

# PART 4 RULES OF PROCEDURE

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# COUNCIL PROCEDURE RULES (Standing Orders relating to the Council)

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## 1. ANNUAL MEETING OF THE COUNCIL

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### 1.1 Timing and Business

In a year when there is an ordinary election of Councillors, the annual meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the annual meeting will take place in March, April or May, but normally in May. In either case, the date will be fixed by the Council.

The annual meeting will:

- i) elect a person to preside if the Mayor or Deputy Mayor are not present;
- ii) elect the Chair of Council (Mayor);
- iii) elect the Vice-Chair of Council (Deputy Mayor);
- iv) approve the Minutes of the last meeting;
- v) receive any announcements from the Chair (Mayor) and/or Head of Paid Service
- vi) elect the Leader and Deputy Leader
- vii) appoint a Cabinet, at least one Overview and Scrutiny Committee, a Standards Committee and such other Committees as the Council considers appropriate;
- viii) adopt the Constitution, including terms of reference of the Cabinet and the Officer Delegation Scheme
- ix) Approve a programme of ordinary meetings of the Council for the year; and
- x) consider any business set out in the notice convening the meeting;

### 1.2 Selection of Councillors on the Cabinet, Committees and Outside Bodies

At the annual meeting, the Council will consider a report by the Head of Paid Service on the annual appointment of Committees in respect of:

- i) the Cabinet and other Committees for the Municipal Year;
- ii) the size of the Cabinet and committees;
- iii) the allocation of seats to political groups in accordance with the political balance rules;

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- iv) the appointment of Councillors to Outside bodies except where appointment to those bodies has been delegated by the Council;
- v) the appointment of Chairs and Vice Chairs to the Committees.

## 2. ORDINARY MEETINGS

Ordinary meetings of the Council will take place in accordance with a programme of meetings decided by the Council. The agenda for Ordinary meetings will take the following form:

- i) apologies and notification of substitutes;
- ii) approve the Minutes of the previous meeting(s);
- iii) receive any declarations of interest from Members;
- iv) receive any announcements or communications from the Mayor, Leader or the Head of Paid Service;
- v) Public Question Time in accordance with the Council's procedure etc;
- vi) deal with any outstanding business from the last Council;
- vii) to receive reports, and recommendations of the Cabinet and Committees;
- viii) deal with public questions;
- ix) consider Members questions and Members notices of motion if any; and
- x) consider any other business specified in the summons to the meeting;
- xi) to consider reports from Members of Outside Bodies to report back to Council.

## 3. EXTRAORDINARY MEETINGS

### 3.1. Calling Extraordinary Meetings of the Council

Those listed below may require the Chief Executive to call extraordinary meetings of the Council.

- i) the Council by resolution;
- ii) the Mayor;

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- iii) the Chief Executive, the Monitoring Officer and/or the Chief Finance Officer; and
- iv) any five Members of the Council if they have signed a requisition presented to the Mayor and he or she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.
- v) An Overview and Scrutiny Committee arising from consideration of a call-in.

### 3.2 **Business**

No business other than that specified in the summons to the meeting may be considered at an extraordinary meeting.

## 4. **VACANCIES ON COMMITTEES**

### 4.1 **Vacancies on the Cabinet and Committees**

- i) In the event of a vacancy occurring on the Cabinet or any Committee or Sub-Committee during the municipal year it shall be filled by the appointment of that Member from the political group to which the vacant seat is allocated as is notified in writing to the Chief Executive by the Leader of the Political Group so as to give effect to the wishes of the Political Group.

## 5. **DATE, TIME AND PLACE OF MEETINGS**

The Council will approve a programme for annual and ordinary meetings of the Council for each year to be held at Hardmans Mill, Rawtenstall at 7.00pm unless otherwise specified in the summons.

## 6. **NOTICE OF AND SUMMONS TO MEETINGS**

The Head of Paid Service will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear working days before a meeting, the Head of Paid Service will send a summons signed on his or her behalf to every Member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

## 7. **QUORUM**

The quorum of a meeting of the Council will be one quarter of the whole number of Members; during any meeting if the Chair counts the number of elected Members of the authority present and declares there is not a quorum present, then the meeting will adjourn immediately.

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Remaining business will be considered at a time and date fixed by the Chair. If he or she does not fix a date, the remaining business will be considered at the next ordinary meeting.

## 8. DURATION OF MEETING

### 8.1 Interruption of the Meeting

If the business of a meeting of the Council has not been concluded within three hours of the start of the meeting, excluding the period taken up by the Public Question Time, the Mayor must interrupt the meeting and any Member speaking must immediately sit down. The Mayor will call for a vote on whether the meeting should continue, and if it is agreed to discontinue the meeting, the Council must consider whether the outstanding business should stand adjourned to the next Council meeting or whether an extraordinary Council meeting should be called to dispose of that business.

## 9. QUESTIONS BY THE PUBLIC AT COUNCIL

### 9.1 General

Members of the public can speak and ask questions in accordance with the Council's Procedure for Public Speaking at Council. Public Question time will be limited to 30 minutes per meeting.

### 9.2 Notice of Questions for Council

No notice of a question need be given but it will help the Council prepare an answer to your question if you do submit it in writing.

### 9.3 Order of Questions

For Council questions will be asked and answered in the order in which they are received by the Head of Paid Service.

### 9.4 Number of Questions

At any one meeting a questioner may usually only ask one question, which shall be of a length considered reasonable by the Mayor/Chair and should be no longer than three minutes. A supplementary question may be asked at the discretion of the Mayor/Chair.

### 9.5 Scope of Questions

The Mayor after consultation with the Head of Paid Service and/or the Monitoring Officer, may reject a question if it:

- i) is not about a matter for which the Local Authority has a responsibility or which affects the Borough

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

#### 9.6 Record of Questions

The Head of Paid Service will enter each written question received in a book open to public inspection and will immediately send a copy of the question to the Leader and/or the appropriate Committee Chair. Rejected questions will include reasons for rejection.

#### 9.7 Asking the Question at the Meeting

The Mayor will invite the questioner to read the written question. If a questioner who has submitted a written question is unable to be present a written reply will be given.

#### 9.8 Answers to Questions

The Leader of the Council will determine which Cabinet Member will answer a particular question.

#### 9.9 Written Answers

Any question which cannot be dealt with during Public Question Time will be dealt with by a written answer.

### 10 QUESTIONS BY MEMBERS

10.1 Subject to Council Procedure Rule 10.2, a Member of the Council may put a written question to:

The Leader

A Member of the Cabinet

The Chairman of any Committee or Sub-Committee

The Member of the Council appointed to a Joint Authority and nominated as Spokesperson for the Joint Authority.

The Member of the Council appointed as the Council's representative on an Outside Body.

The Question must be on any matter for which the Council has a responsibility or which affects the Borough.

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A Member must give at least three clear days notice of the question to the Head of Democratic Services before the date of the meeting to enable the question to be included in the Council Agenda.

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The Mayor shall determine the relevance and the number of Questions to be put.

## 10.2 Answers

10.2.1 An answer to a Question (Council Procedure Rule 10.1) or to a Supplementary Question (Council Procedure Rule 10.3) may take the form of:

(a) A direct oral answer, or

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(b) Where the information is in a publication of the Council or other published work, a reference to that publication or other work, or

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(c) Where the reply cannot conveniently be given orally, a written answer Circulated no later than three working days after the Council meeting to the Question or Supplementary Question.

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10.2.2 The Mayor shall determine which Member shall answer a particular Question.

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10.2.3 The person to whom a Question is put may decline to answer.

10.2.4 Every Question shall be put and answered without discussion

10.2.5 Only Questions, not statements, are permitted.

## 10.3 Supplementary Questions

10.3.1 A Member putting a Question under Council Procedure Rule 10.1 may, put one Supplementary Question to the Member to whom the first Question was put. The Supplementary Question must arise directly out of the original Question or the answer.

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10.4 Questions by Members shall not without the consent of the Mayor exceed a total period of thirty minutes.

## 11 NOTICES OF MOTION AT COUNCIL

### 11.1 Notice

Except for motions which can be moved without notice under rule 13, written notice of every motion, signed by at least 2 Members, must be delivered to the Head of Paid Service at least eight clear days before the

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date of the meeting. These will be entered in a book open to public inspection.

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#### 11.2 **Motion Set Out in Agenda**

Motions or a topic for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Member giving notices states, in writing, that they propose to move it to a later meeting or withdraw it.

#### 11.3 **Scope**

Motions must be about matters for which the Council has a responsibility or which affect the Borough.

### **PREVIOUS DECISION AND MOTIONS**

#### 11.4 **Motion to Rescind a Previous Decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least 12 Members or unless it is a recommendation contained in the Minutes of a Committee and the Summons to attend the meeting of that Committee contained notice that the matter was to be considered.

11.5 A Committee or Sub-Committee of the Council acting under delegated powers may rescind a resolution adopted under delegated powers within a period of six months provided the Summons to attend the meeting of the Committee or Sub-Committee contains a notice that the matter is to be reconsidered.

#### 11.6 **Motion Similar to One Previously Rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 12 Members. Once the motion or amendment is dealt with, no-one can propose a similar motion or amendment for six months.

### 12. **MOTIONS WITHOUT NOTICE AT FULL COUNCIL**

The following motions may be moved without notice:-

- a) to appoint a chair of the meeting at which the motion is moved;
- b) in relation to the accuracy of the Minutes;
- c) to change the order of business in the agenda;

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- d) to refer a matter to the Cabinet or a Council Committee or an appropriate body or individual;
- e) to receive reports or adoption of recommendations of the Cabinet, Committees or officers and any resolutions following from them
- f) to withdraw a motion;
- g) to amend a motion;
- h) to proceed to the next business;
- i) that the question be now put;
- j) to adjourn a debate;
- k) to adjourn a meeting;
- l) 10:00 to adjourn the meeting or resolve to continue the meeting in accordance with Article 8.1;
- m) to suspend a particular Council Procedure rule;
- n) to exclude the public and press in accordance with the Access to Information Rules;
- o) not to hear further a Member named under Rule 20.1 or to exclude him or her from the meeting under Rule 20.2.4;
- p) to give the consent of the Council where its consent is required by this Constitution;
- q) to extend the time limits for speeches;
- r) to request a recorded vote.

### 13 RULES OF DEBATE AT COUNCIL

#### 13.1 General Rules of Debate

1. Each Member, on speaking, shall rise from his seat and address himself to the Mayor or Chairman and not to any other Member of the Council, and the Members shall speak to each other during the transaction of business by the respective titles of 'Mayor' or 'Councillor' as the case may be.
2. During the time when a Member is speaking no other Member shall rise or interrupt such Member's speech, unless he rises for the purpose of taking the ruling of the Mayor or Chairman on a point of order, or to seek permission to make a personal explanation as hereinafter provided.

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3. Whenever the Mayor or Chairman rises to speak or give a ruling or to call a Member to order, no other Member shall continue standing, nor shall any other Member rise until the Chair is resumed.
4. If two or more Members rise at the same time to speak the Mayor or Chairman shall determine to whom belongs the priority of speaking.
5. Any Member shall be entitled to take the ruling of the Mayor or Chairman on a point of order at any time during the meeting.
6. No Member shall speak except upon the question before the Council unless it be to make a personal explanation by permission of the Mayor or Chairman and any Member permitted to make such an explanation must confine his observations strictly to the personal question.
7. If a Member rises for the purpose of taking the ruling of the Mayor or Chairman on a point of order, or to seek permission to make a personal explanation, the Member speaking at the time shall resume his seat, and the Member so rising shall resume his seat immediately on the Mayor or Chairman rising to give his ruling on the point of order or as to admissibility of the proposed personal explanation.
8. The ruling of the Mayor on a point of order, or as to the admissibility of a proposed personal explanation, shall be final and not open to discussion.
9. The Mayor shall decide all questions of order or procedure not provided for by these Procedure Rules.

### 13.2. **Content and Length of Speeches**

Speeches must be directed to the question under discussion or to a personal explanation or to a point of order. No speech shall exceed ten minutes except by consent of the Council. The Council may consent to an extension of a speech by a further period not exceeding five minutes and only one such extension will be allowed.

The Mayor will have overall control of the content and number of speeches and will decide when a matter has been discussed enough for the debate to be closed and a vote taken.

### 13.3 **When a Member May Speak Again**

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

- a) on a point of order; and

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- b) by way of personal explanation;
- c) to reply to a question put during a debate

**13.4 Amendments to Motions**

- a) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- b) If an amendment is not carried, other amendments to the original motion may be moved.
- c) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- d) After an amendment has been carried, if required the Mayor/Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

**13.5 Alteration of Motion**

- a) A Member may alter a motion of which he/she has given notice with the consent of the meeting. The meetings consent will be signified without discussion.
- b) A Member may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- c) Only alterations which could be made as an amendment may be made.

**13.6 Withdrawal of Motion**

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

**13.7 Motions Which May be Moved During Debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- a) to withdraw a motion
- b) to amend a motion

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c) to proceed to the next business

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d) that the question be now put

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e) to adjourn a debate

f) to adjourn a meeting

g) after three hours of the start of the meeting, to approve the remaining business before the Council in accordance with the process set out in Rule 8.1.

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

i) not to hear further a Member named under Rule 20.1 or to exclude him or her from the meeting under Rule 20.2.

### 13.8

#### Closure Motions

a) A Member may move the following motions at the end of a speech of another member:

i) to proceed to the next business;

ii) that the question be now put;

iii) to adjourn a debate; or

iv) to adjourn a meeting;

The mover and seconder of the motion shall not comment and there shall be no discussion on such motion.

b) If a motion to proceed to the next business is seconded and the Mayor is of the opinion that the item has been sufficiently discussed, he/she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

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

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

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### 13.9 Point of Order

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

### 13.10 Personal Explanation

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

## 14 DEBATING MOTIONS

### 14.1 Motion Moved

1. The mover of the motion may and if he/she so desires must reserve their right of reply.
2. No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### 14.2 Right to Require Motion in Writing

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

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### 14.3 Motion Seconded

1. When seconding a motion or amendment, a Member may and if he/she so desires must reserve their speech until later in the debate. Any Member who reserves his/her speech may not speak at the time of seconding the motion.

### 14.4 Debate

Members will proceed to debate the motion in accordance with the general rules of debate.

### 14.5 Voting on Motion

At the conclusion of the debate the Mayor will ask if there are any amendments to the motion. If there are none the Mayor will then call for a

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vote on the motion. If there are amendments they will be dealt with as set out in paragraph 15.

## **15 Procedure for Amendments**

15.1 Once a Member has moved an amendment another Member must second the Amendment or the amendment will fail.

15.2 The mover of the amendment will have a right of reply at the conclusion of the debate of the amendment.

15.3 Members will proceed to debate the amendment in accordance with the general rules of debate.

15.4 At the conclusion of the debate the Mover will reply

15.5 The Mayor will then call for a vote on the amendment. If the amendment is lost the Mayor will ask if there are any other amendments and this procedure will repeat as above until all amendments have been dealt with.

15.6 If the amendment is carried the amendment then becomes the substantive motion and the Mayor will ask if there are any amendments to that.

## **16 VOTING**

### **16.1 Majority**

Any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

### **16.2 Chair's Casting Vote**

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

### **16.3 Show of Hands**

Unless a ballot or recorded vote is demanded under Rules 16.4 and 16.5, the Mayor will take the vote by Members by a show of hands or if there is no dissent, by the affirmation of the meeting.

### **16.4 Ballots**

The vote will take place by ballot if a majority of those Members voting and present at the meeting demand it. The Mayor will announce the numerical result of the ballot immediately the result is known.

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## 16.5 Recorded Vote

If 3 Members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the Minutes. A demand for a recorded vote will override a demand for a ballot.

## 16.6 Right to Require Individual Vote to be Recorded

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the Minutes to show whether they voted for or against the motion or abstained from voting.

## 16.7 Voting on Appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

## 17 MINUTES

### 17.1 Signing the Minutes

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

### 17.2 No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting

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

### 17.3 Form of Minutes

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

## 18 RECORD OF ATTENDANCE

The Head of Paid Service will record the names of all Members present during the whole or part of a meeting.

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## 19 EXCLUSION OF PUBLIC

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Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this constitution or Rule 22 (Disturbance by Public)

## 20 MEMBERS' CONDUCT

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### 20.1 Member Not to be Heard Further

If a Member persistently disregards the ruling of the Mayor by behaving improperly or offensively or deliberately obstructs business, the Mayor may move that the Member be not heard further. If seconded, the motion will be voted on without discussion.

### 20.2 Member to Leave the Meeting

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

### 20.3 General Disturbance

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

## 21 DISTURBANCE BY PUBLIC

### 21.1 Removal of Member of the Public

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

### 21.2 Clearance of Part of Meeting Room

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

## 22 SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

### 22.1 Suspension

All of these Council Rules of Procedure except Rules 16.5 and 17.2 may be suspended by motion on notice or without notice if at least one half of the whole number of Members of the Council are present. Suspension can only be for the duration of the meeting or for the particular item under discussion.

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## 22.2 **Amendment**

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

## 23 **ATTENDANCE AT MEETINGS**

If a Member fails to attend a meeting within six months the Chief Executive will report on the matter to the Council.

## 24 **STATE OF THE BOROUGH DEBATE**

### 24.1 **Calling of Debate**

The Leader will call a state of the Borough debate annually on a date and in a form to be agreed with the Mayor.

### 24.2 **Form of Debate**

The Leader will decide the form of the debate with the aim of enabling the widest possible public involvement and publicity.

### 24.3 **Chairing of Debate**

The debate will be chaired by the Mayor.

### 24.4 **Results of Debate**

The results of the debate will be:

- i) disseminated as widely as possible within the community and to agencies and organisations in the area; and
- ii) considered by the Leader in proposing the budget and policy framework to the Council for the coming year.

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Part 4 - 154

## **2. CABINET PROCEDURE RULES**

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### **1. Discharge of Cabinet Functions**

The arrangements for the discharge of Cabinet Functions are set out in Part 3 of this Constitution. The Cabinet may provide for Cabinet Functions to be discharged by:

1. The Cabinet as a whole.
2. An Officer.
3. Another Local Authority or joint arrangements.
4. A Portfolio holder
5. A Committee of the Cabinet

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### **2. Frequency of Meetings**

The Cabinet will meet at least eight times a year at times to be agreed by the Leader. The Cabinet shall meet at the Council's main offices or another location to be agreed by the Leader.

### **3. Meetings of the Cabinet**

Any part of a Cabinet meeting where a Key Decision is to be taken must be open to the public unless confidential or exempt information is to be discussed.

### **4. Quorum**

The quorum for a meeting of the Cabinet shall be 3 Members of the Cabinet.

### **5. How Decisions are taken by the Cabinet**

- a) Decisions will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution unless the urgency procedure applies.

### **6. Conduct of Cabinet Meetings**

If the Leader is present he/she will preside. In his or her absence the Deputy Leader will preside and if he/she is absent as well, the person appointed to do so by those present shall preside.

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### **7. Substitutes**

There will be no substitutes on the Cabinet.

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## 8. Attendance at Meetings

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Councillors who are not members of the Cabinet and members of the public, may attend meetings of the Cabinet and committees of the Cabinet. This right is subject to the rules which exclude access when confidential or exempt information is being discussed. These are set out in the Access to Information Procedures. Chief Officers and statutory officers are entitled to attend.

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## 9. Order of Business

Inserted: Cabinet meetings. Councillors who are not members of the Cabinet

At each meeting of the Cabinet the following business will be conducted:

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1. Apologies and Declarations of Interest.
2. Consideration of the Minutes of the last meeting.
3. Matters referred to the Cabinet (whether by Overview and Scrutiny Committees or by the Council).
4. Consideration of reports from Overview and Scrutiny Committees.
5. Matters set out in the Agenda for the meeting. The agenda will indicate which matters are key decisions and which are not.

Inserted: , and members of the public, may attend meetings of the Cabinet and committees of the Cabinet. This right is subject to the rules which exclude access when confidential or exempt information is being discussed. These are set out in the Access to Information Procedures. Chief Officers and statutory officers are entitled to attend.¶

## 10. Consultation

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All reports to the Cabinet of proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation with stakeholders and relevant Overview and Scrutiny Committees, and the outcome of that consultation.

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Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

## 11. Agenda Formation

1. Subject to 2-5 below the Leader will decide upon the Agenda for the meetings for the Cabinet. He or she may put on the Agenda of any Cabinet meeting any matter which he or she wishes. The Head of Paid Service will comply with the Leader's requests in this respect.
2. Any Member of the Cabinet may require the Head of Paid Service to make sure that an item is placed on the Agenda of the next available meeting of the Cabinet for consideration. If he or she receives such a request the Head of Paid Service will comply.
3. The Head of Paid Service will make sure the item is placed on the Agenda of the next available meeting of the Cabinet where a relevant Overview and Scrutiny Committee or a Full Council have resolved that an item be considered by the Cabinet. However, there may only be up to four such items on any one Agenda. Once this number has been reached any further items will be deferred to the next meeting of the Cabinet.

