cannot be resolved quickly i.e. it requires more detailed consideration either because of the complexity of the concern or the possibility of other proceedings, an investigation will be carried out under the direction of the Managing Director, Finance Director or the Chief Auditor for ELWA.

## **7 What Assurances Can Be Given To You?**

- 7.1 All concerns raised under this procedure, regardless of their nature, will be treated seriously and sensitively by highly trained and experienced officers. Where practicable immediate steps will be taken to remedy the situation. However, the final outcome may take longer depending upon the issue that is raised.
- 7.2 We shall make every effort to keep your identity confidential if you wish this to be the case. If this is not possible, for example if you are required to give evidence/a formal statement, e.g. a court case or disciplinary hearing, you will be told and we will discuss this with you.

*The earlier and more open the expression of a concern, the easier it will be for senior management to take action.*

- 7.3 The Authority will not tolerate harassment or victimisation of anyone raising a concern under the procedure of good faith, regardless of whether or not it proves well-founded. If anyone tries to discourage you from coming forward to express a concern, we will treat this as a disciplinary offence. In the same way, we will deal

severely with anyone who criticises or victimises you after a concern has been expressed. The Public Interest Disclosures Act became law in 1999 and gives a worker the right not to be victimised or dismissed because he/she has made a protected disclosure.

- 7.4 The Authority will monitor the effectiveness of the procedure and carry out an annual review.

## **8 What Can I Do To Help?**

- 8.1 The purpose of this procedure is to enable you to raise your concerns with the Authority in confidence without any fear of reprisal. We can learn a lot from what you tell us. Your information is important to us and we are looking to ensure that the highest standards of conduct and services are maintained. We therefore ask that you do not take your concerns outside the Authority other than as stated at the end of this document. All outside enquiries about any investigation relating to your concern must be referred to the Chief Auditor or Finance Director. When raising your concern you must declare any personal interest you have in the matter.

## **9 What Happens If An Unfounded Malicious Concern is Raised?**

- 9.1 Individuals are encouraged to come forward in good faith with genuine concerns in the knowledge that they will be taken seriously. If individuals raise malicious unfounded concerns, attempt to make mischief, or attempt to make a personal gain, this will also be taken seriously and may constitute a disciplinary offence or require some other form of penalty appropriate to the circumstances.

## **10 What Happens After the Concern Has Been Investigated?**

- 10.1 You will be informed, where requested and subject to legal constraints, of the outcome of the action taken to resolve your concern.
- 10.2 Where action is not taken you will be given an explanation.
- 10.3 There will be an expectation on the managers of ELWA to minimise the risk of re-occurrence wherever possible.

## **11 If I Am Unhappy With The Way In Which The Issue Has Been Investigated?**

- 11.1 If you are not satisfied with the outcome of an investigation, we would prefer that you raised this with us, explaining why this is the case. Your concern will be looked at again if there is good reason to do so.
- 11.2 The Authority would prefer that a serious concern is raised responsibly rather than not at all. Despite our assurances, you may feel that it is more appropriate to raise your concern with an external organisation, such as a regulator. It is, of course, open for you to do so provided you have sufficient evidence to support your concern.
- 11.3 We strongly advise that before reporting your concern externally, you seek advice from one of the following:

- 11.4 As an employee: Public Concern at Work, a registered charity which advises on serious malpractice within the work place, can be contacted on 020 7404 6609.
- 11.5 As an employee: Your trade union.
- 11.6 As a member of the public or an employee: The Audit Commission, 'prescribed persons' under the Public Interest Disclosure Act, have set up an Anti-fraud and Corruption Unit which can be contacted on 020 7630 1019.

*While we cannot guarantee that we will respond to your concern in the way you might wish, we will try to handle the matter fairly and properly. By using this procedure, you will help us to achieve this.*

-oOo-

## **APPENDIX**

### **Other Relevant Documents**

This is Document 3 of the Anti Fraud and Corruption Strategy. Other documents within the Anti Fraud and Corruption Strategy are:

Document 1: Statement and Principles (Reference PN.01)

Document 2: Guidance for Staff (Reference GN.01)

Document 3: This document (Reference PN.02)

Document 4: Whistleblowing Procedure – Information for Managers (Reference GN.02)

Document 5: Fraud Response Plan (Reference PN.03)