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4. Any Councillor may ask the Leader to put an item on the Agenda of a Cabinet Meeting for consideration, and if the Leader agrees the item will be considered at the next available meeting of the Cabinet. The notice of the meeting will name Councillor who asked for the item to be considered. This Councillor will be required to attend the meeting and if this Councillor does not attend the meeting it will be at the discretion of the Cabinet as to whether or not to consider the matter. However, there may only be up to two such items per Cabinet meeting and once this number has been reached any further items will be deferred to the next meeting of the Cabinet. If the Leader does not agree with the request for the item to be included on the Agenda of a Cabinet Meeting, he or she will write to the Member concerned giving a reason for the refusal.
5. The Monitoring Officer and/or the Chief Financial Officer may include an item for consideration on an Agenda of a Cabinet meeting and may require the Head of paid Service to call such a meeting in pursuance of their statutory duties. In other circumstances, where any two of the Head of Paid Service, Chief Financial Officer and Monitoring Officer are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision, they may jointly include an item on the Agenda of an Cabinet Meeting, if there is no meeting of the Cabinet soon enough to deal with the issue in question, then the persons entitled to include an item on the Agenda may also require that a meeting be convened at which the matter will be considered.

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- Inserted: councillors who are not members of the Cabinet, and members of the public, who are present at a meeting may address the Cabinet or a committee of the Cabinet on any agenda item. The Leader may limit the time for speaking, or may withdraw the permission to speak in order to bring the speech to a close.
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- Deleted: , Deputy Chief Executive
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## 12. Public Involvement

Councillors who are not members of the Cabinet, and members of the public, who are present at a meeting may address the Cabinet or a committee of the Cabinet on any agenda item. The Leader may limit the time for speaking, or may withdraw the permission to speak in order to bring the speech to a close.

## 13. Urgency Procedure

Urgent Cabinet decisions which cannot be delayed until the next meeting of the Cabinet may be taken by the Chief Executive or Director after consultation with the following:

- a) Leader  
Deputy Leader  
Relevant Portfolio Holder (if any) plus one of the following:  
Chief Executive or ~~in the absence of the Chief Executive if the Chief Executive is a decision taker~~  
Monitoring Officer in the absence of the Chief Executive
- b) In the absence of the Leader, Deputy Leader or Portfolio Holder (if any) the consent of another Cabinet Member will be required.

- c) The urgent decision, the reason for it and the reason for the use of the urgency procedure must be reported to the next meeting of the Council.

**14. Application of Council Procedure Rules**

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The following Council Procedure Rules apply to the meetings of the Cabinet:

1. Duration of meeting
2. Notice of and summons to meetings
3. Members conduct
4. Public Question Time
5. Disturbance by the public
6. Voting
7. Previous decisions and motions
8. Procedure for amendments
9. Minutes
10. Record of attendance

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### **3. Committee Procedure Rules**

#### **1. Substitutes on Committees**

1.1 That in the event of a Member of a Political Group on the Council being unable to attend a particular meeting of the Committee/Sub-Committee/Working Party to which he or she has been appointed by the Council, such member may nominate a Member from his or her Political Group to whom the seat has been allocated to act as his or her substitute subject to the following:-

- a) the appointment of a substitute to be for the duration of the particular meeting with full voting rights.
- b) where the Member nominating a substitute is the Chair/Vice-Chair the substitute shall not be entitled to act in this capacity.

Unless appointed so to act by the Committee/Sub-Committee/ Working Party.

- c) the nominated substitute to declare his appointment verbally at the commencement of the meeting under an Agenda item "Apologies and Notification of Substitutes" stating the name of the Member for whom he/she is acting as substitute.
- d) for the avoidance of doubt and since the appointment of a substitute is for the duration of a particular meeting it be not permitted under any circumstances for the substitute to be changed or for a Member to replace their nominated substitute once the nominated substitute has declared his/her appointment at the commencement of the meeting in accordance with (c) above.
- e) the appointment of a substitute Member to be recorded in the Minutes in the list of Members present at the meeting.
- f) In the case of the Appointment and Appeals Committee, Development Control Committee and the Licensing Committee, if a Member wishes a substitute to attend a meeting in his or her place, the Member shall inform the Monitoring Officer or his or her representative before the start of the meeting that he or she is unable to attend and a substitute will attend in his or her place.

g) Substitutes shall not be permitted on the Standards Committee.

#### **2 Urgent Meetings of a Committee**

2.1 An urgent meeting of a Committee can be called at the discretion of the Chair or Vice Chair of the Committee. Wherever possible dates and times of meetings will not be changed, and only with the agreement of the Chair and a

Member of the Opposition. Failure to serve notice of a meeting will not invalidate a meeting.

### **3 Quorum**

- 3.1 The quorum of a meeting of a Committee will be three elected Members of the authority; and the quorum of a meeting of a Sub-Committee will be two Members.

### **4 Duration of Meeting**

- 4.1 Unless the majority of members present vote for the meeting to continue, any meeting which has not concluded its business by 9.30pm will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

### **5 Notice of Questions for Committees**

Notice of a question need not be given for committees although the Council would encourage this.

### **6 Order of Questions**

Written questions will be given priority and the Chair will then determine the order of any other questions raised.

### **7 Right to Address Committees and Sub Committees**

Members of the public are allowed to address Committees and Sub Committees. This will normally be after a report has been made and before the debate begins. Normally a member of the public will only be allowed to speak once.

### **8 Regulatory Committees**

Separate procedures exist for questions and speaking at Development Control Committee and Licensing Committee. (These are under review)

### **9 Minutes and Proceedings of Committees**

The Chair will move that the Minutes be accepted and this will be seconded. Questions and observations will follow. After the conclusion of observations on the Minutes of a particular Committee any Member shall have the right to move an amendment to the motion for confirmation of those Minutes but only to the extent that such amendments relate to the accuracy of those minutes.

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10 Application of Council Procedure Rules

The following Council Procedure Rules apply to meetings of Committees:

1. Notice of and summons to meetings
2. Members conduct
3. Public Question Time
4. Disturbance by the public
5. Voting
6. Previous decisions and motions
7. Procedure for amendments
8. Minutes
9. Record of attendance

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# FINANCIAL PROCEDURE RULES

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## CONTENTS

- Financial Management Standards
- Performance Plans
- Risk Management
- General
- Partnerships

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## FINANCIAL MANAGEMENT STANDARDS

### Why is this important?

- 1.01 All staff and members have a duty to abide by the highest standards of probity in dealing with financial issues. This is facilitated by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met.

### Key Controls

- 1.02 The key controls and control objectives for financial management standards are:
- (a) their promotion throughout the authority
  - (b) a monitoring system to review compliance with financial standards, and regular comparisons of performance indicators and benchmark standards that are reported to full council.

### Responsibilities of the Head of Financial Services

- 1.03 To ensure the proper administration of the financial affairs of the authority.
- 1.04 To set the financial management standards and to monitor compliance with them.
- 1.05 To ensure proper professional practices are adhered to and to act as head of profession in relation to the standards, performance and development of finance staff throughout the authority.
- 1.06 To advise on the key strategic controls necessary to secure sound financial management.
- 1.07 To ensure that financial information is available to enable accurate and timely monitoring and reporting of comparisons of national and local financial performance indicators.

### Responsibilities of Directors and Heads of Service

- 1.08 To promote the financial management standards set by the Head of Financial Services in their departments and to monitor adherence to the standards and practices, liaising as necessary with the Head of Financial Services.
- 1.09 To promote sound financial practices in relation to the standards, performance and development of staff in their departments.

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## MANAGING EXPENDITURE

Scheme of virement

### Why is this important?

1.10 The scheme of virement is intended to enable Directors and Heads of Service and their staff to manage budgets with a degree of flexibility within the overall policy framework determined by the full council, and therefore to optimise the use of resources.

### Key Controls

1.11 Key controls for the scheme of virement are:

- (a) it is administered by the Head of Financial Services within guidelines set by the full council. Any variation from this scheme requires the approval of the full council
- (b) the overall budget is agreed and approved by the Full Council. Directors and Head of Service and Service Managers are therefore authorised to incur expenditure in accordance with the estimates that make up the budget. The rules below cover virement; that is, switching resources between approved estimates or heads of expenditure. For the purposes of this scheme, a budget head is considered to be a line in the approved estimates report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA's Service Expenditure Analysis
- (c) virement does not create additional overall budget liability. Directors and Heads of Service are expected to exercise their discretion in managing their budgets responsibly and prudently. For example, they should aim to avoid supporting recurring expenditure from one-off sources of savings or additional income, or creating future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Directors and Heads of Service must plan to fund such commitments from within their own budgets.
- (d) virement or any budgeted expenditure does not allow Directors and Heads of Service to evade corporate priorities and policies. For example and inter alia no IT equipment (either hardware or software) may be purchased by Directors and Heads of Service without the prior approval of the Head of Financial Services. This ensures compatibility with the authority's IT systems and controls any ongoing service cost implications.

### Responsibilities of the Head of Financial Services

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1.12 To prepare jointly with the Directors and Heads of Service a report to Council where virements in excess of £30k are proposed.

### Responsibilities of Directors and Heads of Service

1.13 Directors and Heads of Service may exercise virement on budgets under his or her control for amounts up to £30k on any one budget head during the year, following notification to the Head of Financial Services and in consultation with the appropriate Council member under arrangements agreed by the Full Council, provided there is no material negative effect on service delivery and subject to the conditions in paragraphs 1.15 to 1.17 below.

1.14 Amounts greater than £30k require the approval of The Cabinet, following a joint report by the Head of Financial Services and the Directors and Heads of Service, which must specify the proposed expenditure and the source of funding, and must explain the implications in the current and future financial year. Amounts greater than £50k require the approval of the Full Council.

1.15 The prior approval of the Council is required for any virement, of whatever amount, where it is proposed to:

- vire between budgets of different accountable Council Committees
- vire between budgets managed by different Directors and Heads of Service.

1.16 Virement that is likely to impact on the level of service activity of Directors and Heads of Service should be implemented only after agreement with the relevant Directors and Heads of Service.

1.17 No virement relating to a specific financial year should be made after 31 March in that year.

1.18 Virement should where applicable follow any existing Scheme of Delegation.

1.19 Where an approved budget is a lump-sum budget or contingency intended for allocation during the year, its allocation will not be treated as a virement, provided that:

- (a) the amount is used in accordance with the purposes for which it has been established
- (b) the Council has approved the basis and the terms, including financial limits, on which it will be allocated. Individual allocations in excess of the financial limits should be reported to Council.

### Treatment of Year-End Balances

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## Why is this important?

- 1.20 The authority's scheme of virement sets out the authority's treatment of year-end balances. It is administered by the Head of Financial Services within guidelines set by the Full Council. Any variation from the scheme of virement (as set out above) requires the approval of the Full Council.
- 1.21 The rules below cover arrangements for the transfer of resources between accounting years, ie a carry-forward. For the purposes of this scheme, a budget heading is a line in the estimates report, or, as a minimum, at an equivalent level to the standard service subdivision as defined by CIPFA in its Service Expenditure Analysis.

## Key Controls

- 1.22 Appropriate accounting procedures are in operation to ensure that carried-forward totals are correct.

## Responsibilities of the Head of Financial Services

- 1.23 To administer the scheme of carry-forward within the guidelines approved by the Full Council.
- 1.24 To report all overspendings and underspendings on service estimates carried forward to the Full Council.

## Responsibilities of the Directors and Heads of Service

- 1.25 Any overspending on service estimates in total on budgets under the control of the Directors and Heads of Service must be carried forward to the following year, and will constitute the first call on service estimates in the following year. The Head of Financial Services will report the extent of overspendings carried forward to the Council and to the Full Council.
- 1.26 50% of Net underspendings on service estimates under the control of the Directors and Heads of Service may be carried forward, subject to the agreement of the Head of Financial Services and reporting to the Council the source of underspending or additional income and the proposed application of those resources.

- ~~1.27 All internal business unit surpluses shall be retained for the benefit of the authority and their application shall require the approval of Council.~~

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## ACCOUNTING POLICIES

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## Why is this important?

- 1.28 The Head of Financial Services is responsible for the preparation of the authority's statement of accounts, in accordance with proper practices as set out in the format required by the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC), for each financial year ending 31 March.

## Key Controls

- 1.29 The key controls for accounting policies are:
- (a) systems of internal control are in place that ensure that financial transactions are lawful
  - (b) suitable accounting policies are selected and applied consistently
  - (c) proper accounting records are maintained
  - (d) financial statements are prepared which present fairly the financial position of the authority and its expenditure and income.

## Responsibilities of the Head of Financial Services

- 1.30 To select suitable accounting policies and to ensure that they are applied consistently. The accounting policies are set out in the statement of accounts, which is prepared at 31 March each year, and covers such items as:
- (a) separate accounts for capital and revenue transactions
  - (b) the basis on which debtors and creditors at year end are included in the accounts
  - (c) details on substantial provisions and reserves
  - (d) fixed assets
  - (e) depreciation
  - (f) capital charges
  - (g) work in progress
  - (h) stocks and stores
  - (i) deferred charges
  - (j) accounting for value added tax
  - (k) government grants
  - (l) leasing
  - (m) pensions.

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## Responsibilities of Directors and Heads of Service

- 1.31 To adhere to the accounting policies and guidelines approved by the Head of Financial Services.

## ACCOUNTING RECORDS AND RETURNS

### Why is this important?

- 1.32 Maintaining proper accounting records is one of the ways in which the authority discharges its responsibility for stewardship of public resources. The authority has a statutory responsibility to prepare its annual accounts to present fairly its operations during the year. These are subject to external audit. This audit provides assurance that the accounts are prepared properly, that proper accounting practices have been followed and that quality arrangements have been made for securing economy, efficiency and effectiveness in the use of the authority's resources.

### Key Controls

- 1.33 The key controls for accounting records and returns are:
- (a) all members, finance staff, Directors and Heads of Service operate within the required accounting standards and timetables
  - (b) all the authority's transactions, material commitments and contracts and other essential accounting information are recorded completely, accurately and on a timely basis
  - (c) procedures are in place to enable accounting records to be reconstituted in the event of systems failure
  - (d) reconciliation procedures are carried out to ensure transactions are correctly recorded
  - (e) prime documents are retained in accordance with legislative and other requirements.

## Responsibilities of the Head of Financial Services

- 1.34 To determine the accounting procedures and records for the authority. Where these are maintained outside the finance department, the Head of Financial Services should consult the Directors and Heads of Service concerned.
- 1.35 To arrange for the compilation of all accounts and accounting records under his or her direction.
- 1.36 To comply with the following principles when allocating accounting duties:

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- (a) separating the duties of providing information about sums due to or from the authority and calculating, checking and recording these sums from the duty of collecting or disbursing them
- (b) employees with the duty of examining or checking the accounts of cash transactions must not themselves be engaged in these transactions.

- 1.37 To make proper arrangements for the audit of the authority's accounts in accordance with the Accounts and Audit Regulations 1996.
- 1.38 To ensure that all claims for funds including grants are made by the due date.
- 1.39 To prepare and publish the audited accounts of the authority for each financial year, in accordance with the statutory timetable and with the requirement for the Full Council to approve the statement of accounts before the statutory deadline.
- 1.40 To administer the authority's arrangements for under - and overspendings to be carried forward to the following financial year.
- 1.41 To ensure the proper retention of financial documents in accordance with statutory requirements.

#### **Responsibilities of Directors and Heads of Service**

- 1.42 To consult and obtain the approval of the Head of Financial Services before making any changes to accounting records and procedures.
- 1.43 To comply with the principles outlined in paragraph 1.38 when allocating accounting duties.
- 1.44 To maintain adequate records to provide a management trail leading from the source of income/expenditure through to the accounting statements.
- 1.45 To supply information required to enable the statement of accounts to be completed in accordance with guidelines issued by the Head of Financial Services.

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## THE ANNUAL STATEMENT OF ACCOUNTS

### Why is this important?

- 1.46 The authority has a statutory responsibility to prepare its own accounts to present fairly its operations during the year. The Accounts Committee is responsible for approving the statutory annual statement of accounts.

### Key controls

- 1.47 The key controls for the annual statement of accounts are:
- the authority is required to make arrangements for the proper administration of its financial affairs and to secure that one of its officers has the responsibility for the administration of these affairs. In this authority, that officer is the Head of Financial Services
  - the authority's statement of accounts must be prepared in accordance with proper practices as set out in the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (the SORP) (CIPFA/LASAAC).

### Responsibilities of the Head of Financial Services

- 1.48 To select suitable accounting policies and to apply them consistently.
- 1.49 To make judgements and estimates that are reasonable and prudent.
- 1.50 To comply with CIPFA Best Value Accounting Code of Practice and prepare an annual statement of Internal Financial Controls.
- 1.51 To sign and date the statement of accounts, stating that it presents fairly the financial position of the authority at the accounting date and its income and expenditure for each year ended 31 March.
- 1.52 To draw up the timetable for final accounts preparation and to advise staff and external auditors accordingly.

### Responsibilities of Directors and Heads of Service

- 1.53 To comply with accounting guidance provided by the Head of Financial Services and to supply the Head of Financial Services with information when required.

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## PERFORMANCE PLANS

### Why is this important?

- 2.01 Each local authority has a statutory responsibility to publish various performance plans, including crime reduction strategies, community care plans, etc. The purpose of performance plans is to explain overall priorities and objectives, current performance, and proposals for further improvement.

### Key Controls

- 2.02 The key controls for performance plans are:
- (a) to ensure that all relevant plans are produced and that they are consistent
  - (b) to produce plans in accordance with statutory requirements
  - (c) to meet the timetables set
  - (d) to ensure that all performance information is accurate, complete and up to date
  - (e) to provide improvement targets which are meaningful, realistic and challenging.

### Responsibilities of the Head of Financial Services

- 2.03 To advise and supply the financial information that needs to be included in performance plans in accordance with statutory requirements and agreed timetables.
- 2.04 To contribute to the development of corporate and service targets and objectives and performance information.
- 2.05 To ensure that systems are in place to measure activity and collect accurate information for use as performance indicators.
- 2.06 To ensure that performance information is monitored sufficiently frequently to allow corrective action to be taken if targets are not likely to be met.

### Responsibilities of Directors and Heads of Service

- 2.07 To contribute to the development of performance plans in line with statutory requirements.
- 2.08 To contribute to the development of corporate and service targets and objectives and performance information.

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## BUDGETING

### Format of the budget

#### Why is this important?

- 2.09 The format of the budget determines the level of detail to which financial control and management will be exercised. The format shapes how the rules around virement operate, the operation of cash limits and sets the level at which funds may be reallocated within budgets.

#### Key Controls

- 2.10 The key controls for the budget format are:
- (a) the format complies with all legal requirements
  - (b) the format complies with CIPFA's *Best Value Accounting – Code of Practice*
  - (c) the format reflects the accountabilities of service delivery.

#### Responsibilities of the Head of Financial Services

- 2.11 To advise Members and Directors and Heads of Service on the format of the budget that is approved by the Full Council.

#### Responsibilities of Directors and Heads of Service

- 2.12 To comply with accounting guidance provided by the Head of Financial Services.

#### Revenue budget preparation, monitoring and control

#### Why is this important?

- 2.13 Budget management ensures that once the budget has been approved by the Full Council, resources allocated are used for their intended purposes and are properly accounted for. Budgetary control is a continuous process, enabling the authority to review and adjust its budget targets during the financial year. It also provides the mechanism that calls to account managers responsible for defined elements of the budget.
- 2.14 By continuously identifying and explaining variances against budgetary targets, the authority can identify changes in trends and resource requirements at the earliest opportunity. The authority itself operates within an annual cash limit, approved when setting the overall budget. To ensure that the authority in total does not overspend, each service is required to manage its own expenditure within the cash-limited budget allocated to it.

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- 2.15 For the purposes of budgetary control by service managers, a budget will normally be the planned income and expenditure for a service area or cost centre. However, budgetary control may take place at a more detailed level if this is required by the Directors and Heads of Service scheme of delegation.

### Key Controls

- 2.16 The key controls for managing and controlling the revenue budget are:
- (a) Service Managers should be responsible only for income and expenditure that they can influence
  - (b) there is a nominated budget manager for each cost centre heading
  - (c) Service Managers accept accountability for their budgets and the level of service to be delivered and understand their financial responsibilities
  - (d) service managers follow an approved certification process for all expenditure
  - (e) income and expenditure are properly recorded and accounted for
  - (f) performance levels and levels of service are monitored in conjunction with the budget and necessary action is taken to align service outputs and budget.

### Responsibilities of the Head of Financial Services

- 2.17 To establish an appropriate framework of budgetary management and control that ensures that:
- (a) budget management is exercised within annual cash limits unless the Full Council agrees otherwise
  - (b) each Director and Head of Service has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers to fulfil their budgetary responsibilities
  - (c) expenditure is committed only against an approved budget head
  - (d) all officers responsible for committing expenditure comply with relevant guidance, and the financial regulations
  - (e) each cost centre has a single named manager, determined by the relevant Director or Head of Service. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making processes that commits expenditure

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- (f) significant variances from approved budgets are investigated and reported by budget managers regularly.

- 2.18 To administer the authority's scheme of virement.
- 2.19 To submit reports to the Cabinet and to the Full Council, in consultation with the relevant Director or Head of Service, where a Director or Head of Service is unable to balance expenditure and resources within existing approved budgets under his or her control.
- 2.20 To prepare and submit reports on the authority's projected income and expenditure compared with the budget on a regular basis.

### **Responsibilities of Directors and Heads of Service**

- 2.21 To maintain budgetary control within their departments, in adherence to the principles in 2.17 and to ensure that all income and expenditure are properly recorded and accounted for.
- 2.22 To ensure that an accountable budget manager is identified for each item of income and expenditure under the control of the Director and Heads of Service (grouped together in a series of cost centres). As a general principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure.
- 2.23 To ensure that spending remains within the service's overall cash limit, and that individual budget heads are not overspent, by monitoring the budget and taking appropriate corrective action where significant variations from the approved budget are forecast.
- 2.24 To ensure that a monitoring process is in place to review performance levels and levels of service in conjunction with the budget and is operating effectively.
- 2.25 To prepare and submit to Council Committees, reports on the service's projected expenditure compared with its budget, in consultation with the Head of Financial Services should Members request such a report.
- 2.26 To ensure prior approval by the Full Council for new proposals, of whatever amount, that:
- (a) create financial commitments in future years. *NB - A report on new proposals should explain the full financial implications, following consultation with the Head of Financial Services. Unless the Full Council has agreed Directors and Heads of Service must plan to contain the financial implications of such proposals within their cash limit.*
  - (b) change existing policies, initiate new policies or cease existing policies

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(c) materially extend or reduce the authority's services.

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2.27 To ensure compliance with the scheme of virement.

2.28 To agree with the relevant Director or Head of Service where it appears that a budget proposal, including a virement proposal, may impact materially on another service area or Directors and Heads of Service level of service activity.

## Budgets and Medium-Term Planning

### Why is this important?

2.29 The authority is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the authority's plans and policies.

2.30 The revenue budget must be constructed so as to ensure that resource allocation properly reflects the service plans and priorities of the full council. Budgets (spending plans) are needed so that the authority can plan, authorise, monitor and control the way money is allocated and spent. It is illegal for an authority to budget for a deficit.

2.31 Medium-term planning (or a three- to five-year planning system) involves a planning cycle in which managers develop their own plans. As each year passes, another future year will be added to the medium-term plan. This ensures that the authority is always preparing for events in advance.

### Key Controls

2.32 The key controls for budgets and medium-term planning are:

- (a) specific budget approval for all expenditure
- (b) service managers are consulted in the preparation of the budgets for which they will be held responsible and accept accountability within delegations set by the Council for their budgets and the level of service to be delivered
- (c) a monitoring process is in place to review regularly the effectiveness and operation of budget preparation and to ensure that any corrective action is taken.

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## Responsibilities of the Head of Financial Services

- 2.33 To prepare and submit reports on budget prospects for the Council, including resource constraints set by the Government. Reports should take account of medium-term prospects, where appropriate.
- 2.34 To determine the detailed form of revenue estimates and the methods for their preparation, consistent with the budget approved by the Full Council, and after consultation with the Council and Directors and Heads of Service.
- 2.35 To prepare and submit reports to the Council on the aggregate spending plans of departments and on the resources available to fund them, identifying, where appropriate, the implications for the level of council tax to be levied.
- 2.36 To advise on the medium-term implications of spending decisions
- 2.37 To encourage the best use of resources and value for money by working with Directors and Heads of Service to identify opportunities to improve economy, efficiency and effectiveness, and by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.
- 2.38 To advise the Full Council and Council Committees on proposals in accordance with his or her responsibilities under section 151 of the Local Government Act 1972.

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## Responsibilities of Directors and Heads of Service

- 2.39 To prepare estimates of income and expenditure, in consultation with the Head of Financial Services, to be submitted to Council Committees.
- 2.40 To prepare budgets that are consistent with any relevant cash limits, with the authority's annual budget cycle and with guidelines issued by the Council. The format should be prescribed by the Head of Financial Services in accordance with the Full Council's general directions.
- 2.41 To integrate financial and budget plans into service planning, so that budget plans can be supported by financial and non-financial performance measures.
- 2.42 In consultation with the Head of Financial Services and in accordance with the laid-down guidance and timetable, to prepare detailed draft revenue and capital budgets for consideration by the appropriate committee.
- 2.43 When drawing up draft budget requirements, to have regard to:
- (a) spending patterns and pressures revealed through the budget monitoring process

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- (b) legal requirements
- (c) policy requirements as defined by the Full Council in the approved policy framework
- (d) initiatives already under way.

## Resource Allocation

### Why is this important?

2.44 A mismatch often exists between available resources and required resources. A common scenario is that available resources are not adequate to fulfil need/desire. It is therefore imperative that needs/desires are carefully prioritised and that resources are fairly allocated, in order to fulfil all legal responsibilities. Resources may include staff, money, equipment, goods and materials.

### Key Controls

- 2.45 The key controls for resource allocation are:
- (a) resources are acquired in accordance with the law and using an approved authorisation process
  - (b) resources are used only for the purpose intended, to achieve the approved policies and objectives, and are properly accounted for
  - (c) resources are securely held for use when required
  - (d) resources are used with the minimum level of waste, inefficiency or loss for other reasons.

### Responsibilities of the Head of Financial Services

- 2.46 To advise on methods available for the funding of resources, such as grants from central government and borrowing requirements.
- 2.47 To assist in the allocation of resources to Service Managers.

### Responsibilities of Directors and Heads of Service

- 2.48 To work within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way.
- 2.49 To identify opportunities to minimise or eliminate resource requirements or consumption without having a detrimental effect on service delivery.

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## Capital Programmes

### Why is this important?

- 2.50 Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the authority, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs.
- 2.51 The Government places strict controls on the financing capacity of the authority. This means that capital expenditure should form part of an investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources.
- 2.52 The authority is expected to have in place a Capital Strategy and Asset Management Plan (AMP). The AMP in particular should be review and updated at least annually and be based on a three year rolling programme.

### Key Controls

- 2.52 The key controls for capital programmes are:
- (a) specific approval by the Full Council for the programme of capital expenditure
  - (b) expenditure on capital schemes is subject to the approval of the Head of Financial Services
  - (c) a scheme and estimate, including project plan, progress targets and associated revenue expenditure is prepared for each capital project, for approval by the Council
  - (d) approval by the Full Council where capital schemes are to be financed from the revenue budgets
  - (e) proposals for improvements and alterations to buildings must be approved by the appropriate Director or Head of Service
  - (f) schedules for individual schemes within the overall budget approved by the Full Council must be submitted to the Head of Financial Services for approval (for example, minor works), or under any other arrangements approved by the Full Council
  - (g) the development and implementation of asset management plans
  - (h) accountability for each proposal is accepted by a named manager

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- (i) monitoring of progress in conjunction with expenditure and comparison with approved budget.

### **Responsibilities of Head of Financial Services**

- 2.53 To prepare capital estimates jointly with Directors and Heads of Service and the Executive Management Team and to report them to the Council for approval. Full Council member approval is required where a Director or Head of Service proposes to bid for or exercise additional borrowing approval not anticipated in the capital programme. This is because the extra borrowing may create future commitments to financing costs.
- 2.54 To prepare and submit reports to the Council on the projected income, expenditure and resources compared with the approved estimates.
- 2.55 To issue guidance concerning capital schemes and controls, for example, on project appraisal techniques. The definition of 'capital' will be determined by the Head of Financial Services, having regard to government regulations and accounting requirements.
- 2.56 To obtain authorisation from the Council for individual schemes where the estimated expenditure exceeds the capital programme provision by more than a specified amount.

### **Responsibilities of Directors and Heads of Service**

- 2.57 To comply with guidance concerning capital schemes and controls issued by the Head of Financial Services.
- 2.58 To ensure that all capital proposals have undergone a project appraisal in accordance with guidance issued by the Head of Financial Services.
- 2.59 To prepare regular reports reviewing the capital programme provisions for their services. They should also prepare a quarterly return of estimated final costs of schemes in the approved capital programme for submission to the Head of Financial Services.
- 2.60 To ensure that adequate records are maintained for all capital contracts.
- 2.61 To proceed with projects only when there is adequate provision in the capital programme and with the agreement of the Head of Financial Services, where required.
- 2.62 To prepare and submit reports, jointly with the Head of Financial Services, to the Council, of any variation in contract costs greater than the approved limits. The Council may choose to meet cost increases of up to 5% by virement from savings elsewhere within their capital programme.

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- 2.63 To prepare and submit reports, jointly with the Head of Financial Services, to the Council, on completion of all contracts where the final expenditure exceeds the approved contract sum by more than the specified amount.
- 2.64 To ensure that credit arrangements, such as leasing agreements or any other long term liability arrangements, are not entered into without the prior approval of the Head of Financial Services and, if applicable, approval of the scheme through the capital programme.
- 2.65 To consult with the Head of Financial Services and to seek Council approval where the Director or Head of Service proposes to bid for supplementary credit approvals to be issued by government departments to support expenditure that has not been included in the current year's capital programme.

## **MAINTENANCE OF RESERVES**

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

- 2.66 The local authority must decide the level of general reserves it wishes to maintain before it can decide the level of council tax. Reserves are maintained as a matter of prudence. They enable the authority to provide for unexpected events and there by protect it from overspending, should such events occur. Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items.

### **Key Controls**

- 2.67 To maintain reserves in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC) and agreed accounting policies.
- 2.68 For each reserve established, the purpose, usage and basis of transactions should be clearly identified.
- 2.69 Authorisation and expenditure from reserves by the appropriate Director or Head of Service in consultation with the Head of Financial Services.

### **Responsibilities of the Head of Financial Services**

- 2.70 To advise the Council and/or the Full Council on prudent levels of reserves for the authority, and to take account of the advice of the external auditor in this matter.

### **Responsibilities of Directors and Heads of Service**

- 2.71 To ensure that resources are used only for the purposes for which they were intended.

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## RISK MANAGEMENT

### Why is this important?

- 3.01 All organisations, whether private or public sector, face risks to people, property and continued operations. Risk is the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk. Its objectives are to secure the assets of the organisation and to ensure the continued financial and organisational well-being of the organisation. In essence it is, therefore, an integral part of good business practice. Risk management is concerned with evaluating the measures an organisation already has in place to manage identified risks and then recommending the action the organisation needs to take to control these risks effectively, whether by insurance or other methods.
- 3.02 It is the overall responsibility of the Council to approve the authority's risk management strategy, and to promote a culture of risk management awareness throughout the authority.

### Key Controls

- 3.03 The key controls for risk management are:
- (a) procedures are in place to identify, assess, prevent or contain material known risks, and these procedures are operating effectively throughout the authority
  - (b) a monitoring process is in place to review regularly the effectiveness of risk reduction strategies and the operation of these controls. The risk management process should be conducted on a continuing basis
  - (c) managers know that they are responsible for managing relevant risks and are provided with relevant information on risk management initiatives
  - (d) provision is made for losses that might result from the risks that remain
  - (e) procedures are in place to investigate claims within required timescales
  - (f) acceptable levels of risk are determined and insured against where appropriate
  - (g) the authority has identified business continuity plans for implementation in the event of disaster that results in significant loss or damage to its resources.

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## Responsibilities of the Head of Financial Services

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- 3.04 To prepare and promote the authority's risk management policy statement and strategy.
- 3.05 To develop risk management controls in conjunction with other Directors and Heads of Service.
- 3.06 To include all appropriate employees of the authority in a suitable fidelity guarantee insurance.
- 3.07 To effect corporate insurance cover, through external insurance and internal funding, and to negotiate all claims in consultation with other officers, where necessary.

## Responsibilities of Directors and Heads of Service

- 3.08 To notify the Head of Financial Services immediately of any loss, liability or damage that may lead to a claim against the authority, together with any information or explanation required by the Head of Financial Services or the authority's insurers.
- 3.09 To take responsibility for risk management, having regard to advice from the Head of Financial Services and other specialist officers (eg crime prevention, fire prevention, health and safety).
- 3.10 To ensure that there are regular reviews of risk within their departments and that risk management is seen as a tool in service delivery.
- 3.11 To notify the Head of Financial Services promptly of all new risks, properties or vehicles that require insurance and of any alterations affecting existing insurances.
- 3.12 To consult the Head of Financial Services and the Director of Business and Monitoring Officer on the terms of any indemnity that the authority is requested to give.
- 3.13 To ensure that employees, or anyone covered by the authority's insurances, do not admit liability or make any offer to pay compensation that may prejudice the assessment of liability in respect of any insurance claim

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## INTERNAL CONTROLS

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### Why is this important?

- 3.14 The authority is complex and beyond the direct control of individuals. It therefore requires internal controls to manage and monitor progress towards strategic objectives.
- 3.15 The authority has statutory obligations, and, therefore, requires internal controls to identify, meet and monitor compliance with these obligations.
- 3.16 The authority faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to manage these risks.
- 3.17 The system of internal controls is established in order to provide measurable achievement of:
- (a) efficient and effective operations
  - (b) reliable financial information and reporting
  - (c) compliance with laws and regulations
  - (d) risk management.

### Key controls

- 3.18 The key controls and control objectives for internal control systems are:
- (a) key controls should be reviewed on a regular basis and the authority should make a formal statement annually to the effect that it is satisfied that the systems of internal control are operating effectively
  - (b) managerial control systems, including defining policies, setting objectives and plans, monitoring financial and other performance and taking appropriate anticipatory and remedial action. The key objective of these systems is to promote ownership of the control environment by defining roles and responsibilities
  - (c) financial and operational control systems and procedures, which include physical safeguards for assets, segregation of duties, authorisation and approval procedures and Information systems
  - (d) an effective internal audit function that is properly resourced to ensure the Head of Financial Services (s.151 Officer) is able to perform his statutory duties. It should operate in accordance with the principles contained in the Auditing Practices Board's auditing guideline *Guidance for Internal Auditors*, CIPFA's *Code of Practice for Internal Audit in Local Government in the United Kingdom* and with any other statutory obligations and regulations.

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## Responsibilities of the Head of Financial Services

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- 3.19 To assist the authority to put in place an appropriate control environment and effective internal controls which provide reasonable assurance of effective and efficient operations, financial stewardship, probity and compliance with laws and regulations. In addition, enabling the s.151 officer to make an annual statement in annual accounts as to the effectiveness of the authorities system of internal control.

## Responsibilities of Directors and Heads of Service

- 3.20 To manage processes to check that established controls are being adhered to and to evaluate their effectiveness, in order to be confident in the proper use of resources, achievement of objectives and management of risks.
- 3.21 To review existing controls in the light of changes affecting the authority and to establish and implement new ones in line with guidance from the Head of Financial Services. Directors and Heads of Service should also be responsible for removing controls that are unnecessary or not cost or risk effective – for example, because of duplication.
- 3.22 To ensure staff have a clear understanding of the consequences of lack of control.

## AUDIT REQUIREMENTS

### Internal Audit

#### Why is this important?

- 3.23 The requirement for an internal audit function for local authorities is implied by section 151 of the Local Government Act 1972, which requires that authorities “make arrangements for the proper administration of their financial affairs”. The Accounts and Audit Regulations 1996 (SI 1996/590), regulation 5, more specifically require that a “relevant body shall maintain an adequate and effective system of internal audit of their accounting records and control systems”.
- 3.24 Accordingly, internal audit is an independent and objective appraisal function established by the authority for reviewing the system of internal control. It examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.

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## Key controls

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- 3.25 The key controls for internal audit are:
- (a) that it is independent in its planning and operation
  - (b) the Head of Internal Audit has direct access to the head of paid service, all levels of management and directly to elected members
  - (c) the internal auditors comply with the Auditing Practices Board's guideline *Guidance for Internal Auditors*, as interpreted by CIPFA's *Code of Practice for Internal Audit in Local Government in the United Kingdom*.

## Responsibilities of the Head of Financial Services

- 3.26 To ensure that internal auditors have the authority to:
- (a) access authority premises at reasonable times
  - (b) access all assets, records, documents, correspondence and control systems
  - (c) receive any information and explanation considered necessary concerning any matter under consideration
  - (d) require any employee of the authority to account for cash, stores or any other authority asset under his or her control
  - (e) access records belonging to third parties, such as contractors, when required
  - (f) directly access the head of paid service, the Council and Audit Committee.
- 3.27 To approve the strategic and annual audit plans prepared by the head of internal audit, which take account of the characteristics and relative risks of the activities involved.
- 3.28 To ensure that effective procedures are in place to investigate promptly any fraud or irregularity.

## Responsibilities of Directors and Heads of Service

- 3.29 To ensure that internal auditors are given access at all reasonable times to premises, personnel, documents and assets that the auditors consider necessary for the purposes of their work.
- 3.30 To ensure that auditors are provided with any information and explanations that they seek in the course of their work.

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- 3.31 To consider and respond promptly to recommendations in audit reports.
- 3.32 To ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.
- 3.33 To notify the Head of Financial Services immediately of any suspected fraud, theft, irregularity, improper use or misappropriation of the authority's property or resources. Pending investigation and reporting, the chief officer should take all necessary steps to prevent further loss and to secure records and documentation against removal or alteration.
- 3.34 To ensure that new systems for maintaining financial records, or records of assets, or changes to such systems, are discussed with and agreed by the Head of Internal Audit prior to implementation.

## External Audit

### Why is this important?

- 3.35 The Local Government Finance Act 1982 set up the Audit Commission, which is responsible for appointing external auditors to each local authority in England and Wales. The external auditor has rights of access to all documents and information necessary for audit purposes.
- 3.36 The basic duties of the external auditor are defined in the Audit Commission Act 1998 and the Local Government Act 1999. In particular, section 4 of the 1998 Act requires the Audit Commission to prepare a code of audit practice, which external auditors follow when carrying out their duties. The code of audit practice issued in March 2000 sets out the auditor's objectives to review and report upon:
- (a) the financial aspects of the audited body's corporate governance arrangements
  - (b) the audited body's financial statements
  - (c) aspects of the audited body's arrangements to manage its performance, including the preparation and publication of specified performance information and compliance in respect of the preparation and publication of the BVPP.
- 3.37 The authority's accounts are scrutinised by external auditors, who must be satisfied that the statement of accounts 'presents fairly' the financial position of the authority and its income and expenditure for the year in question and complies with the legal requirements.

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## Key Controls

- 3.38 External auditors are appointed by the Audit Commission normally for a minimum period of five years. The Audit Commission prepares a code of audit practice, which external auditors follow when carrying out their audits.

## Responsibilities of the Head of Financial Services

- 3.39 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets that the external auditors consider necessary for the purposes of their work.
- 3.40 To ensure there is effective liaison between external and Internal Audit.
- 3.41 To work with the external auditor and advise, Council members and Directors and Heads of Service on their responsibilities in relation to external audit.

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## Responsibilities of Directors and Heads of Service

- 3.42 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for the purposes of their work.
- 3.43 To ensure that all records and systems are up to date and available for inspection.

## PREVENTING FRAUD AND CORRUPTION

### Why is it this important?

- 3.44 The authority will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the authority.
- 3.45 The authority's expectation of propriety and accountability is that members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.
- 3.46 The authority also expects that individuals and organisations (eg suppliers, contractors, service providers) with whom it comes into contact will act towards the authority with integrity and without thought or actions involving fraud and corruption.

## Key Controls

- 3.47 The key controls regarding the prevention of financial irregularities are that:

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- (a) the authority has an effective anti-fraud and anti-corruption policy and maintains a culture that will not tolerate fraud or corruption
- (b) all members and staff act with integrity and lead by example
- (c) senior managers are required to deal swiftly and firmly with those who defraud or attempt to defraud the authority or who are corrupt
- (d) high standards of conduct are promoted amongst members by the standards committee
- (e) the maintenance of a register of interests in which any hospitality or gifts accepted must be recorded
- (f) whistle blowing procedures are in place and operate effectively
- (g) legislation including the Public Interest Disclosure Act 1998 is adhered to.

#### **Responsibilities of the Head of Financial Services**

- 3.48 To develop and maintain an anti-fraud and anti-corruption policy.
- 3.49 To maintain adequate and effective internal control arrangements.
- 3.50 To ensure that all suspected irregularities are reported to the Chief Internal Auditor, the Head of Paid Service and the Audit Committee.

#### **Responsibilities of Directors and Heads of Service**

- 3.51 To ensure that all suspected irregularities are reported to the Chief Internal Auditor.
- 3.52 To instigate the authority's disciplinary procedures where the outcome of an audit investigation indicates improper behaviour.
- 3.53 To ensure that where financial impropriety is discovered, the Head of Financial Services is informed, and where sufficient evidence exists to believe that a criminal offence may have been committed, the police are called in to determine with the Crown Prosecution Service whether any prosecution will take place.
- 3.54 To maintain a departmental register of interests.

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## ASSETS

### Security

#### Why is this important?

3.55 The authority holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register is a prerequisite for proper fixed asset accounting and sound asset management.