Document 6: Extracts from the Integrated Waste Management Contract  
(Reference GN.03)

Document 7: Copies of the Policy of Shanks Waste Management (Reference GN.04)



# **Part F**

## **Members' Allowances Scheme**

## **MEMBERS' ALLOWANCES SCHEME**

### **1 Members' Allowances Scheme**

- 1.1 Under the Local Authorities (Members' Allowances) Regulations 1991, ELWA is classified as a "secondary authority" and, as such, is not allowed to pay basic, special responsibility or attendance allowances to Members of the Authority. These allowances may be paid however by Councils that appoints representatives to "secondary authorities".
- 1.2 Each of ELWA's four constituent Councils has implemented a Members' Allowances Scheme (or similar). Under these schemes, Councillors that are appointed as Members of the Authority may receive a Special Responsibility Allowance for their role on the Authority but such a decision is entirely at the discretion of the respective Council. Any payments made under these arrangements cannot be reclaimed from the Authority.
- 1.3 Sections 174 and 175 of the Local Government Act 1972 do allow the Authority to pay travelling and subsistence allowances and attendance allowances for conferences and 'outside' meetings in connection with approved duties. For administrative purposes however, Members are required to submit any such claims through their respective Councils, in accordance with the Members' Allowances Scheme for their Council. Payments made by the Councils in this respect can be reclaimed from the Authority.

**Part G**  
**Authority Officers**  
**and**  
**The Management Structure**

# THE MANAGEMENT STRUCTURE

## 1 Terminology

The use of the word 'employees' means all staff engaged by or on behalf of the Authority to carry out its functions. As well as those employed on a long term, full-time basis this also includes those engaged under short term, agency or similar arrangements.

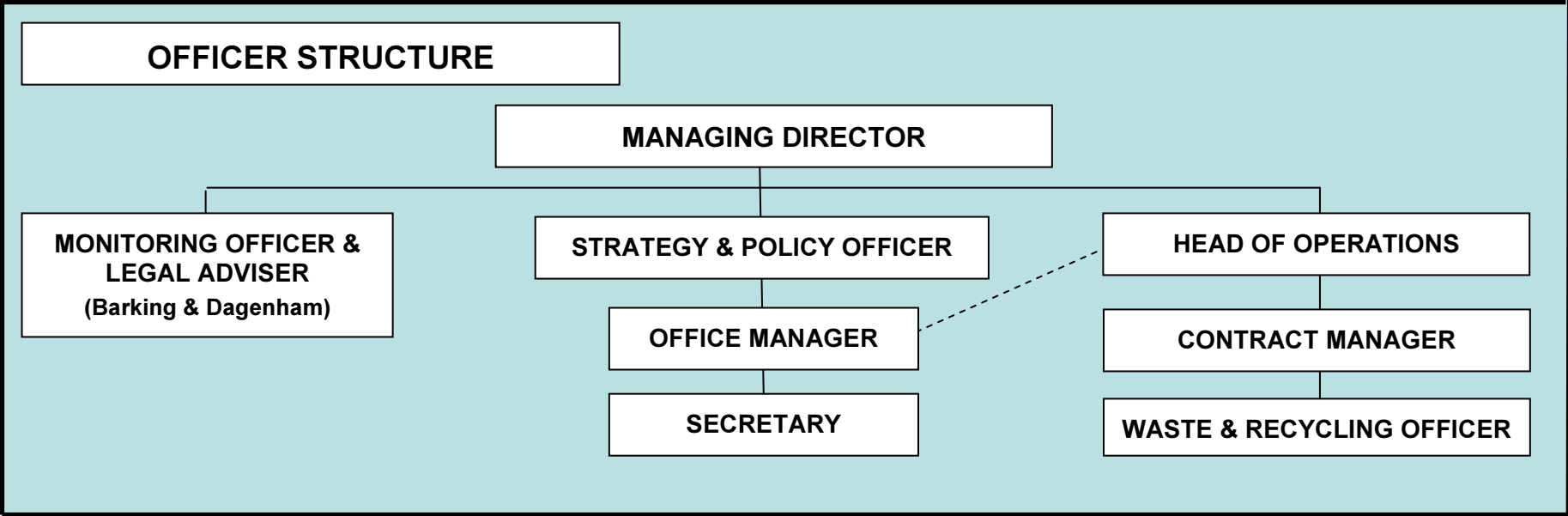
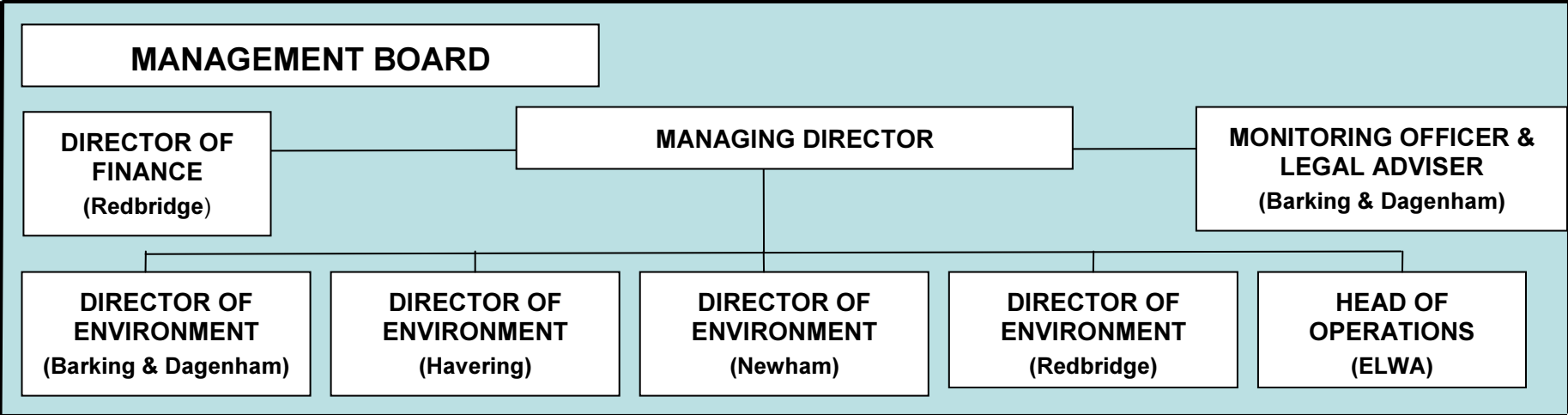
### 1.1 Introduction