#### Key Controls

3.56 The key controls for the security of resources such as land, buildings, fixed plant machinery, equipment, software and information are:

- (a) resources are used only for the purposes of the authority and are properly accounted for
- (b) resources are available for use when required
- (c) resources no longer required are disposed of in accordance with the law and the regulations of the authority so as to maximise benefits
- (d) an asset register is maintained for the authority, assets are recorded when they are acquired by the authority and this record is updated as changes occur with respect to the location and condition of the asset
- (e) all staff are aware of their responsibilities with regard to safeguarding the authority's assets and information, including the requirements of the Data Protection Act and software copyright legislation
- (f) all staff are aware of their responsibilities with regard to safeguarding the security of the authority's computer systems, including maintaining restricted access to the information held on them and compliance with the authority's computer and internet security policies.

#### Responsibilities of the Head of Financial Services

3.57 To ensure that an asset register is maintained in accordance with good practice for all fixed assets with a value in excess of £10,000. The function of the asset register is to provide the authority with information about fixed assets so that they are:

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- safeguarded
- used efficiently and effectively
- adequately maintained.

- 3.58 To receive the information required for accounting, costing and financial records from each Director and Head of Service.
- 3.59 To ensure that assets are valued in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC).

### Responsibilities of Directors and Heads of Service

- 3.60 The appropriate Director or Head of Service shall maintain a property database in a form approved by the Head of Financial Services for all properties, plant and machinery and moveable assets currently owned or used by the authority. Any use of property by a department or establishment other than for direct service delivery should be supported by documentation identifying terms, responsibilities and duration of use.
- 3.61 To ensure that lessees and other prospective occupiers of council land are not allowed to take possession or enter the land until a lease or agreement, in a form approved by the Director or Head of Service in consultation with the Head of Financial Services, has been established as appropriate.
- 3.62 To ensure the proper security of all buildings and other assets under their control.
- 3.63 Where land or buildings are surplus to requirements, a recommendation for sale should be the subject of a joint report by the Director or Head of Service and the Head of Financial Services.
- 3.64 To pass title deeds to the appropriate Director or Head of Service who is responsible for custody of all title deeds.
- 3.65 To ensure that no authority asset is subject to personal use by an employee without proper authority.
- 3.66 To ensure the safe custody of vehicles, equipment, furniture, stock, stores and other property belonging to the authority.
- 3.67 To ensure that the department maintains a register of moveable assets in accordance with arrangements defined by the Head of Financial Services.
- 3.68 To ensure that assets are identified, their location recorded and that they are appropriately marked and insured.

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- 3.69 To consult the Head of Financial Services in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.
- 3.70 To ensure cash holdings on premises are kept to a minimum and adequately secured.
- 3.71 To ensure that keys to safes and similar receptacles are carried on the person of those responsible at all times; loss of any such keys must be reported to the Head of Financial Services as soon as possible.
- 3.72 To record all disposal or part exchange of assets that should normally be by competitive tender or public auction, unless, following consultation with the Head of Financial Services, Council Members agree otherwise.
- 3.73 To arrange for the valuation of assets for accounting purposes to meet requirements specified by the Head of Financial Services.
- 3.74 To ensure that all employees are aware that they have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be sensitive or privileged, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the authority in some way.

#### **Inventories**

- 3.75 To maintain inventories and record an adequate description of furniture, fittings, equipment, plant and machinery above £500 in value.
- 3.76 To carry out an annual check of all items on the inventory in order to verify location, review, condition and to take action in relation to surpluses or deficiencies, annotating the inventory accordingly. Attractive and portable items such as computers, cameras and video recorders should be identified with security markings as belonging to the authority.
- 3.77 To make sure that property is only used in the course of the authority's business, unless the Director or Head of Service concerned has given permission otherwise.

#### **Stocks and Stores**

- 3.78 To make arrangements for the care and custody of stocks and stores in the department.
- 3.79 To ensure stocks are maintained at reasonable levels and are subject to a regular independent physical check. All discrepancies should be investigated and pursued to a satisfactory conclusion.

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- 3.80 To investigate and remove from the authority's records (ie write off) discrepancies as necessary, or to obtain Council approval if they are in excess of a predetermined limit.
- 3.81 To authorise or write off disposal of redundant stocks and equipment. Procedures for disposal of such stocks and equipment should be by competitive quotations or auction, unless, following consultation with the Head of Financial Services, Council members decide otherwise in a particular case.
- 3.82 To seek Council approval to the write-off of redundant stocks and equipment in excess of a predetermined sum.

### **Intellectual Property**

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

- 3.83 Intellectual property is a generic term that includes inventions and writing. If these are created by the employee during the course of employment, then, as a general rule, they belong to the employer, not the employee. Various acts of Parliament cover different types of intellectual property.
- 3.84 Certain activities undertaken within the authority may give rise to items that may be patentable, for example, software development. These items are collectively known as intellectual property.

#### **Key Controls**

- 3.85 In the event that the authority decides to become involved in the commercial exploitation of inventions, the matter should proceed in accordance with the authority's approved intellectual property procedures.

#### **Responsibilities of the Head of Financial Services**

- 3.86 To develop and disseminate good practice through the authority's intellectual property procedures.

#### **Responsibilities of Directors and Heads of Service**

- 3.87 To ensure that controls are in place to ensure that staff do not carry out private work in council time and that staff are aware of an employer's rights with regard to intellectual property.

### **Asset Disposal**

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

- 3.88 It would be uneconomic and inefficient for the cost of assets to outweigh their benefits. Obsolete, non-repairable or unnecessary resources should

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be disposed of in accordance with the law and the regulations of the authority.

### Key controls

- 3.89 Assets for disposal are identified and are disposed of at the most appropriate time, and only when it is in the best interests of the authority, and best price is obtained, bearing in mind other factors, such as environmental issues. For items of significant value, disposal should be by competitive tender or public auction.
- 3.90 Procedures protect staff involved in the disposal from accusations of personal gain.

### Responsibilities of the Head of Financial Services

- 3.91 To issue guidelines representing best practice for disposal of assets.
- 3.92 To ensure appropriate accounting entries are made to remove the value of disposed assets from the authority's records and to include the sale proceeds if appropriate.

### Responsibilities of Directors and Heads of Service

- 3.93 To seek advice from purchasing advisors on the disposal of surplus or obsolete materials, stores or equipment.
- 3.94 To ensure that income received for the disposal of an asset is properly banked and coded.

## TREASURY MANAGEMENT

### Why is this important?

- 3.95 Many millions of pounds pass through the authority's books each year. This led to the establishment of codes of practice. These aim to provide assurances that the authority's money is properly managed in a way that balances risk with return, but with the overriding consideration being given to the security of the authority's capital sum.

### Key Controls

- 3.96 That the authority's borrowings and investments comply with the CIPFA *Code of Practice on Treasury Management*, the *Prudential Code on Treasury Management* and with the authority's treasury policy statement.

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### **Responsibilities of Head of Financial Services – treasury management and banking**

- 3.97 To arrange the borrowing and investments of the authority in such a manner as to comply with the CIPFA *Code of Practice on Treasury Management* and the authority's treasury management policy statement and strategy.
- 3.98 To report regularly throughout the year on treasury management activities to the Council.
- 3.99 To operate bank accounts as are considered necessary – opening or closing any bank account shall require the approval of the Head of Financial Services.

### **Responsibilities of Directors and Heads of Service – Treasury Management and Banking**

- 3.100 To follow the instructions on banking issued by the Head of Financial Services.

### **Responsibilities of Head of Financial Services – Investments and Borrowing**

- 3.101 To ensure that all investments of money are made in the name of the authority or in the name of nominees approved by the Full Council.
- 3.102 To ensure that all securities that are the property of the authority or its nominees and the title deeds of all property in the authority's ownership are held in the custody of the appropriate Director or Head of Service.
- 3.103 To effect all borrowings in the name of the authority.
- 3.104 To act as the authority's registrar of stocks, bonds and mortgages and to maintain records of all borrowing of money by the authority.

### **Responsibilities of Directors and Heads of Service – investments and borrowing**

- 3.105 To ensure that loans are not made to third parties and that interests are not acquired in companies, joint ventures or other enterprises without the approval of the Full Council, following consultation with the Head of Financial Services.

### **Responsibilities of Directors and Heads of Service – Trust Funds and Funds Held for Third Parties**

- 3.106 To arrange for all trust funds to be held, wherever possible, in the name of the authority. All officers acting as trustees by virtue of their official position shall deposit securities, etc relating to the trust with the Head of Financial Services, unless the deed otherwise provides.

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- 3.107 To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Head of Financial Services, and to maintain written records of all transactions.
- 3.108 To ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust.

#### **Responsibilities of the Head of Financial Services – Imprest Accounts**

- 3.109 To provide employees of the authority with cash or bank imprest accounts to meet minor expenditure on behalf of the authority and to prescribe rules for operating these accounts. Minor items of expenditure should not exceed the prescribed amount.
- 3.110 To determine the petty cash limit and to maintain a record of all transactions and petty cash advances made, and periodically to review the arrangements for the safe custody and control of these advances.
- 3.111 To reimburse imprest holders as often as necessary to restore the imprests, but normally not more than monthly.

#### **Responsibilities of Directors and Heads of Service – Imprest Accounts**

- 3.112 To ensure that employees operating an imprest account:
- (a) obtain and retain vouchers to support each payment from the imprest account. Where appropriate, an official receipted VAT invoice must be obtained
  - (b) make adequate arrangements for the safe custody of the account
  - (c) produce upon demand by the Head of Financial Services cash and all vouchers to the total value of the imprest amount
  - (d) record transactions promptly
  - (e) reconcile and balance the account at least monthly; reconciliation sheets to be signed and retained by the imprest holder
  - (f) provide the Head of Financial Services with a certificate of the value of the account held at 31 March each year
  - (g) ensure that the float is never used to cash personal cheques or to make personal loans and that the only payments into the account are the reimbursement of the float and change relating to purchases where an advance has been made
  - (h) on leaving the authority's employment or otherwise ceasing to be entitled to hold an imprest advance, an employee shall account to

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the Head of Financial Services for the amount advanced to him or her.

## STAFFING

### Why is this important?

3.113 In order to provide the highest level of service, it is crucial that the authority recruits and retains high calibre, knowledgeable staff, qualified to an appropriate level.

### Key Controls

3.114 The key controls for staffing are:

- (a) an appropriate staffing strategy and policy exists, in which staffing requirements and budget allocation are matched
- (b) procedures are in place for forecasting staffing requirements and cost
- (c) controls are implemented that ensure that staff time is used efficiently and to the benefit of the authority
- (d) checks are undertaken prior to employing new staff to ensure that they are appropriately qualified, experienced and trustworthy.

### Responsibilities of the Head of Financial Services

3.115 To ensure that budget provision exists for all existing and new employees.

3.116 To act as an advisor alongside the Head of People and [Policy](#) on areas such as National Insurance and pension contributions, as appropriate.

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### Responsibilities of Directors and Heads of Service

3.117 To produce an annual staffing budget.

3.118 To ensure that the staffing budget is an accurate forecast of staffing levels and is equated to an appropriate revenue budget provision (including on-costs and overheads).

3.119 To monitor staff activity to ensure adequate control over such costs as sickness, overtime, training and temporary staff.

3.120 To ensure that the staffing budget is not exceeded without due authority and that it is managed to enable the agreed level of service to be provided.

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3.121 To ensure that the Head of People and Policy and the Head of Financial Services are immediately informed if the staffing budget is likely to be materially over- or underspent.

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## GENERAL

### Why is this important?

4.01 Departments have many systems and procedures relating to the control of the authority's assets, including purchasing, costing and management systems. Departments are increasingly reliant on computers for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.

4.02 The Head of Financial Services has a professional responsibility to ensure that the authority's financial systems are sound and should therefore be notified of any new developments or changes.

### Key Controls

The key controls for systems and procedures are:

- (a) basic data exists to enable the authority's objectives, targets, budgets and plans to be formulated
- (b) performance is communicated to the appropriate managers on an accurate, complete and timely basis
- (c) early warning is provided of deviations from target, plans and budgets that require management attention
- (d) operating systems and procedures are secure.

### Responsibilities of the Head of Financial Services

4.03 To make arrangements for the proper administration of the authority's financial affairs, including to:

- (a) issue advice, guidance and procedures for officers and others acting on the authority's behalf
- (b) determine the accounting systems, form of accounts and supporting financial records
- (c) establish arrangements for audit of the authority's financial affairs
- (d) approve any new financial systems to be introduced

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- (e) approve any changes to be made to existing financial systems.

### **Responsibilities of Directors and Heads of Service**

- 4.04 To ensure that accounting records are properly maintained and held securely.
- 4.05 To ensure that vouchers and documents with financial implications are not destroyed, except in accordance with arrangements approved by the Head of Financial Services.
- 4.06 To ensure that a complete management trail, allowing financial transactions to be traced from the accounting records to the original document, and vice versa, is maintained.
- 4.07 To incorporate appropriate controls to ensure that, where relevant:
- (a) all input is genuine, complete, accurate, timely and not previously processed
  - (b) all processing is carried out in an accurate, complete and timely manner
  - (c) output from the system is complete, accurate and timely.
- 4.08 To ensure that the organisational structure provides an appropriate segregation of duties to provide adequate internal controls and to minimise the risk of fraud or other malpractice.
- 4.09 To ensure there is a documented and tested disaster recovery plan to allow information system processing to resume quickly in the event of an interruption.
- 4.10 To ensure that systems are documented and staff trained in operations.
- 4.11 To consult with the Head of Financial Services before changing any existing system or introducing new systems.
- 4.12 To establish a scheme of delegation identifying officers authorised to act upon the chief officer's behalf in respect of payments, income collection and placing orders, including variations, and showing the limits of their authority.
- 4.13 To supply lists of authorised officers, with specimen signatures and delegated limits, to the Head of Financial Services, together with any subsequent variations.
- 4.14 To ensure that effective contingency arrangements, including back-up procedures, exist for computer systems. Wherever possible, back-up

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information should be securely retained in a fireproof location, preferably off site or at an alternative location within the building.

- 4.15 To ensure that, where appropriate, computer systems are registered in accordance with data protection legislation and that staff are aware of their responsibilities under the legislation.
- 4.16 To ensure that relevant standards and guidelines for computer systems issued by the Directors and Heads of Service are observed.
- 4.17 To ensure that computer equipment and software are protected from loss and damage through theft, vandalism, etc.
- 4.18 To comply with the copyright, designs and patents legislation and, in particular, to ensure that:
- (a) only software legally acquired and installed by the authority is used on its computers
  - (b) staff are aware of legislative provisions
  - (c) in developing systems, due regard is given to the issue of intellectual property rights

## **INCOME AND EXPENDITURE**

### **Income**

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

- 4.19 Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. It is preferable to obtain income in advance of supplying goods or services as this improves the authority's cashflow and also avoids the time and cost of administering debts.

#### **Key Controls**

- 4.20 The key controls for income are:
- (a) all income due to the authority is identified and charged correctly, in accordance with an approved charging policy, which is regularly reviewed
  - (b) all income is collected from the correct person, at the right time, using the correct procedures and the appropriate stationery
  - (c) all money received by any employee on behalf of the authority is paid without delay to the Head of Financial Services or, as he or she

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directs, to the authority's bank or National Giro account, and properly recorded. The responsibility for cash collection should be separated from that:

- for identifying the amount due
  - for reconciling the amount due to the amount received
- (d) effective action is taken to pursue non-payment within defined timescales
- (e) formal approval for debt write-off is obtained
- (f) appropriate write-off action is taken within defined timescales
- (g) appropriate accounting adjustments are made following write-off action
- (h) all appropriate income documents are retained and stored for the defined period in accordance with the document retention schedule
- (i) money collected and deposited is reconciled to the bank account by a person who is not involved in the collection or banking process.

#### **Responsibilities of the Head of Financial Services**

- 4.21 To agree arrangements for the collection of all income due to the authority and to approve the procedures, systems and documentation for its collection.
- 4.22 To order and supply to departments all receipt forms, books or tickets and similar items and to satisfy himself or herself regarding the arrangements for their control.
- 4.23 To agree the write-off of bad debts up to an approved limit in each case and to refer larger sums to Council (eg inter alia The Scheme of Delegation).
- 4.24 To approve all debts to be written off in consultation with the relevant chief officer and to keep a record of all sums written off up to the approved limit and to adhere to the requirements of the Accounts and Audit Regulations 1996.
- 4.25 To obtain the approval of Council in consultation with the relevant chief officer for writing off debts in excess of the approved limit.
- 4.26 To ensure that appropriate accounting adjustments are made following write-off action.

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## Responsibilities of Directors and Heads of Service

- 4.27 To establish a charging policy for the supply of goods or services, including the appropriate charging of VAT, and to review it regularly, in line with corporate policies.
- 4.28 To separate the responsibility for identifying amounts due and the responsibility for collection, as far as is practicable.
- 4.29 To establish and initiate appropriate recovery procedures, including legal action where necessary, for debts that are not paid promptly.
- 4.30 To issue official receipts or to maintain other documentation for income collection.
- 4.31 To ensure that at least two employees are present when post is opened so that money received by post is properly identified and recorded.
- 4.32 To hold securely receipts, tickets and other records of income for the appropriate period.
- 4.33 To lock away all income to safeguard against loss or theft, and to ensure the security of cash handling.
- 4.34 To ensure that income is paid fully and promptly into the appropriate authority bank account in the form in which it is received. Appropriate details should be recorded on to paying-in slips to provide an audit trail. Money collected and deposited must be reconciled to the bank account on a regular basis.
- 4.35 To ensure income is not used to cash personal cheques or other payments.
- 4.36 To supply the Head of Financial Services with details relating to work done, goods supplied, services rendered or other amounts due, to enable the Head of Financial Services to record correctly the sums due to the authority and to ensure accounts are sent out promptly. To do this, Directors and Heads of Service should use established performance management systems to monitor recovery of income and flag up areas of concern to the Head of Financial Services. Directors and Heads of Service have a responsibility to assist the Head of Financial Services in collecting debts that they have originated, by providing any further information requested by the debtor, and in pursuing the matter on the authority's behalf. Only up to approved levels of cash can be held on the premises.
- 4.37 To keep a record of every transfer of money between employees of the authority. The receiving officer must sign for the transfer and the transferor must retain a copy.

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- 4.38 To recommend to the Head of Financial Services all debts to be written off and to keep a record of all sums written off up to the approved limit. Once raised, no bona fide debt may be cancelled, except by full payment or by its formal writing off. A credit note to replace a debt can only be issued to correct a factual inaccuracy or administrative error in the calculation and/or billing of the original debt.
- 4.39 To obtain the approval of the Head of Financial Services when writing off debts in excess of the approved limit, and the approval of the Council where required.
- 4.40 To notify the Head of Financial Services of outstanding income relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Head of Financial Services and not later than 30 April.

### **Ordering and Paying For Work, Goods And Services**

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

- 4.41 Public money should be spent with demonstrable probity and in accordance with the authority's policies. Authorities have a statutory duty to achieve best value in part through economy and efficiency. The authority's procedures should help to ensure that services obtain value for money from their purchasing arrangements. These procedures should be read in conjunction with the authority's code of practice on tenders and contracts. See also Contract Procedure Rules and Procurement Policies.

#### **General**

- 4.42 Every Officer and member of the authority has a responsibility to declare any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the authority, in accordance with appropriate codes of conduct.
- 4.43 Official orders must be in a form approved by the Head of Financial Services. Official orders must be issued for all work, goods or services to be supplied to the authority, except for supplies of utilities, periodic payments such as rent or rates, petty cash purchases or other exceptions specified by the Head of Financial Services.
- 4.44 Each order must conform to the guidelines approved by the Full Council on central purchasing and the standardisation of supplies and materials. Standard terms and conditions must not be varied without the prior approval of the Head of Financial Services.
- 4.45 Apart from petty cash, and other payments from advance accounts, the normal method of payment from the authority shall be by cheque or other instrument or approved method, drawn on the authority's bank account or

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National Giro account by the Head of Financial Services. The use of direct debit shall require the prior agreement of the Head of Financial Services.

- 4.46 Official orders must not be raised for any personal or private purchases, nor must personal or private use be made of authority contracts.

### Key Controls

- 4.47 The key controls for ordering and paying for work, goods and services are:
- (a) all goods and services are ordered only by appropriate persons and are correctly recorded
  - (b) all goods and services shall be ordered in accordance with the authority's code of practice for tenders and contracts unless they are purchased from sources within the authority
  - (c) goods and services received are checked to ensure they are in accordance with the order. Goods should not be received by the person who placed the order
  - (d) payments are not made unless goods have been received by the authority to the correct price, quantity and quality standards
  - (e) all payments are made to the correct person, for the correct amount and are properly recorded, regardless of the payment method
  - (f) all appropriate evidence of the transaction and payment documents are retained and stored for the defined period, in accordance with the document retention schedule
  - (g) all expenditure, including VAT, is accurately recorded against the right budget and any exceptions are corrected
  - (h) in addition, the effect of e-business/e-commerce and electronic purchasing requires that processes are in place to maintain the security and integrity of data for transacting business electronically.

### Responsibilities of the Head of Financial Services

- 4.48 To ensure that all the authority's financial systems and procedures are sound and properly administered.
- 4.49 To approve any changes to existing financial systems and to approve any new systems before they are introduced.
- 4.50 To approve the form of official orders and associated terms and conditions.

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- 4.51 To make payments from the authority's funds on the Directors and Heads of Service authorisation that the expenditure has been duly incurred in accordance with financial regulations.
- 4.52 To make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order.
- 4.53 To make payments to contractors on the certificate of the appropriate chief officer, which must include details of the value of work, retention money, amounts previously certified and amounts now certified.
- 4.54 To provide advice and encouragement on making payments by the most economical means.
- 4.55 To ensure that a budgetary control system is established that enables commitments incurred by placing orders to be shown against the appropriate budget allocation so that they can be taken into account in budget monitoring reports.

#### **Responsibilities of Directors and Heads of Service**

- 4.56 To ensure that unique pre-numbered official orders are used for all goods and services, other than the exceptions specified in 4.43.
- 4.57 To ensure that orders are only used for goods and services provided to the department directorate. Individuals must not use official orders to obtain goods or services for their private use.
- 4.58 To ensure that only those staff authorised by him or her sign orders and to maintain an up to-date list of such authorised staff, including specimen signatures identifying in each case the limits of their authority. The authoriser of the order should be satisfied that the goods and services ordered are appropriate and needed, that there is adequate budgetary provision and that quotations or tenders have been obtained if necessary. Best value principles should underpin the authority's approach to procurement. Value for money should always be achieved.
- 4.59 To ensure that goods and services are checked on receipt to verify that they are in accordance with the order. This check should, where possible, be carried out by a different officer from the person who authorised the order. Appropriate entries should then be made in inventories or stores records.
- 4.60 To ensure that payment is not made unless a proper VAT invoice has been received, checked, coded and certified for payment, confirming:
- (a) receipt of goods or services
  - (b) that the invoice has not previously been paid

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- (c) that expenditure has been properly incurred and is within budget provision
- (d) that prices and arithmetic are correct and accord with quotations, tenders, contracts or catalogue prices
- (e) correct accounting treatment of tax
- (f) that the invoice is correctly coded
- (g) that discounts have been taken where available
- (h) that appropriate entries will be made in accounting records.

4.61 To ensure that two authorised members of staff are involved in the ordering, receiving and payment process. If possible, a different officer from the person who signed the order, and in every case, a different officer from the person checking a written invoice, should authorise the invoice.

4.62 To ensure that the department maintains and reviews periodically a list of staff approved to authorise invoices. Names of authorising officers together with specimen signatures and details of the limits of their authority shall be forwarded to the Head of Financial Services.

4.63 To ensure that payments are not made on a photocopied or faxed invoice, statement or other document other than the formal invoice. Any instances of these being rendered should be reported to the Head of Internal Audit.

4.64 To encourage suppliers of goods and services to receive payment by the most economical means for the authority. It is essential, however, that payments made by direct debit have the prior approval of the Head of Financial Services.

4.65 To ensure that the department obtains best value from purchases by taking appropriate steps to obtain competitive prices for goods and services of the appropriate quality, with regard to the best practice guidelines issued by the Head of Financial Services, which are in line with best value principles and contained in the authority's code of practice for tenders and contracts.

4.66 To utilise the central purchasing procedures established by the Head of Financial Services in putting purchases, where appropriate, out to competitive quotation or tender. These will comply with the code of practice on tenders and contracts and will cover:

- (a) authorised officers and the extent of their authority
- (b) advertisement for tenders

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- (c) procedure for creating, maintaining and revising a standard list of contractors
- (d) selection of tenderers
- (e) compliance with UK and EC legislation and regulations
- (f) procedures for the submission, receipt, opening and recording of tenders
- (g) the circumstances where financial or technical evaluation is necessary
- (h) procedures for negotiation
- (i) acceptance of tenders
- (j) the form of contract documentation
- (k) cancellation clauses in the event of corruption or bribery
- (l) contract records.

4.67 To ensure that employees are aware of the national code of conduct for local government employees (summarised in the procedures and conditions of employment manual).

4.68 To ensure that loans, leasing or rental arrangements are not entered into without prior agreement from the Head of Financial Services. This is because of the potential impact on the authority's borrowing powers, to protect the authority against entering into unapproved credit arrangements and to ensure that value for money is being obtained.

4.69 To notify the Head of Financial Services of outstanding expenditure relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Head of Financial Services and, in any case, not later than 30 April.

4.70 With regard to contracts for construction and alterations to buildings and for civil engineering works, to document and agree with the Head of Financial Services the systems and procedures to be adopted in relation to financial aspects, including certification of interim and final payments, checking, recording and authorising payments, the system for monitoring and controlling capital schemes and the procedures for validation of subcontractors' tax status.

4.71 To notify the Head of Financial Services immediately of any expenditure to be incurred as a result of statute/court order where there is no budgetary provision.

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4.72 To ensure that all appropriate payment records are retained and stored for the defined period, in accordance with the document retention schedule.

### Payments to Employees and Members

#### Why is this important?

4.73 Staff costs are the largest item of expenditure for most authority services. It is therefore important that payments are accurate, timely, made only where they are due for services to the authority and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and that members' allowances are authorised in accordance with the scheme adopted by the Full Council.

#### Key Controls

4.74 The key controls for payments to employees and members are:  
(a) proper authorisation procedures are in place and that there is adherence to corporate timetables in relation to:

- starters
- leavers
- variations
- enhancements

and that payments are made on the basis of timesheets or claims

- (b) frequent reconciliation of payroll expenditure against approved budget and bank account
- (c) all appropriate payroll documents are retained and stored for the defined period in accordance with the document retention schedule
- (d) that Inland Revenue regulations are complied with.

#### Responsibilities of the Head of Financial Services

4.75 To arrange and control secure and reliable payment of salaries, wages, compensation or other emoluments to existing and former employees, in accordance with procedures prescribed by him or her, on the due date.

4.76 To record and make arrangements for the accurate and timely payment of tax, superannuation and other deductions.

4.77 To make arrangements for payment of all travel and subsistence claims or financial loss allowance.

4.78 To make arrangements for paying members travel or other allowances upon receiving the prescribed form, duly completed and authorised.

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- 4.79 To provide advice and encouragement to secure payment of salaries and wages by the most economical means.
- 4.80 To ensure that there are adequate arrangements for administering superannuation matters in line with guidance from Lancashire County Council.

#### **Responsibilities of Directors and Heads of Service**

- 4.81 To ensure appointments are made in accordance with the regulations of the authority and approved establishments, grades and scale of pay and that adequate budget provision is available.
- 4.82 To notify the Head of Financial Services of all appointments, terminations or variations which may affect the pay or pension of an employee or former employee, in the form and to the timescale required by the Head of Financial Services.
- 4.83 To ensure that adequate and effective systems and procedures are operated, so that:
- payments are only authorised to bona fide employees
  - payments are only made where there is a valid entitlement
  - conditions and contracts of employment are correctly applied
  - employees' names listed on the payroll are checked at regular intervals to verify accuracy and completeness.
- 4.84 To send an up-to-date list of the names of officers authorised to sign records to the personnel director, together with specimen signatures. The payroll provider should have signatures of personnel officers and officers authorised to sign timesheets and claims.
- 4.85 To ensure that payroll transactions are processed only through the payroll system. Directors and Heads of Service should give careful consideration to the employment status of individuals employed on a self-employed consultant or subcontract basis. The Inland Revenue applies a tight definition for employee status, and in cases of doubt, advice should be sought from the Head of Financial Services.
- 4.86 To certify travel and subsistence claims and other allowances. Certification is taken to mean that journeys were authorised and expenses properly and necessarily incurred, and that allowances are properly payable by the authority, ensuring that cost-effective use of travel arrangements is achieved. Due consideration should be given to tax implications and that the Head of Financial Services is informed where appropriate.
- 4.87 To ensure that the Head of Financial Services is notified of the details of any employee benefits in kind, to enable full and complete reporting within the income tax self-assessment system.

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- 4.88 To ensure that all appropriate payroll documents are retained and stored for the defined period in accordance with the document retention schedule.

### **Responsibilities of Members**

- 4.89 To submit claims for members' travel and subsistence allowances on a monthly basis and, in any event, within one month of the year end.

## **TAXATION**

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

- 4.90 Like all organisations, the authority is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe. It is therefore very important for all officers to be aware of their role.

### **Key Controls**

- 4.91 The key controls for taxation are:
- (a) service managers are provided with relevant information and kept up to date on tax issues
  - (b) service managers are instructed on required record keeping
  - (c) all taxable transactions are identified, properly carried out and accounted for within stipulated timescales
  - (d) records are maintained in accordance with instructions
  - (e) returns are made to the appropriate authorities within the stipulated timescale.

### **Responsibilities of the Head of Financial Services**

- 4.92 To complete all Inland Revenue and other agency returns regarding PAYE, NI, Superannuation, etc.
- 4.93 To complete a monthly return of VAT inputs and outputs to HM Customs and Excise.
- 4.94 To provide details to the Inland Revenue regarding the construction industry tax deduction scheme.
- 4.95 To maintain up-to-date guidance for authority employees on taxation issues in the accounting manual and the tax manual.

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## Responsibilities of Directors and Heads of Service

- 4.96 To ensure that the correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HM Customs and Excise regulations.
- 4.97 To ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements.
- 4.98 To ensure that all persons employed by the authority are added to the authority's payroll and tax deducted from any payments, except where the individuals are bona fide self-employed or are employed by a recognised staff agency.
- 4.99 To follow the guidance on taxation issued by the Head of Financial Services in the authority's accounting manual and VAT manual.

## TRADING ACCOUNTS AND BUSINESS UNITS

### Why is this important?

- 4.100 Trading accounts and business units have become more important as local authorities have developed a more commercial culture. Under best value, authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost. They are also required to disclose the results of significant trading operations in the BVPP.

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## Responsibilities of the Head of Financial Services

- 4.101 To advise on the establishment and operation of trading accounts and business units.

## Responsibilities of Directors and Heads of Service

- 4.102 To consult with the Head of Financial Services where a business unit wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of their main contract with the authority. In general, such contracts should not be entered into unless they can be terminated within the main contract period without penalty.
- 4.103 To observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited and all relevant expenditure, including overhead costs, is charged, and to produce an annual report in support of the final accounts.
- 4.104 To ensure that the same accounting principles are applied in relation to trading accounts as for other services or business units.
- 4.105 To ensure that each business unit prepares an annual business plan.

## PARTNERSHIPS

### Why is this important?

- 5.01 Partnerships are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. Local authorities are working in partnership with others – public agencies, private companies, community groups and voluntary organisations. Local authorities still deliver some services, but their distinctive leadership role is to bring together the contributions of the various stakeholders. They therefore need to deliver a shared vision of services based on user wishes.
- 5.02 Local authorities will mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations. Local authorities will be measured by what they achieve in partnership with others.

### General

- 5.03 The main reasons for entering into a partnership are:
- (a) the desire to find new ways to share risk
  - (b) the ability to access new resources

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(c) to provide new and better ways of delivering services

(d) to forge new relationships.

5.04 A partner is defined as either:

(a) an organisation (private or public) undertaking, part funding or participating as a beneficiary in a project

(b) a body whose nature or status give it a right or obligation to support the project.

5.05 Partners participate in projects by:

(a) acting as a project deliverer or sponsor, solely or in concert with others

(b) acting as a project funder or part funder

(c) being the beneficiary group of the activity undertaken in a project.

5.06 Partners have common responsibilities:

(a) to be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation

(b) to act in good faith at all times and in the best interests of the partnership's aims and objectives

(c) be open about any conflict of interests that might arise

(d) to encourage joint working and promote the sharing of information, resources and skills between public, private and community sectors

(e) to hold confidentially any information received as a result of partnership activities or duties that is of a confidential or commercially sensitive nature

(f) to act wherever possible as ambassadors for the project.

### Key Controls

5.07 The key controls for authority partners are:

(a) if appropriate, to be aware of their responsibilities under the authority's financial regulations and the code of practice on tenders and contracts

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- (b) to ensure that risk management processes are in place to identify and assess all known risks
- (c) to ensure that project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise
- (d) to agree and accept formally the roles and responsibilities of each of the partners involved in the project before the project commences, particularly in the area of document recording, control and procedures, where external funding is being managed and which will result in later internal/external auditor verification
- (e) to communicate regularly with other partners throughout the project so that problems can be identified and shared to achieve their successful resolution.

#### **Responsibilities of the Head of Financial Services**

- 5.08 To advise on effective controls that will ensure that resources are not wasted.
- 5.09 To advise on the key elements of funding a project. They include:
- (a) a scheme appraisal for financial viability in both the current and future years
  - (b) risk appraisal and management
  - (c) re-sourcing, including taxation issues
  - (d) audit, security and control requirements
  - (e) carry-forward arrangements.
- 5.10 To ensure that the accounting arrangements are satisfactory.

#### **Responsibilities of Directors and Heads of Service**

- 5.11 To maintain a register of all contracts entered into with external bodies in accordance with procedures specified by the Head of Financial Services.
- 5.12 To ensure that, before entering into agreements with external bodies, a risk management appraisal has been prepared for the Head of Financial Services.
- 5.13 To ensure that such agreements and arrangements do not impact adversely upon the services provided by the authority.
- 5.14 To ensure that all agreements and arrangements are properly documented.

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- 5.15 To provide appropriate information to the Head of Financial Services to enable a note to be entered into the authority's statement of accounts concerning material items.

## EXTERNAL FUNDING

### Why is this important?

- 5.16 External funding is potentially a very important source of income, but funding conditions need to be carefully considered to ensure that they are compatible with the aims and objectives of the authority. Local authorities are increasingly encouraged to provide seamless service delivery through working closely with other agencies and private service providers. Funds from external agencies such as the National Lottery and the single regeneration budget provide additional resources to enable the authority to deliver services to the local community. However, in some instances, although the scope for external funding has increased, such funding is linked to tight specifications and may not be flexible enough to link to the authority's overall plan.

### Key Controls

- 5.17 The key controls for external funding are:
- (a) to ensure that key conditions of funding and any statutory requirements are complied with and that the responsibilities of the accountable body are clearly understood
  - (b) to ensure that funds are acquired only to meet the priorities approved in the policy framework by the Full Council
  - (c) to ensure that any match-funding requirements are given due consideration prior to entering into long-term agreements and that future revenue budgets reflect these requirements.

### Responsibilities of the Head of Financial Services

- 5.18 To ensure that all funding notified by external bodies is received and properly recorded in the authority's accounts.
- 5.19 To ensure that the match-funding requirements are considered prior to entering into the agreements and that future revenue budgets reflect these requirements.
- 5.20 To ensure that audit requirements are met.

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## Responsibilities of Directors and Heads of Service

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- 5.21 To ensure that all claims for funds are made by the due date.
- 5.22 To ensure that the project progresses in accordance with the agreed project and that all expenditure is properly incurred and recorded.

### WORK FOR THIRD PARTIES

#### Why is this important?

- 5.23 Current legislation enables the authority to provide a range of services to other bodies. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements should be in place to ensure that any risks associated with this work is minimised and that such work is intra vires.

#### Key Controls

- 5.24 The key controls for working with third parties are:
- (a) to ensure that proposals are costed properly in accordance with guidance provided by the Head of Financial Services
  - (b) to ensure that contracts are drawn up using guidance provided by the Head of Financial Services and that the formal approvals process is adhered to
  - (c) to issue guidance with regard to the financial aspects of third party contracts and the maintenance of the contract register.

#### Responsibilities of Head of Financial Services

- 5.25 To issue guidance with regard to the financial aspects of third party contracts and the maintenance of the contract register.

#### Responsibilities of Directors and Heads of Service

- 5.26 To ensure that the approval of Council is obtained before any negotiations are concluded to work for third parties.
- 5.27 To maintain a register of all contracts entered into with third parties in accordance with procedures specified by the Head of Financial Services.
- 5.28 To ensure that appropriate insurance arrangements are made.
- 5.29 To ensure that the authority is not put at risk from any bad debts.
- 5.30 To ensure that no contract is subsidised by the authority.

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- 5.31 To ensure that, wherever possible, payment is received in advance of the delivery of the service.
- 5.32 To ensure that the department/unit has the appropriate expertise to undertake the contract.
- 5.33 To ensure that such contracts do not impact adversely upon the services provided for the authority.
- 5.34 To ensure that all contracts are properly documented.
- 5.35 To provide appropriate information to the Head of Financial Services to enable a note to be entered into the statement of accounts.

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# CONTRACT PROCEDURE RULES

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## **1.0 The Scope of the Contract Procedure Rules**

### **Part 4 - 218**

Constitution of the Rossendale Borough Council – amended at 7<sup>th</sup> October 2009 V11

- 1.1 These Contract Procedure Rules must be followed every time the Council enters into a contract or arrangement for works, goods, land or services.
- 1.2 European Union Regulations and Directives and English Law must also be followed where appropriate - See Appendix A for Guidance on Contracts Subject to the European Union Regulations.
- 1.3 In these Contract Procedure Rules:
- 1.3.1 "Directors and Heads of Services" means the Chief Executive or ~~Head of Financial Services~~ or ~~Director of Business~~ or a Head of Service of the Council;
- 1.3.2 "Contract" includes any arrangement under which the Council pays or receives money for work, goods, land, or services, including contracts, agreements, partnership arrangements, private finance initiatives, joint ventures, contracts with Consultants and Service Level Agreements with partners, including voluntary organisations. It includes where the Council is acting as an "Accountable Body" for any government funding;
- 1.3.3 "Contract Conditions" includes the Contract Conditions mentioned in Paragraph 22 below;
- 1.3.4 "Council" means Rossendale Borough Council;
- 1.3.5 "Executive Team" means the Chief Executive, ~~Director of Business, the Director of Customers and Communities, the Head of People and Policy and the Head of Financial Services;~~
- 1.3.6 "Goods" includes materials, equipment and non-land assets;
- 1.3.7 "Head of Service" means the Head of the relevant Council Service or any person authorised by him or her to act on his or her behalf;
- 1.3.8 "Land" includes premises and buildings;
- 1.3.9 "Most financially favourable tender "or" most economically advantageous tender" means, subject to Paragraph 13.3, the lowest tender or quote if payment is made by the Council and the highest if payment is made to the Council;
- 1.3.10 "Procurement Strategy" means the Council's Procurement Strategy as agreed by the Council from time to time;
- 1.3.11 "Supplier Selection Form" shall mean the relevant Form – See Appendix B - to be completed in the case of a contract for the supply of goods or services;
- 1.3.12 "Tender" includes all offers, quotations, quotes proposals, submissions or other bids for contracts.

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1.4 The highest standards of probity are required of all Member and Officers involved in the procurement, award and management of Council contracts. At all times during the procurement process all Members and Officers shall consider and implement the principles of non-discrimination, equal treatment and transparency.

1.5 These Contract Procedure Rules are intended to help and inform Officers making purchasing decisions. Advice on their use is available from the Director of Business and the Corporate Procurement Assistant. Any Officer can contact Internal Audit if he or she believes that the provisions of these Contract Procedure Rules are not being followed in a particular case.

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1.6 The use of e-procurement technology (for example, e-auctions) does not negate the requirement to comply with all elements of these Contract Procedure Rules.

## 2. Exceptions

2.1 The Executive Team can allow exceptions to these Contract Procedure Rules after considering a report by a Directors and Heads of Services; the Executive Team shall then inform Internal Audit and report the decision to the Cabinet for information.

2.2 These Contract Procedure Rules shall not apply if:

- (i) the Head of Service, in consultation with the Head of Financial Services, is satisfied that there is no genuine competition, for example, where:
  - (a) the goods are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available;
  - (b) the price of goods or services are wholly controlled by trade organisations or government order;
  - (c) the goods or services are required for repairing or servicing existing specialist plant or equipment;
  - (d) the work is to be carried out by public service providers, for example, gas, water, electricity.

Where there is no genuine competition, the Head of Service, in consultation with the Head of Financial Services shall obtain written tenders from contractors and, where appropriate, shall negotiate to obtain the most financially favourable tender or the most economically advantageous tender for the Council prior to awarding any contract.

- (ii) the proposed contract for the execution of work forms part of a serial programme, the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of these Contract Procedure Rules;

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- (iii) the Head of Service, in consultation with the Head of Financial Services, considers it desirable in the best interest of the Council that a tender be invited for the execution of work from a contractor selected by the Council or negotiated with a contractor already engaged by the Council;
- (iv) the goods, materials or services are required due to an emergency;
- (v) the Head of Service and the Head of Financial Services agree that significant financial loss may be incurred if the letting of the contract is delayed.

2.3 In cases (iv) and (v) above, the Head of Service may obtain verbal quotations provided that they are subsequently confirmed in writing.

2.4 If the Head of Service and the Head of Financial Services are of the opinion that any of these Contract Procedure Rules should not apply to a contract, then a report shall be submitted to the Executive Team – See Paragraph 2.1.

2.5 Where the Council carries out work using a Standard Form of Contract (for example, the Institution of Civil Engineers' Conditions of Contract) procedural requirements may differ to those laid down in these Contract Procedure Rules.

### 3. Estimating Contract Values

3.1 Contract values shall be calculated on a total overall basis, for example, where a contract is for £10,000 per year for five years the contract value will be £50,000. Particular elements of the contract shall not be split in an attempt to avoid these Contract Procedure Rules. Where the length of a contract is not known the Head of Service shall use his or her best estimate.