- (a) The Authority's 'Officers' are responsible for the various functions and services that the Authority either delivers or arranges delivery of.
- (b) The Authority's Managing Director has overall responsibility for the management of the organisation. The Managing Director has the lead executive role in the management, administration and delivery of the Authority's services as well as providing strategic direction to the Authority, in conjunction with the ELWA Management Board and is also responsible for managing the relationship with the Authority's integrated waste management service contractor, Shanks.east london (the trading name of ELWA Limited).

# ORGANISATION CHART (wef 2010/11)



**MEMBERS**  
(2 from each constituent Council)



## 2 Management Structure

### 2.1 Senior Officers

The Authority shall have the following Officers:

Post	Main Areas of Responsibility
Managing Director (and Head of Paid Service)	Overall corporate management, legal, technical (including waste policy), and operational (including personnel support) responsibility within the Authority
Finance Director (and Chief Financial Officer)	Financial and audit responsibility
Head of Operations	Day-to-day operational responsibility (including IWMS Contract management)

### 2.2 Statutory Officers

- (a) Head of Paid Service (Managing Director)
- (b) The Managing Director shall be the Authority's Head of Paid Service. The Head of Paid Service is a statutory position with a specific responsibility for:
  - (i) determining and publicising a description of the overall structure of the Authority which shows the management structure and the deployment of employees; and
  - (ii) reporting to the Authority on the manner in which the discharge of the Authority's functions is co-ordinated, the number and grade of employees required for the discharge of functions, and the organisation of employees.
- (c) The Managing Director shall have the duties, powers, responsibilities and perform the functions as described in the Scheme of Delegation in Part C of this Constitution and in the job description for the position.