### 4. Pre-Procurement Procedure

4.1 Before commencing a procurement, it is essential that the Head of Service leading the procurement has identified the needs and fully assessed all options for meeting those needs. Consideration shall be given to the Procurement Strategy as appropriate. Before undertaking a procurement the Head of Service shall where appropriate:

- (i) Establish a business case for the purchase, including ensuring that there are sufficient funds in the relevant budget to cover the cost of the purchase;
- (ii) Plan out the time period to deal with all aspects of the purchase;
- (iii) Consider all means of satisfying the needs, including environmental issues;
- (iv) Consult the Corporate Procurement Assistant to ascertain whether there is an appropriate Framework Agreement or Preferred Supplier that should be used or whether there are options available to purchase collaboratively with other Authorities;
- (v) Consider the form of the contract in consultation with the Director of Business;

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- (vi) Choose a course of action which must represent best value for money to the Council;
- (vii) Consult with users of the service;
- (viii) Prepare a written specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (ix) Ensure the tender documents are available in electronic format;
- (x) Prepare project initiative documents

4.2 When any Officer of the Council or any employee of a service provider may be affected by any transfer arrangements, the Head of Service shall ensure that Transfer of Undertaking (Protection of Employment) ('TUPE') issues are considered and obtain advice from the Director of Business and the Head of People and Policy before proceeding to invite tenders.

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4.3 Tenders received by facsimile or other electronic means (for example, e.mail) shall be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Director of Business and the Head of Financial Services.

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## 5. Framework Agreements and Preferred Suppliers Lists

5.1 Where an appropriate Framework Agreement or Preferred Supplier List exists, (i.e. a call off contract with a preferred supplier or e-purchasing system) this must be used up to a contract value of £50,000.

5.2 Contracts over £50,000 must follow the appropriate procedure – See Paragraph 6 - irrespective of whether there is a Framework Agreement or Preferred Supplier List in place.

5.3 The term of a Framework Agreement must not exceed four years and, while an Agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number

5.4 Contracts based on Framework Agreements shall be awarded by either:

- (i) applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- (ii) where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
  - (a) inviting the organisations within the Framework Agreement which are capable of executing the subject of the contract to submit written Tenders;
  - (b) fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;

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- (c) awarding each Contract to the tenderer who has submitted the best Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

5.5 Lists of Preferred Suppliers shall be developed by the Head of Service – See Paragraphs 7.7 and 7.8 - and maintained by the Corporate Procurement Assistant; the Lists shall be subject to review and market testing on a three year rolling programme – See Paragraph 7.7.6

## 6. Levels of Contract Values – Quotes or Tenders

6.1 Where values appear in these Contract Procedure Rules, these exclude VAT and are subject to annual inflation increases in line with the annual increase in the Retail Price Index (to the nearest £100). Contract values thresholds are as follows:-

Low Value – up to £10,000

Medium Value – over £10,000 and up to £60,000

High Value – Over £60,000

6.1.2 The value or amount of the contract shall in the following cases be calculated as follows:-

a) Where periodical payments are to be made by the Council, by reference to the maximum total amount that the Council may be obliged to pay under the terms of the contract,

b) Where there is an undefined quantity under the terms of the contract, by reference to an estimate by the Head of Service of the total value of the contract.

6.1.3 Heads of Service shall ensure that, where proposed Contracts, irrespective of their value, might be of interest to potential contractors located in other Member States of the European Union, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other Member States, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

(i) the Council's Website;

(ii) portal websites specifically created for contract advertisements;

(iii) National Official Journals; or

(iv) the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (even if there is no requirement within the EU Procedure).

## 6.2 Contracts under £10,000

6.2.1 For contracts estimated to be under £10,000, the Head of Service shall consider the following:

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- (i) Best value for money shall be obtained, including full life costs;
- (ii) Use of existing Framework Agreements;
- (iii) Use of suppliers on a Preferred Supplier List;
- (iv) Use of the e-purchasing system;
- (v) Alternative written quotes;
- (vi) Use of Purchasing Cards.

6.2.2 There is no obligation to obtain tenders or quotes, but Heads of Service shall be responsible for ensuring best value for money is obtained.

6.2.3 Use of specific Contract Conditions shall be included as relevant – See Paragraphs 22, 24, 25, 28, 29 and 30.

6.2.4 Should any clarification be required then the Director of Business and the Corporate Procurement Assistant shall be contacted.

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### 6.3 **Contracts between £10,000 and £60,000**

6.3.1 Existing Framework Agreements and Preferred Suppliers Lists must be used where appropriate – See Paragraph 5.2

6.3.2 In other cases, three written tenders or quotes shall be obtained, including at least one from a local supplier, if possible, and, in the case of a contract for the supply of goods or services, the reasons for the choice of supplier documented on the Supplier Selection Form – See Appendix B.

6.3.3 As an exception, where three written tenders or quotes cannot be obtained, for example, due to time constraints, the specialist nature of the contract or use of an existing Preferred Supplier or the most financially favourable tender or the most economically advantageous tender has not been selected then, in the case of a contract for the supply of goods or services, this must be explained on the Supplier Selection Form - See Appendix B.

6.3.4 Use of specific Contract Conditions shall be included as relevant – See Paragraphs 22, 24, 25, 28, 29 and 30.

6.3.5 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.

### 6.4 **Contracts between £60,000- £100,000**

6.4.1 A minimum of four written tenders or quotes shall be obtained and, in the case of a contract for goods or services, the Supplier Selection Form - See Appendix B – shall be authorised by the Head of Service and Corporate Procurement Assistant. Four written tenders or quotes shall be obtained even when there is a Framework Agreement or Preferred Supplier List in place.

6.4.2 As an exception, where four written tenders or quotes cannot be obtained, for example, due to time constraints or the specialist nature of the contract or the most financially favourable tender has not been selected the Head of Service

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shall explain this, in the case of a contract for goods or services, on the Supplier Selection Form - See Appendix B.

6.4.3 Use of specific Contract Conditions must be included as relevant – See Paragraphs 22, 24, 25, 28, 29 and 30.

6.4.4 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote

## 6.5 **Contracts over £100,000**

6.5.1 For contracts valued at above £100,000 written tenders or quotes shall be required. In the case of a contract for goods or services, the Corporate Procurement Assistant must also be involved from the commencement of the project and must sign the Supplier Selection Form – see Appendix B.

6.5.2 However, if there is a Central Government Contract available, advice shall first be taken from the Director of Business and the Corporate Procurement Assistant about whether it is more appropriate to use that Agreement - See Paragraph 10.

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6.5.3 Prior approval to seek tenders or quotes shall be obtained from the Executive Team.

6.5.4 Use of specific Contract Conditions shall be included as relevant – See Paragraphs 22, 24, 25, 28, 29 and 30.

6.5.5 The Council's Legal Section must approve all contracts.

6.5.6 Prior to the commencement of the purchasing process, approval of the proposed contract award procedure including the pre-qualification and/or evaluation criteria to be applied shall be sought by the Head of Service from the Directors and Heads of Services and the Corporate Procurement Assistant.

6.5.7 Heads of Service shall ensure that sufficient time is allowed for the preparation of tenders, having regard to the value and complexity of the project. This shall normally be not less than four weeks. Invitations to tender shall be sent out by the Head of Service who shall record:

- (i) the name and nature of the contract,
- (ii) the number of tender invitations,
- (iii) the closing date and time for receipt of tenders.

6.5.8 Heads of Service shall be responsible for judgements regarding any sub-division of work or supplies into packages, for example, to enable separate contracts to be let, with a view to seeking effective competition and to secure satisfactory service delivery.

6.5.9 A current financial appraisal and a company search shall be carried out of all contractors, in a form determined by the Head of Financial Services.

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- 6.5.10 Should the contract value be over European Union (EU) Thresholds, one of the Procedures shall be used as appropriate for the procurement – See Appendix A.
- 6.5.11 Should the contract value be under the EU Thresholds then one of the Open or Selective Procedures shall be used - See Paragraph 7.
- 6.5.12 A file note shall be made of suppliers invited to tender or quote but who failed to tender or quote.

## 7. Procedures for Inviting Tenders

### 7.1 Open Procedure

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- 7.2 Open Procedure tendering is generally undesirable (as it may involve too many contractors in abortive tendering) and shall only be used where no Select List exists. The Council advertises its intentions, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers. All contractors expressing an interest are invited to tender. The advertisement shall be published in the local press, on the Council's website, and, if appropriate, the national press and/or trade journal in order to target the relevant market for the particular contract.
- 7.3 The advertisement shall contain details of the proposed contract, including a description of the Council's requirements in sufficient detail to enable the submission of competitive offers, and specify a time limit within which interested parties may express an interest in tendering. The advertisement shall, subject to Paragraphs 7.5. and 7.8.2, give a closing date of at least seven days.
- 7.4 The Head of Service shall send an Invitation to Tender (ITT) within three working days to any party expressing an interest; the ITT must state a date and time by which the Tender is to be returned - See also Paragraphs 11 and 12.
- 7.5 The Head of Service shall invite tenders for High Value Contracts by advertising on the Council's website and, if appropriate, the national press and/or trade journal and/or Official Journals, and where the value is above the EU Threshold shall also advertise in the appropriate Official Journal – See Appendix A. The advertisement shall include:
- (i) the nature and purpose of the contract, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
  - (ii) where further details may be obtained and where applications shall be submitted.
  - (iii) the last date and time when tenders shall be received;

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and be placed at least 14 days before the closing date.

7.6 The Head of Service shall be satisfied with the financial standing and technical capability of the successful contractor before any contract is awarded.

## 7.7 Selective Procedure

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7.7.1 The Council publishes its intentions as above – See Paragraphs 7.2 and 7.5 - however only those suppliers selected by the Head of Financial Services, the Head of Service, the Head of Financial Services and the Director of Business are invited to tender. Short-listed suppliers shall be selected on the basis of clear pre-qualification/evaluation criteria that are either published in the advertisement or available from the Head of Service. The reasons to include or exclude suppliers from the tender process must be documented by the Head of Service and must relate to the pre-qualification criteria.

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7.7.2 Pre-qualification/evaluation criteria shall include the following as appropriate to the individual contract being tendered i.e. potential suppliers shall be asked to demonstrate:

Evidence of financial standing shall be provided from some or all of the following sources and evaluated by the Head of Financial Services:

- (i) financial standing – including Audited Accounts and Credit Rating;
- (ii) bankers' references;
- (iii) balance sheets;
- (iv) statements of turnover (both overall and for the work or services for which a contract may be let);
- (v) for services, evidence of professional risk indemnity ;
- (vi) the provision of bonds and guarantees;
- (vii) any other information considered appropriate, providing adequate notice is given regarding the additional information sought.

Minimum technical capacity as to skills, efficiency, experience and reliability shall include an assessment of :

- (i) applicants' qualifications and those of the personnel who it is proposed shall do the work;
- (ii) statements of the plan, equipment and specialist services available;
- (iii) average manpower for each of the last three years;
- (iv) numbers of managerial personnel during the same period;
- (v) for works, a list of the works carried out in the last five years, supported by certificates of satisfactory completion (which may be obtained direct from clients);
- (vi) technical capacity, including the contractors' quality management systems, human resources, health and safety, environmental management systems and equality and diversity policies where relevant to the performance of the contract;
- (vii) for services, a list of the principal contracts carried out in the last three years with their values;
- (viii) the proportion of the work which applicants intend to subcontract.

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- 7.7.3 The appraisal process may also include taking up references and inviting applicants to attend for interview.
- 7.7.4 If there are fewer selected to tender than the required number – See Paragraphs 6.3.2 and 6.4.1 then all those considered suitable shall be asked to tender.
- 7.7.5 The Select List shall identify for each contractor the type of work and maximum value of contracts which may be undertaken by that contractor. The Select List shall be available for reference by members of the public on request.
- 7.7.6 Heads of Service shall review the Select List at least once every three years and shall request contractors to submit accounts for reappraisal as appropriate. This will provide an incentive for those included on the Select List to maintain the necessary standard. If it is considered that an up to date financial appraisal is necessary for a contractor chosen from the Select List, the Head of Service shall request contractors to submit their latest accounts for reappraisal in sufficient time prior to invitations to tender being sent out. The reviewed Select List shall be available for reference by members of the public on request.
- 7.7.7 Heads of Service shall inform contractors if it is decided to exclude them from the Select List, and also if any request to be asked to tender is refused. If a contractor applies in writing for the reasons within 15 working days of being given such a decision, the reasons shall be provided in writing within a further 15 working days. Where the reason is an unsatisfactory reference, this fact must be stated but not its nature nor the name of the referee.
- 7.7.8 Heads of Service shall maintain a register of all current contracts to include expiry dates and timescales for renewal and supply a copy of the register to the Head of Financial Services.

## **7.8 Ad Hoc Approved List Tendering**

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- 7.8.1 The case for compiling an approved list on an ad-hoc basis for a specific contract, as opposed to inviting contractors from a Select List, shall depend on the size, nature and continuity of the Council's relevant spending programme.
- 7.8.2 The Head of Service shall in respect of Medium Value Contracts and High Value Contracts invite contractors to be placed on a list for a specific contract by advertising as above – See Paragraphs 7.2 and 7.5. The advertisement shall include:
- (i) the nature and purpose of the contract, including a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
  - (ii) where further details may be obtained and where applications shall be submitted;
  - (iii) the last date and time when tenders shall be received;

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and be placed at least 14 days before the closing date.

7.8.3 The Head of Service must be satisfied with the contractors' financial standing, technical resources and ability to complete the contract satisfactorily before they are placed on the Approved Ad Hoc List.

7.8.4 The Head of Service, the Head of Financial Services and the Director of Business shall select contractors to be invited to tender which may include some or all of the Contractors on the Council's Select Lists.

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## 8. Preparation of Tender Documents

8.1 Tender documentation shall consist of one or more of the following, as appropriate:

- (i) drawings;
- (ii) a specification which describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (iii) bills of quantity;
- (iv) conditions of contract;
- (v) instructions to tenderers;
- (vi) the form of tender

8.2 Other information may need to be made available to ensure that contractors' bids reflect service requirements and are competitively priced, including the following:

- (i) an outline of the tender pre-qualification/evaluation criteria in descending order of importance;
- (ii) the terms and conditions under which assets etc. shall be made available;
- (iii) workforce information required for the purpose of assessing prospective liability in relation to the possible transfer of an undertaking; to ensure consistency of provision of information, this shall be provided by the Head of Service and not by an existing contractor;
- (iv) the amount of work likely to be available under the contract.

8.3 The Head of Service shall ensure that:

- (i) ambiguities and contradictions do not occur between documents and information provided;
- (ii) any locally prepared variations to standard documentation are clear and use generally accepted terms;
- (iii) Contract Conditions and specifications are in the best interest of the Council in respect of quality, cost and performance;

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(iv) independent scrutiny of tender documentation occurs at this stage, as errors may eventually prove costly.

8.4 To ensure consistency and to aid understanding by the Tenderer, tender documentation shall be collated by an experienced officer who shall obtain the advice and approval of the Director of Business.

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## 9. Joint Procurement, Collaborative and E-Procurement Arrangements

9.1 Any joint procurement arrangements with other Local Authorities, such as the East Lancashire E-Partnership, or public bodies including membership or use of Purchasing Consortia shall be approved by the Head of Financial Services and the Director of Business prior to the commencement of any procurement by the Council.

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9.2 All purchases made via a local authority purchasing and distribution Consortium are deemed to comply with these Contract Procedure Rules and no exception is required. However, purchases above the EU Threshold – See Appendix A – must be let under the EU Procedure, unless the Consortium has satisfied this requirement already by letting their contract in accordance with EU Procedures on behalf of the Council and other consortium members.

9.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed which complies with the Contract Procedure Rules of the leading organisation, shall be deemed to comply with these Contract Procedure Rules and no exemption is required. However, advice must be sought from the Director of Business and the Corporate Procurement Assistant.

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9.4 Where appropriate electronic procurement, such as E-Ordering, E-Tendering, E-Marketplace and E-Auctions, may be used with the requirement to comply with all aspects of these Contract Procedural Rules and the Council's Financial Regulations.

## 10. Central Government Contracts

10.1 The Office of Government Commerce (OGC) has in place various Framework Agreements that have already been tendered through EU Procedures and therefore can be used by Councils without the need for re-tendering. The Director of Business and the Corporate Procurement Assistant shall be contacted for guidance. Details can be found on the OGC website: [www.ogcbuyingsolutions.gov.uk](http://www.ogcbuyingsolutions.gov.uk)

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## 11. The Invitation to Tender (ITT)

11.1 The ITT shall include details of the Council's requirements for the particular contract including:

(i) A description of the works to be undertaken, the goods or services being purchased, including a specification which describes the

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- Council's requirements in sufficient detail to enable the submission of competitive offers, including any environmental management systems;
- (ii) The procurement timetable including the tender return date, which shall allow a reasonable period for the applicants to prepare their tenders;
  - (iii) Information on whether any variations are permissible;
  - (iv) The Council's terms and conditions of contract or main contract clauses as relevant - See Paragraphs 22, 24, 25, 28, 29 and 30;
  - (v) The pre-qualification/evaluation criteria including any weightings, for example, price, quality service, quality of response, understanding of requirements, successful track record;
  - (vi) Pricing formats or mechanisms and instructions for completion;
  - (vii) Whether the Council is of the view that TUPE will apply;
  - (viii) Form and content of Method Statements to be provided;
  - (ix) Rules for the submission of Tenders;
  - (x) Any further information which shall inform or assist tenderers

## 12. Submitting and Opening Tenders

### 12.1 Submitting Tenders

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- 12.1.1 Tenders shall be considered only if they are delivered to the Committee and Member Services Manager in a plain, securely sealed envelope, or in any special envelope provided by the Council for the purpose. Such envelopes shall in no way indicate the identity of the sender.
- 12.1.2 The outside of the envelope shall be marked "Tender" and with the name of the contract to which the tender relates.
- 12.1.3 On receipt of each tender the envelope shall be endorsed with the date and time of arrival.
- 12.1.4 Tenders received by hand shall be receipted on request.
- 12.1.5 All tenders received shall remain unopened in the secure custody of the Committee and Member Services Manager or such other Officer appointed by him or her for that purpose until the appointed time for opening.

### 12.2 Opening of tenders

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- 12.2.1 Tenders shall be opened at the designated time in the presence of at least:
  - (i) the Committee and Member Services Manager or his or her representative;
  - (ii) the Head of Service or his or her representative (not being a person who has been involved in the tender process);
  - (iii) the Corporate Procurement Assistant for all goods and services contracts; or
  - (iv) the Head of Financial Services for all contracts above the EU threshold,

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The Leader or Deputy Leader shall also be invited to attend the opening, but do not have to be present at the opening.

12.2.2 Tenders shall be numbered by the Committee and Member Services Manager or his or her representative as they are opened.

12.2.3 The Committee and Member Services Manager shall immediately prepare a list of tenders received in a Tender Book detailing the names of tenderers and the tender sums and this shall be certified by those present as a true record.

12.2.4 A record shall also be made in the Tender Book of any contractors invited to tender but who failed to tender.

### **13. Evaluation of Tenders and Correction of Errors**

13.1 Tenderers must complete all tender documentation or parts thereof. Any omissions shall render a tender null and void, with no further consideration given, save for omissions which are of an insignificant nature, any such omissions being recorded in the Tender Book.

13.2 Tenders subject to EU Regulations shall be evaluated in accordance with the relevant EU Regulations and the pre-qualification/evaluation criteria set out in the ITT. All other tenders shall be evaluated in accordance with the pre-qualification/evaluation criteria set out in the ITT.

13.3 All contracts shall be awarded on the basis of the most financially favourable tender or the most economically advantageous tender for the Council. This means that the Council is not obliged to accept a tender just because it is the lowest price. Other non-price elements must also be taken into account such as quality, service, references, professionalism, sustainability, local economic benefits, environmental management systems etc. The pre-qualification/evaluation criteria shall be prepared by the Head of Service and shall be listed in the ITT documentation. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract Award Procedure.

13.4 All tenderers shall be compared impartially using the same criteria with a view to securing the most financially favourable tender or the most economically advantageous tender with the same degree of security and confidentiality as at all stages of the tendering process.

13.5 All tenders shall be checked for arithmetical accuracy, including the correct extension and summation of rates tendered in the bill of quantities.

13.6 At least the most financially favourable tender or the most economically advantageous tender received shall be evaluated; particular attention shall be given to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers.

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- 13.7 If a tender is found to contain ambiguities or arithmetical errors, the tender total shall be corrected and the tenderer notified accordingly. If, in the opinion of the Head of Service, any tendered rate is considered unrealistic, the tenderer may be given the opportunity of confirming the rate or withdrawing the tender. In order to preserve parity of tendering, amendment to tender rates after submission of tenders shall not be permitted. If the tenderer withdraws or the revised tender is no longer the most competitive, the next most competitive shall be examined and dealt with in the same way. Where the Council has made an error in a tender then all bidders shall be informed and given the opportunity to amend their tender.
- 13.8 The Head of Service must keep a written record of all amendments.
- 13.9 There shall be no significant changes in specification in any dealings with tenderers after tenders have been opened. Where post-tender negotiations are necessarily undertaken, no tenderer shall be given an opportunity to reconsider a tender on the original specification, unless similar opportunities are given to all tenderers.
- 13.10 Any changes which affect the original tendered sum(s) shall be notified to the Committee and Member Services Manager for inclusion in the Tender Book which shall be signed by the Committee and Member Services Manager or his or her representative and the Head of Service or his or her representative.
- 13.11 The Head of Service shall compile a report on the evaluation of the tendered amounts with the original estimate; this report shall form the basis for acceptance of the preferred tender.

#### **14. Late or Incomplete Tenders**

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- 14.1 Late or incomplete tenders shall not be considered but shall be opened by the Committee and Member Services Manager or his or her representative to ascertain the name of the tenderer so that the tender may be promptly returned, subject to Paragraph 32.2 below.

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#### **15. Acceptance of tenders**

- 15.1 Subject to the provisions below, the Head of Service shall accept the most financially favourable tender or the most economically advantageous tender received on behalf of the Council, provided that:-
- i) It is within the approved estimate; in all cases, the Head of Service shall document and sign a file note recording the preferred tenderer, along with the names of all Members and Officers involved in the decision making process;
  - ii) The contract is awarded using the tender pre-qualification/evaluation criteria.

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- 15.2 The successful tenderer shall be notified promptly following the decision to accept the tender.
- 15.3 Where the most financially favourable tender or the most economically advantageous tender is outside the approved estimate provision, the Head of Service shall either:
- (i) write to all tenderers explaining the situation and giving them the opportunity to lower their tenders to within the approved estimate; or
  - (ii) report to the Cabinet requesting an increase in the estimate provision; or
  - (iii) report to the Cabinet requesting authority to revise the specification and seek new tenders. If it is decided to re-tender, all previous tenderers shall be asked to tender again, and no tenderers shall be given any information about any of the first tenders.
- 15.4 No tender other than the most financially favourable tender or the most economically advantageous tender shall be accepted until the Executive Team has considered a report from the Head of Service which shall include the comments of the ~~Director of Business as Monitoring Officer~~. There may be sound commercial reasons why the Head of Service considers that work shall not be awarded to the lowest tenderer, such as:
- (i) differences in method, timing or perceived performance, which have not been eliminated by specification;
  - (ii) a tender which is too low to be credible;
  - (iii) the potential ability of the tenderer to complete on time.
- 15.5 For all Low Value Contracts up to £6,000 the decision to award a contract shall be made by the Head of Service.
- 15.6 For all Medium Value contracts £6,000 - £50,000 the decision to award a contract shall be made by the Head of Service and, in the case of contracts for the supply of goods and services, evidenced on the Supplier Selection Form for Order Values £6,000 - £50,000 - See Appendix B.
- 15.7 For all High Value Contracts £50,000 - £100,000 the decision to award a contract shall be made by the Head of Service and authorised by the Head of Financial Services if four tenders have not been obtained or the most financially favourable tender selected and evidenced, in the case of contracts for the supply of goods or services, on the Supplier Selection Form for Tender Values £50,000 - £100,000 - See Appendix B.
- 15.8 For all contracts over £100,000 the decision to award a contract shall be made by the Head of Service and approved by the Head of Financial Services and, in the case of contracts for the supply of goods or services, evidenced on the Supplier Selection Form for Tenders over £100,000, signed by the Corporate

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Procurement Assistant who shall keep the Form on file. (The Executive Team shall have given prior approval to such tenders and may request final approval of relevant contracts).

- 15.9 Only Full Council can accept a tender that would require an increase in the Council's total revenue or capital budget.
- 15.10 Once the contract has been let, all unsuccessful tenderers shall be notified of the results, and may be informed of the successful price on request. The letter of acceptance shall not seek to qualify the terms and amounts previously tendered by the contractor.
- 15.11 The letter of acceptance establishes a legally binding contract which shall be subsequently supported by a deed if the contract is to be under seal.
- 15.12 A proforma questionnaire shall be sent to contractors who did not tender inviting them to give reasons for their failure to tender.
- 15.13 Heads of Service shall keep written records of contractors for a period of six years; however, written documents which relate to unsuccessful contractors may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of a contract, provided there is no dispute about the award.

## **16. Post-Tender Negotiation**

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16.1 For Contracts under £100,000 price negotiation shall be allowed but the Head of Service must consider and implement the principles of non-discrimination, equal treatment and transparency. If the contract value requires completion of a Supplier Selection Form - See Schedule B - then any price negotiations must be recorded on the Form. The Head of Service shall seek clarification on specifications and assistance from the Director of Business and the Corporate Procurement Assistant.

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16.2 For Contracts over £100,000 then price negotiation shall only be allowed with the prior approval of the Executive Team.

16.3 If a Contract is subject to EU Regulations then price negotiation shall never be permissible when using the Open or Restricted Procedures.

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## **17. Letters of Intent / Payments Prior to the Signing of a Contract**

17.1 No payments shall be made to any supplier, partner or consultant prior to the signing of a contract or, in exceptional circumstances, a letter of intent has been issued. Any letter of intent shall only be issued with the agreement of the Director of Business and then only after a risk assessment has been considered.

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## **18. Contract Extension**

18.1 Any contract may be extended by the Head of Service in accordance with its terms. Where the terms do not expressly provide for extension then, subject to

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any legal constraints, the contract may be extended by negotiation. The Head of Service shall always be satisfied that the extension shall achieve best value for money and is reasonable in all the relevant circumstances.

18.2 All such extensions shall be notified to the Director of Business and the Corporate Procurement Assistant. Deleted: Executive

18.3 Once a contract has expired it cannot then be extended.

## 19. Contracting with the Not for Profit Sector

19.1 These Contract Procedure Rules shall also apply in full to any Contracts or Service Level Agreements made between the Council and any Not for Profit Organisation. Deleted:

19.2 Where the Council is acting as an Accountable Body for any government funding then these Contract Procedure Rules shall also apply in full.

## 20. Form of Contracts Deleted: ¶ ¶

20.1 All contracts shall be in writing, which can be a formal document or an official order or a letter, and signed by both parties.

20.2 All Low Value, Medium Value and High Value Contracts shall be in writing and (subject to Paragraph 23 below) signed by the Director of Business or by any other Officer of the Council duly authorised to sign such contracts by the Director of Business. Contracts may also be in an electronic format and must include, as a minimum: Deleted: Executive  
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- (i) The work to be undertaken, or the goods or services etc. to be supplied;
- (ii) The price and any discounts;
- (iii) The place of supply and/or delivery of goods or services;
- (iv) Any specific time scales to be achieved.

## 21. Nominated Sub-Contractors and Suppliers

21.1 If a Sub-Contractor or Supplier is to be nominated or named to a main Contractor, quotations or tenders shall be invited in accordance with these Contract Procedure Rules and the terms of the invitation shall be compatible with the main contract.

## 22. Contract Conditions

22.1 Below is a selection of Contract Conditions which are to be used in different types of contract. Those that are appropriate must be selected and if in doubt advice as to their use obtained from the Director of Business. Deleted: Executive Director of Business

## 22.2 HEALTH AND SAFETY Formatted: Superscript Deleted: Full Council 26/02/09 and 25/03/09 V10

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"The contractor, their sub-contractor(s) and any self employed person(s) engaged for the purposes of the contract shall comply fully with:

- (i) Their obligations under the Health and Safety at Work etc. Act 1974 and all relevant statutory provisions;
- (ii) The Council's general and specific health and safety policies and procedures, including any local, or site-specific health and safety requirements in force for the time being, and;
- (iii) Any other reasonable requirements, specified to them, in writing or otherwise, by the Council's competent person appointed for the purpose of health and safety assistance".

**Uses:** This should be in all contracts for the provision of works and most contracts for services to, or on behalf of, the Council where health and safety could possibly be an issue.

### 22.3 INDEMNITY

"The contractor shall indemnify the Council against any claim for bodily injury, loss of life or damage to property of third parties provided always that this indemnity shall not apply where the bodily injury, loss of life or damage to property results from any act or default of the Council, its Officers or agents or other Contractors (not being employed by the Contractor).

The Contractor shall effect and maintain insurance policies which provide full cover in respect of such claims and shall when required by the Council or its Officers produce satisfactory evidence that it is insured against such liability".

**Uses:** In all works and services contracts where there is any possibility of an injury to persons or property arising.

### 22.4 ANTI-CORRUPTION (Gifts or Rewards to Councillors or Officers)

The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or refrain from doing or for having done or refrained from doing any action in relation to the obtaining or execution of the Contract or any other Contract with the Council or for showing or refraining to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council, or if the like acts shall have been done by any person employed by him or her or acting on his or her behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Council the Contractor to or any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall have

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given any fee or regard the receipt of which is an offence under the sub-section (2) of section 117 of the Local Government Act 1972.

**Uses:** All contracts.

## 22.5 HUMAN RIGHTS, EQUALITY AND DISCRIMINATION

- (a) Comply with the Human Rights Act 1998;
- (b) Comply with all equality and anti-discrimination legislation including the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 as amended by the Disability Discrimination (Amendment Act) 2005, the Equal Pay Act 1975, the Sex Discrimination Act 1975, the Gender Reassignment Regulations 1999, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations (2006) and the Equality Act 2006 and accordingly will not treat one group of people less favourably than others because of their colour, race, nationality, religion, ethnic origin, gender, sexual orientation, age, disability or otherwise in the decision to recruit, train, promote, discipline or dismiss its personnel and will have regard to the need to eliminate unlawful discrimination and to promote equality and diversity;
- (c) Observe all equality and anti-discrimination codes of practice including the Commission for Racial Equality's Code of Practice in employment as approved by Parliament in 1983 and the Disability Rights Commission and the Equal Opportunities Commission Code of Practice issued in 2003;
- (d) Comply with the Council's own policies on equality and anti-discrimination;
- (e) Maintain and promote an equality policy with the aim of ensuring an environment free from discrimination and set this out in instructions to those concerned with recruitment, training and promotion; in documents available to its personnel recognised trade unions or other representative groups of its personnel; and in recruitment advertisements and other literature;
- (f) On request provide the Council with examples of the instructions and other documents, recruitment advertisements and such other literature as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this clause;
- (g) Monitor and review the representation within its workforce and provide the Council with a breakdown of job applicants and workforce of: colour, race, nationality, ethnic origin, religion or belief, gender, sexual orientation, age or disability having regard to the Council's own procedures for monitoring representation among its own employees;

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(h) On request attend meetings to review and discuss the Contractor's compliance with equality and anti-discrimination requirements;

(i) In the event of any investigation or legal proceedings (whether civil or criminal) brought against the Contractor relating to its obligation under this clause shall provide details to the Council and the steps taken to remedy the situation;

(j) Indemnify the Authority in the case of any finding under any anti-discrimination legislation arising out of the contractor's acts or omissions; and

(k) Impose the same obligations on any sub-contractor.

**Uses:** In all contracts where:

- (i) The contractor's staff work on Council premises or alongside the Council's employees; or
- (ii) Services are provided to the public on behalf of the Council or as a joint or consortia arrangement; or
- (iii) The contract consists of major capital works; or
- (iv) Labour costs are a major cost of the overall project.

## 22.6 FREEDOM OF INFORMATION

"The Freedom of Information Act 2000 ("the Act") gives a general right of public access to all types of recorded information (subject to exemptions) held by the Council or on behalf of the Council by another party, and places a number of obligations on the Council with regard to disclosure of information. The Contractor will accept the Council's duty to comply with the Act and will co-operate in providing information held on behalf of the Council to enable the Council to meet its statutory obligations. The Council shall undertake to consider the application of exemptions with respect to any information supplied by the contractor to the authority".

**Uses:** All contracts.

## 22.7 THIRD PARTY RIGHTS

"Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement"

**Uses:** All contracts where a person who is not a party to the contract might feasibly claim that they were affected by a term in the contract, for example, a person discriminated against by the contractor might try to use the anti-

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"The contractor shall ensure that in the provision of the works or service it shall: ¶

¶ (i) Comply with the Human Rights Act 1998;¶

¶ (i) Not discriminate against any person unlawfully;¶

¶ (iii) Co-operate with any investigation or proceedings concerning alleged contravention of any anti-discrimination legislation in performing the contract;

¶ (iv) Indemnify the authority in the case of any finding under any anti-discrimination legislation arising out of the contractor's acts or omissions; and

¶ (v) Impose the same obligations on any sub-contractor.¶

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discrimination clause in the contract to claim that the Council should compensate them for the actions of the Contractor.

## 22.8 DATA PROTECTION

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“The Council shall comply with the Data Protection legislation in respect of the use of all personal data arising from the performance of the contract, whether supplied by the Council or otherwise obtained”

**Uses:** All contracts where the Contractor holds or uses information (or works on information held by the Council) about individuals, whether they are members of the public or employees – this shall therefore be required in most contracts where services are provided to the public, software contracts with consultants who are working on the Council’s computer network etc.

## 22.9 DISPUTE RESOLUTION

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“In the first instance, the parties will use reasonable endeavours and act in good faith to resolve any disputes or claims that may arise in connection with this Contract through both parties negotiating. If these negotiations should fail to resolve the dispute within 28 days, both parties will attempt to resolve the dispute through mediation.

The decision as to who shall act as mediator is to be agreed between the parties. Failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of a mediator, the mediator must be appointed by the Centre for Dispute Resolution within 14 days of the appointment of the mediator, the parties must meet the mediator to agree the procedure to be adopted for the mediation.

All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

If the parties agree on a resolution of the dispute, the agreement shall be put in writing and once signed by the parties, will be binding on them.

If the parties fail to resolve the dispute within two months of the mediator being appointed (or longer period by agreement) or if either party withdraws from the mediation procedure then either party may exercise any remedy it may have under or in connection with the contract through the English courts.

Neither party shall be prevented, by the inclusion of this mediation clause, from applying at any time to the English courts for such interim or conciliatory measures (including but not limited to preservation of property) as may be considered appropriate”.

**Uses:** All contracts over £10,000 unless a standard RIBA or ICE Contract is used, or some other professional body contracts which has its own dispute resolution mechanism.

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## 23. SEALING OF DOCUMENTS

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23.1 The Legal Section must approve all contracts - See Paragraph 6.5.5 - and will arrange to seal Medium Value Contracts and High Value Contracts, thereby providing the Council with a longer time period in which to sue for breach of contract.

23.2 The persons authorised to witness the application of the Seal are the Head of Finance or the Director of Business or any other person authorised by either of them from time to time.

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23.3 Details of the sealing are recorded in the Council's Seal Book and signed by the person witnessing the seal.

## 24. LIQUIDATED DAMAGES

24.1 Provision shall be made in all contracts for payment of liquidated damages by the contractor where there is a failure to complete the contract within the time specified.

24.2 The amount of liquidated damages shall be determined by the appropriate Head of Service in consultation with the Director of Business.

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## 25. PERFORMANCE BONDS

25.1 Where the estimated amount of a contract exceeds £250,000 the Head of Service shall normally require the contractor to provide a bond or other security. Any decision not to require a bond will be recorded on the appropriate file.

25.2 If a bond or other security is deemed necessary, the amount shall be at least 10% of the contract sum.

## 26. INSURANCE

26.1 Prior to letting a contract the Head of Service shall ensure that the contractor holds adequate insurance policies to include, where appropriate, Professional Indemnity insurance which shall protect the Council's interest and cover all potential losses that may arise. An adequate level of insurance shall be determined in consultation with the Council's Insurers.

26.2 The Head of Service shall make and record such checks as are necessary from time to time to ensure that the contractor's insurance policies remain in force.

## 27. AVOIDANCE OF RESTRICTIVE PRACTICES

27.1 All contractors submitting a tender or a request for inclusion on a Select List or Ad Hoc List shall sign a declaration that:

- (i) they shall not communicate the amount of the proposed tender to anyone except the Council;

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- (ii) they shall not receive details of a proposed tender from any other contractor;
- (iii) they shall not adjust the amount of a proposed tender as a result of an arrangement with any person other than the Council;
- (iv) they shall not agree with any other person:
  - a) the amount of the proposed tender;
  - b) not to tender.

27.2 If the contractor is in breach, the Directors and Heads of Services shall be informed so that relevant action can be taken to include reporting to the Cabinet.

## 28. ASSIGNMENT AND SUB-LETTING

28.1 All contracts shall include clauses preventing:

- (i) the assignment of contracts except with the prior written permission of the Council;
- (ii) the sub-letting of any part of the work contained in the contract except with the prior written approval of the Head of Service.

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## 29. CANCELLATION AND DETERMINATION

29.1 The following clause shall be included in every written contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf does any of the following:

- (a) offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other council contract (even if the Contractor does not know what has been done); or
- (b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117 (2) of the Local Government Act 1972; or
- (c) commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, Contractors or Officers. Any clause limiting the contractor's liability shall not apply to this clause.

29.2 In the event of it being necessary to consider the termination of a contract, the Head of Service shall discuss the proposed course of action with the Director of Business.

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### 30. COMPLIANCE WITH BRITISH STANDARDS

- 30.1 All contracts shall require that all works carried out or goods supplied conform to the current British Standard Specification or Code of Practice, if such exists.
- 30.2 Reference shall be made in contract documentation to specific British Standards as appropriate to define more clearly the scope of the contract.

### 31. ENGAGEMENT OF CONSULTANTS

31.1 Consultants shall only be used if in the opinion of the Head of Service, in consultation with the Head of Financial Services, the work cannot be handled by Council Officers. A Select List of Consultants compiled under Paragraphs 7.7 or 7.8 shall be maintained and reviewed every three years. The appropriate professional institution or trade association shall be contacted to verify a Consultant's qualifications before being included on the Select List.

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31.2 The Cabinet must have resolved to support the actual project in principle before Consultants are appointed. A note shall be placed on each project's file stating:

- (i) why it was necessary to use an external consultant;
- (ii) the brief for the project;
- (iii) the brief for selecting the consultant and how this was met;
- (iv) which Officers were involved in the selection process.

31.3 Where Consultants are employed by the Council, the Head of Service shall ensure that the requirements of Paragraph 22.4 above are written into the terms of their engagement and shall verify that this has been done.

31.4 Any Consultant who is to be responsible for supervising any stage of the contract process on behalf of the Council shall:

- (i) comply in all aspects with these Contract Procedure Rules and the Council's Financial Regulations;
- (ii) hold, where appropriate, an adequate level of Professional Indemnity Insurance to cover any potential loss that may arise;
- (iii) produce all records maintained by him or her relating to the contract to the Head of Service or his or her representative whenever requested during the period of the contract;
- iv) pass all records to the Head of Service on completion of the contract.

31.5 There may be instances where use of these Contract Procedure Rules for the engagement of Consultants would be inappropriate, for example, in the case

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of the engagement of a barrister or other consultant where quality of performance is more important than the lowest tender. In such instances, Consultants shall be appointed as follows:

- (i) Low Value: appointed by a Head of Service;
- (ii) Medium Value: appointed by the Head of Service;
- (iii) High Value: appointed by the Head of Service and Executive Director of Resources;

The Head of Service shall:

- (i) ensure that consultancies can be properly funded, within an approved budget and expenditure code;
- (ii) consider the nature of the contract and how payments shall be made;
- (iii) draw up a written contract with any consultants employed;
- (iv) ensure that all documentation relating to a proposed consultancy is collated by an experienced officer in consultation with the Director of Business.

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31.6 When grants are awarded to outside bodies for feasibility studies, the organisation concerned shall be responsible for appointing and monitoring the Consultants. Grant funded projects agreed by the Council shall proceed without any variation to the brief which would result in the Council incurring extra costs.

## **32. DISPOSAL OF LAND BY THE COUNCIL**

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32.1 Land transactions and related negotiations shall only take place at the explicit consent of the Head of Financial Services acting as Corporate Property Officer, having consulted the Head of Service and Ward Members. Such transactions and related negotiations may include disposals, acquisitions, exchanges of land, leases and other means of transaction.

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32.2 Where the Head of Financial Services acting as Corporate Property Officer decides that land shall be disposed of by way of a formal open market competitive tender then:

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- (i) The procedure for the receipt, custody and opening of tenders and for dealing with late tenders shall be in accordance with these Contract Procedure Rules, except that:
  - (a) a defined range of uses which may be acceptable to the Council shall be provided in the tender documentation;
  - (b) any late tenders received shall be opened in the same way and a decision made by the Head of Financial Services as Corporate Property Officer whether or not the tender should be considered;

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(c) any letters sent out to successful tenderers shall contain a statement that in the event of any late tenders or further offers being received prior to the exchange of contract then these will be considered by the Head of Financial Services as Corporate Property Officer.

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(ii) All persons by whom or on whose behalf a tender is submitted shall declare on the form of tender whether they are Members or Officers of the Council or whether they are related to a member or employee of the Council. Failure to make such a declaration or the making of a false declaration shall invalidate the tender and render voidable at the option of the Council any contract entered into as a result of the tender

(iii) A tender may be accepted in accordance with these Contract Procedure Rules provided that in the event of there being a proposal to accept a tender from a Member or Officer of the Council or a relative of such a person this shall be referred to the Cabinet for consideration.