### 2.3 The Monitoring Officer

- (a) The Authority has appointed its Legal Adviser as Monitoring Officer. The Monitoring Officer is also a statutory position. The duties and responsibilities of the Monitoring Officer shall be those required by law and those set out in Part H of this Constitution and include the following:
  - (i) Maintaining the Constitution - The Monitoring Officer has to maintain an up to date version of the Constitution and ensure that it is widely available for consultation by Members, employees and the public.
  - (ii) Ensuring lawfulness and fairness of decision making - After consulting with the Head of Paid Service and Chief Financial Officer (assuming it is reasonably practical and appropriate to do so), the Monitoring Officer must report to the Authority if he/she considers that any proposal, decision or omission is unlawful, or if any decision or omission is maladministration. Such a report will have the effect of

stopping the proposal or decision being implemented until the report has been considered.

- (iii) Register of Interests - The Monitoring Officer is responsible for establishing and maintaining a register of interests of Members of the Authority.
- (iv) Proper Officer for access to information - The Monitoring Officer ensures that Authority decisions, together with the reasons for those decisions and relevant reports and background papers, are made publicly available as soon as possible.
- (v) Providing advice - The Monitoring Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity, budget and policy framework issues.
- (vi) Whistle blowing - The Monitoring Officer is responsible for whistle blowing and investigations into ethical matters in relation to Members having due regard to Codes of Conduct and any other requirements or duties imposed on Members.

## 2.4 The Chief Financial Officer

- (a) The Finance Director shall be the Authority's Chief Financial Officer pursuant to S151 of the Local Government Act 1072. The Chief Financial Officer is also a statutory position with specific responsibility for:
  - (i) Ensuring lawfulness and financial prudence of decision making - After consulting with the Head of Paid Service and the Monitoring Officer (assuming it is reasonably practical and appropriate to do so), the Chief Financial Officer must report to the Authority and the Authority's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Authority is about to enter an item of account unlawfully.
  - (ii) The administration of financial affairs - The Chief Financial Officer is responsible for the administration of the financial affairs of the Authority.
  - (iii) Contributing to corporate management - The Chief Financial Officer contributes to the corporate management of the Authority, in particular through the provision of professional financial advice.
  - (iv) Providing advice - The Chief Financial Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity, budget and policy framework issues to all Members, and supports and advises Members and employees in their respective roles.
  - (v) Giving financial information - The Chief Financial Officer provides financial information to the media, members of the public and the community as and when necessary.

# **Part H**

## **Review, Revision, Suspension, Interpretation and Publication**



# **REVIEW, REVISION, SUSPENSION, INTERPRETATION AND PUBLICATION**

## **1 Monitoring and Reviewing the Constitution**

- 1.1 The Authority's Monitoring Officer is responsible for monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect.
- (a) 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 Authority on ways in which it could be amended in order to achieve its purpose. In order to do this, the Monitoring Officer may:
- (i) undertake an audit trail of a sample of decisions;
  - (ii) record and analyse issues raised with him/her by Members, employees, the public and other relevant stakeholders;
  - (iii) compare practices in the authority with those in other comparable authorities, or national examples of best practice.

## **2 Changes**

- 2.1 Significant changes to the Constitution will only be approved by the Authority after consideration of the proposal by the Monitoring Officer.
- 2.2 Subject to any minor administrative amendments or changes required by new legislation, for which the Managing Director has delegated authority to implement, the Constitution will be reconsidered after the first year of its introduction and then every year to see if any changes are required in the light of experience.

## **3 Suspension**

- 3.1 Limit to suspension - The Articles of this Constitution may not be suspended except by the Authority in exceptional circumstances and if lawful to do so.
- 3.2 Procedure to suspend - A motion to suspend any part of the Constitution may not be moved without notice.

## **4 Interpretation**

- 4.1 Any reference to a statute, statutory instrument, regulation or directive shall be deemed to automatically include a reference to any subsequent amendment, modification or re-enactment in respect of them.
- 4.2 The ruling of the Chairman of the Authority as to the construction or application of this Constitution or as to any proceedings of the Authority shall not be challenged at any meeting of the Authority. Such interpretation will have regard to the purposes of this Constitution and to the law.

## **5 Publication**

- 5.1 The Monitoring Officer is responsible for:

- (a) giving a printed copy of this Constitution to each Member of the Authority on their appointment; and
- (b) ensuring that copies are available for inspection at the Authority's offices and other appropriate locations, including the Authority's web-site ([www.eastlondonwaste.gov.uk](http://www.eastlondonwaste.gov.uk)). Copies can be purchased by members of the local press and the public on payment of a reasonable fee.