32.3 Where the Directors and Heads of Services decides that land shall be disposed of at auction, then the Directors and Heads of Services shall have the necessary authority to appoint and instruct independent auctioneers. Reserve prices shall be agreed between the Director of Business and the auctioneers instructed in conjunction with the Head of Finance. A schedule of land disposed of, auctioneers used, reserve prices and achieved receipts shall be reported retrospectively to the Cabinet on an annual basis.

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32.4 Where there is a proposal to dispose of land to a Member or Officer of the Council other than by a competitive tender and the disposal is in the opinion of the Chief Executive not a routine disposal, the proposal shall be referred to the Cabinet for consideration and a full report shall be made by the Directors and Heads of Services on the proposal.

32.5 For the purpose of this Contract Procedure Rule persons shall be deemed to be related if they would be so deemed for the purposes of the Officer Employment Procedure Rules Rule 1.

32.6 For the purpose of this Contract Procedure Rule 'Officers' includes any person who receives remuneration directly from the Council.

32.7 In the case of minor disposals of land (less than £10,000 (this value to be index linked on an annual basis)), the Council's Property Services Manager shall have the authority to decide whether or not to treat with an individual on a transaction and shall be empowered to advise any interested parties that a particular property shall not be considered for disposal for any period up to one year unless exceptional circumstances cause a dramatic increase in value.

32.8 The Directors and Heads of Services shall have regard at the outset to matters of Value Added Tax on the acquisition and disposal of land; guidance

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can be sought from the Head of Financial Services and the Corporate Procurement Assistant.

**33. RISK ASSESSMENT, CONTINGENCY PLANNING AND BUSINESS CONTINUITY**

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- 33.1 A business case must be prepared for all procurements with a potential value over the EU Threshold Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 33.2 For all High Value Contracts, Heads of Service must:
- (i) maintain a risk register during the contract period;
  - (ii) undertake appropriate risk assessments and for identified risks;
  - (iii) ensure contingency measures and business continuity plans are in place.

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## Appendix A

### Contracts Subject to the European Union Regulations

The Director of Business may be contacted for further details of the EU Procedures and up to date Thresholds.

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Where an estimated value of a contract exceeds the current EU Threshold, the contract shall be tendered in accordance with the Regulations. Under the Regulations, the contract may be tendered under the Open, Restricted Negotiated or the Competitive Dialogue. Procedures; tenders shall also be advertised in the local press and on the Council's Website; standstill Procedures shall also apply.

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Constitution of the Rossendale Borough Council – amended at 7<sup>th</sup> October 2009 V11

**SUPPLIER SELECTION FORM FOR TENDER VALUES £6,000 - £50,000**

Service			
Officer undertaking supplier selection			
Description of goods or services to be purchased:			
<b>Suppliers selected for tenders: (please keep tenders with this form)</b>			
<b>Supplier Name</b>		<b>Tender Value (£)</b>	
1			
2			
3			
Please document rationale for selecting these suppliers			
Have you obtained tenders or quotes from at least three suppliers?		Yes	No
If not, please document the reasons why not, for example, Framework Agreement in place			
Successful Supplier:			
Please state your reasons for selecting this supplier. If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why.			
<b>AUTHORISATION</b>			
In authorising this order, I confirm that: The value of this order is within my prescribed authorisation limits; and I confirm there are sufficient financial resources available within my budget to fund the purchase.			
Head of Service (please print name)		Job Title	

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Signature		Date:	
<b>Where:</b> <b>Three tenders or quotes have not been obtained; or</b> <b>The most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected</b> <b>Then: The Head of Service must authorise this form.</b>			
Head of Service (please print name)		Date:	
Signature			

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**SUPPLIER SELECTION FORM FOR TENDER VALUES £50,000 - £100,000**

Service			
Officer undertaking supplier selection			
Description of goods or services to be purchased:			
<b>Suppliers selected for tenders: (please keep quotations with this form)</b>			
<b>Supplier Name</b>		<b>Tender Value (£)</b>	
1			
2			
3			
Please document rationale for selecting these suppliers			
Have you obtained tenders or quotes from at least four suppliers?		Yes	No
If not, please document the reasons why not			
Successful Supplier:			
Please state your reasons for selecting this supplier. If the most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected, please explain why.			
<b>AUTHORISATION</b>			
In authorising this order, I confirm that: The value of this order is within my prescribed authorisation limits; and I confirm there are sufficient financial resources available within my budget to fund the purchase.			

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Head of Service (please print name)			
Signature			
<b>Where:</b> <ul style="list-style-type: none"> <li>• Four tenders have not been obtained; or</li> <li>• The most financially favourable tender or quote or the most economically advantageous tender or quote has not been selected</li> </ul>			
<b>Then : The <u>Head of Financial Services</u> must also authorise this form.</b>			
<u>Head of Financial Services</u> (please print name)		Date:	
Signature			

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**SUPPLIER SELECTION FORM FOR TENDERS OVER £100,000**

This report should be completed for all tenders with an expected contract value over £100,000. It demonstrates good procurement practice and compliance with these Contract Procedure Rules. Please attach other documentary support as necessary. The form should be completed fully and kept on file by the Corporate Procurement Assistant.

**Description of goods or services etc. to be purchased:**

Head of Service - Name .....

Telephone Number .....

**Pre Tender**

Has the approval of the Executive Team been obtained  Yes  
 No

Was an Office of Government Commerce or Consortia Contract used?  Yes  
 No

If yes then please give details of OGC or Consortia Contract:

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**Tender**

If a tender was required which procedure was used? OPEN / SELECTIVE / EUROPEAN UNION REGULATIONS

If Selective Procedure then what Pre-Qualification/Evaluation criteria were used, i.e. what criteria were used to decide which of the suppliers who expressed an interest were actually asked to submit a tender?:

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

Which companies were asked to tender?

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

Which of the following pre-qualification/evaluation criteria were used to determine the successful supplier?

(Please indicate which of the following apply - if any)

- . Technical suitability
- . Health and safety
- . Equal opportunities
- . Delivery dates
- . Financial stability
- . Experience
- . Past performance
- . Aesthetic/functional characteristics
- . Technical/after-sales service
- . Quality
- . Costing/pricing
- . Customer care

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Environmental Issues

Others (Please list)

Is the successful bid within budget?

Yes

No

Do the Executive Team need to validate the decision?

Yes

No

What, if any, Post Tender Negotiation was carried out?

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

Which supplier was successful and why?

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

What is the duration of the contract? ..... years

Which Contract Conditions have been included?

Health and Safety

Indemnity

Anti-Corruption

Human Rights, Equality and Discrimination   
Information

Freedom of

Third Party Rights

Data Protection

Dispute Resolution

What costs savings, if any, have been made?

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Any other relevant information?

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Signed by the Head of Service

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Date.....

Approved by the Head of Financial Services

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Date.....

Corporate Procurement Assistant

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Date.....

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## **6. BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

### **1. THE FRAMEWORK FOR CABINET DECISIONS**

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

### **2. PROCESS FOR DEVELOPING THE FRAMEWORK AND MAKING DECISIONS**

The process by which the budget and policy framework shall be developed is:

- a) The Cabinet will publicise by including in the Forward Plan and publicise by such other methods as it considers appropriate a timetable for making proposals to the Councils for the adoption of any plan, strategy or budget that forms part of the budget and policy framework, and its arrangements for consultation after publication of those initial proposals. The Chairmen of Overview and Scrutiny Committees will also be notified. The consultation period shall in each instance be not less than six weeks.
- b) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses to that consultation.

If a relevant Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. As the Overview and Scrutiny Committees have responsibility for fixing their own work programmes, it is open to the Overview and Scrutiny Committees to investigate, research or report in detail with policy recommendations before the end of the consultation period.

The Cabinet will take any response from an Overview and Scrutiny Committees into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.

- c) Once the Cabinet has approved the firm proposals, the chief Executive will refer them at the earliest opportunity to the Council for decision.
- d) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place. Before reaching a decision having significant financial implications the Council shall consider a report from the Head of Financial Services.

- e) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision which has immediate effect. Otherwise, it may only make an in-principle decision. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.

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- f) The decision will be publicised in such manner as the Council determines and a copy shall be given to the Leader.
- g) An in-principle decision will automatically become effective ten working days from the date of the Council's decision, unless the Leader informs the Chief Executive in writing within five working days that he or she objects to the decision becoming effective and provides reasons why.
- h) In that case, the Chief Executive will call a Council meeting within a further ten working days. The Council will be required to re-consider its decision. The Council may:
  - (i) approve the Cabinet's recommendation by a simple majority of votes cast at the meeting; or
  - (ii) approve a different decision which does not accord with the recommendation of the Cabinet by a simple majority.
- i) The decision shall then be made public and shall be implemented immediately;
- j) In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in year changes to the policy framework which may be undertaken by the Cabinet, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the policy and budgetary framework are reserved to the Council.

### **3. DECISION OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

- a) Subject to the provisions of paragraph 5 (virement) the Cabinet, and any Officers discharging Cabinet functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to 4 below.
- b) If the Cabinet and any Officers discharging Cabinet functions want to make such a decision, they shall take advice from the Chief Executive after having consulted the Monitoring Officer and/or the Chief Finance Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not in accordance with the budget. If the advice of either of those Officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.

### **4. URGENT DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

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a) The Cabinet or Chief Executive may take a decision which is contrary to the Council's policy framework or contrary to or not in accordance with the budget approved by Full Council if the decision is a matter of urgency. However, the decision may only be taken:

- (i) if it is not practical to convene a quorate meeting of the Full Council; and
- (ii) if the chairman of a relevant Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of Full Council and the chairman of the relevant Overview and Scrutiny Committees consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the chairman of a relevant Overview and Scrutiny Committees the consent of the Chairman of the Council and in the absence of both the Vice-Chairman of the Council will be sufficient.

b) Following the decision, the decision-maker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency. (see 4E 'The Access to Information Procedure Rules' – Rule 17).

## 5. VIREMENT

Steps taken by the Cabinet or Officers discharging Cabinet functions to implement Council policy shall not exceed those budgets allocated to each budget head. However, such bodies or individuals shall be entitled to vire across budget heads where each individual virement does not exceed that specified in the Council's Financial Regulations set out in the Financial Procedure Rules. Beyond that limit, approval to any virement across budget heads shall require the approval of the Full Council.

## 6. IN-YEAR CHANGES TO POLICY FRAMEWORK

The responsibility for agreeing the budget and policy framework lies with the Council, and decision by the Cabinet, or Officers, statutory area committees or joint arrangements discharging Cabinet functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- (a) which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance's.

## 7. CALL-IN OF DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

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- (a) Where an Overview and Scrutiny Committee is of the opinion that a Cabinet decision is, or if made would be, contrary to the policy framework, or contrary to or not in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer and shall follow the procedure set out in the Overview and Scrutiny Procedure Rules.
- (b) If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council will meet within twenty-one days of the request by the Overview and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Head of Financial Services. The Council may
- (i) endorse a decision or proposal of the Cabinet as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
  - (ii) amend the Council's financial regulations or policy concerned to encompass the decision or proposal of the body or individual responsible for that Cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (iii) where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer or the Head of Financial Services .

\* Please note Overview and Scrutiny Procedure Rules, Rule 9 & 10.

## **7. OVERVIEW AND SCRUTINY PROCEDURE RULES**

### Part 4 - 258

Constitution of the Rossendale Borough Council – amended at 7<sup>th</sup> October 2009 V11

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### Part 4 - 259

Constitution of the Rossendale Borough Council – amended at 7<sup>th</sup> October 2009 V11

## Introduction

The Council will have ~~three~~ Overview and Scrutiny Committees: the Overview and Scrutiny Management Committee, the Policy Committee and the Performance and Overview Scrutiny Committee. Their functions are set out in the Terms of Reference part of this Constitution (~~Part 3~~).

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~~The Overview and Scrutiny Committees may, after consulting appropriate interested parties, appoint Task and Finish Groups.~~

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The Council will establish and maintain a “Scrutiny Pack” which will contain details of additional procedures to be followed in carrying out the functions of the Committees.

### 1. Who may sit on Overview and Scrutiny Committees or Task and Finish Groups?

In order to ensure openness, transparency and accountability of decision making, the Council will exclude the Leader and Deputy Leader of the Council and Members of the Cabinet from membership of the Overview and Scrutiny Committees. However, such a Member may attend the Overview and Scrutiny Committees to give evidence, if so requested by the Overview and Scrutiny Committees.

A Member of the Overview and Scrutiny Committees may not take part in the discussion or voting on the scrutiny of a decision in which he or she was involved as a substitute Member at the meeting at which the decision was made, or by virtue of his or her membership of the Committee making that decision (whether or not the Member was in attendance at the particular meeting when the decision was made).

Task and Finish Groups may also be used to support the work of the Overview and Scrutiny Committees.

### 2. Co-optees

The Overview and Scrutiny Committees shall be entitled to appoint persons who are not members of the Authority in a non-voting capacity.

### 3. Work Programme

The Overview and Scrutiny Committees will be responsible for setting their own work programme.

### 4. Agenda Items

- (a) Any Member of the Overview and Scrutiny Committees shall be entitled to give notice to the Proper Officer that he or she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. On receipt of such a

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request the Proper Officer will ensure that it is included on the next available agenda.

- (b) Any Members of the Council who are not Members of the Overview and Scrutiny Committee may give written notice to the Proper Officer that they wish an item to be included on the agenda of the relevant Overview and Scrutiny Committee. If the Proper Officer receives such a notification, then he or she will include the item on the first available agenda of the Overview and Scrutiny Committee for consideration by that Committee.

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## 5. Policy Development and Overview

- (a) The Overview and Scrutiny Committees may make proposals to the Council or Cabinet for developments in so far as they relate to matters within their Terms of Reference.
- (b) The Overview and Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so (subject to their own budget as agreed by Full Council).

## 6. Reports from Overview and Scrutiny Committees

- (a) Once an Overview and Scrutiny Committee has completed its deliberations on any matter it will prepare a formal report and submit it to the Council, the Cabinet, Committee, Regulatory Committee or other body as appropriate.
- (b) The Council, the Cabinet, the Committee or Regulatory Committee shall consider the report of the Overview and Scrutiny Committees within one Committee cycle of receiving it. Within two months of their first consideration of a report from the Overview and Scrutiny Committees, the Council, Cabinet, the Committee or Regulatory Committee will report back to the Overview and Scrutiny Committees with their findings. The report will provide a reasoned argument for their findings, particularly where those differ from the recommendations of the Overview and Scrutiny Committees. Their report will also include, where appropriate, an action plan and timetable to facilitate future scrutiny.

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## 7. Members and Officers giving account

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- (a) The Overview and Scrutiny Committees may scrutinise and review decisions (other than quasi judicial decisions) made or actions taken in connection with the discharge of any of the Council's functions. As well as reviewing documentation, in fulfilling the scrutiny role, they may require any Member of the Cabinet or Regulatory Committees, the Head of Paid Service and/or any senior officer to attend before them to explain in relation to matters within their remit:
- (i) any particular decisions or series of decisions;
  - (ii) the extent to which the actions taken implement Council policy;

And it is the duty of those persons to attend if so required. (Note: Save in exceptional circumstances and in agreement with the Head of Paid Service no officer below Directors and Heads of Services or a Service Head or other senior officer reporting directly to a Directors and Heads of Services or Head of Service shall be required to appear before an Overview or Scrutiny Committee).

- (b) Where any Member or officer is required to attend the Overview and Scrutiny Committee under this provision, the Chairman of that Committee will inform the Proper Officer. The Proper Officer shall inform the Member or Officer in writing giving at least five working days notice of the meeting at which he or she is required to attend. The notice will state the nature of the item on which he or she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (c) Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then the Overview and Scrutiny Committees shall, in consultation with the Member or officer, arrange an alternative date for attendance to take place within a maximum of ten working days from the date of the original request.

## 8. Attendance by others

The Overview and Scrutiny Committees may invite people other than those Members and Officers referred to above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and shall invite such people to attend.

## 9. Call-in

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1. All decisions made by Committee and any other key decisions should be sent to Members within four working days of the Committee having met.
2. Such Notices will bear the date on which they are published and will specify that the decision will come into force, and may then be implemented, on the expiry of 3 working days after the publication of the decision.
3. The rules relating to the timetable for operating the Call-In Procedure shall be adhered to, whatever method of delivery of the Minutes to Members is used.
4. If a decision is called in
  - i) the Monitoring Officer shall decide on the validity or otherwise of the Call-In
  - ii) the Monitoring Officer shall then notify Members of the decision making Committee.
  - iii) the Monitoring Officer shall then notify the Chair of the Overview and Scrutiny Management Board
  - iv) the Monitoring Officer shall then carry out an assessment of the Members who are ineligible to sit on the Overview and Scrutiny Committee by virtue of conflict of interest if already been part of decision making process
  - v) the Monitoring Officer shall then call a meeting of the Overview and Scrutiny Committees on such date as he or she may determine, where possible after consultation with the Chair of the Committee, and in any case within 20 working days of the decision to call in.
5. If a decision is called in, the implementation of that decision is suspended until the Overview and Scrutiny Committees has met.
6. If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making Committee for reconsideration, setting out in writing the nature of its concerns or refer the matter to Full Council. If referred back to the decision making Committee, a meeting will be convened to reconsider the decision within a further ten working days.
7. If following an objection to the decision:
  - i) the Overview and Scrutiny Committees does not meet in the period set out above or the expiry of ten working day period; or
  - ii) the Overview and Scrutiny Committees does meet but does not refer the matter back to the decision making Committee, the decision shall take effect on the date of the meeting.

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8. If the matter is referred to Full Council, and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, the Council will refer any decision to which it objects back to the decision making Committee, together with the Council's views on the decision. A meeting of the decision making Committee will be convened to reconsider within ten working days of the Council's request.
9. Any three Members of the Council may request in writing for a decision to be called in. In writing shall mean hand written (not email), and the request for Call in shall be signed by three Councillors and all Call ins shall be delivered to the Monitoring Officer.
10. The following matters are exempt from call-in.
  - i) Where decisions involve expenditure or reductions in service only those over a value of £25,000 per annum may be called-in.
  - ii) The procedure will not apply to decisions on individual planning or licensing applications.
  - iii) Call-Ins should only apply to decisions which are considered to be contrary to policy or not in accordance with the budget.
  - iv) Decisions which are deemed to be urgent by a Cabinet and a resolution passed to that effect.
  - v) Decisions determined by the various Appeals Panels which deal with Personnel matters (e.g. grievances, disciplinary matters, regardings and other matters relating to employment terms and conditions).
  - vi) Any deferred decisions.

## 10. Call in and Urgency

- (i) The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if the Cabinet resolve that any delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interest. The minute of any decision taken as a matter of urgency must indicate the reasons for urgency.
- (ii) The operation of the provisions relating to call-in and emergency shall be monitored annually by the Head of Paid Service or his or her nominee, and a report submitted to council with proposals for review if necessary.

## 11. Councillor Call for Action

- (i) The Overview and Scrutiny Management will receive and consider Councillor Calls for Action ("CCFA") where they meet the criteria set

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Constitution

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out in the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008.

- (ii) In determining whether to accept a matter under the CCFA the Sub Committee will have regard to the criteria set out in the Guidance set out in the Protocol in Appendix A below.

## **Councillor Call for Action** **Guidance for Councillors in Rossendale**

### **INTRODUCTION**

With the implementation of new legislation, a Ward Councillor may now formally request a relevant scrutiny committee to consider an issue – formally known as a ‘Local Government matter’ – in their ward for further investigation through a ‘Councillor Call for Action’.

We already have in place mechanisms for Members to raise an issue with scrutiny within their own authority by way of completing a scrutiny form.

However, the legislation now extends the rights of Members to refer a local government matter not just to the Committees of their own Authority, but in the case of two-tier areas such as Rossendale, to the County Council’s scrutiny committee.

This guidance is to help Councillors decide whether they have a valid Call for Action, and provides details of how to lodge a Call for Action at Rossendale.

A referral to the Overview and Scrutiny Committee is seen as being an end of the Councillor Call for Action process and not the first stop. We believe that our local community will be better served if issues can be resolved without the need to take them to Overview and Scrutiny.

By monitoring the Calls for Action, our Overview and Scrutiny Committee can identify common issues which it would aim to take forward as part of its scrutiny of the Local Area Agreement.

### **Prior to making a CCfA referral?**

Prior to referring a matter as a Councillor Call for Action to an Overview and Scrutiny Committee, a Councillor must have tried to resolve the issue/problem themselves using the mechanisms and resources available to them at ward/neighbourhood level. The Councillor should:

- Raise the issue through the Member Enquiry Service
- Ensure that the service area or partner agency has been informed of the issue and given enough time to resolve it

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- Ensure that this is not an issue that is currently being or should be pursued via the Council's complaints process

### What is a valid Councillor Call for Action?

In very simple terms, you must be able to answer yes, yes and no to the following questions to determine whether it is a valid Councillor Call for action:

#### Question 1

Does it relate to a local authority function?

#### Answer

Yes

#### Question 2

Does it affect all or part of your ward, or any person who lives or works in it?

#### Answer

Yes

#### Question 3

Might it be subject to exclusion (listed below)?

#### Answer

No

Any matter that already has a statutory appeals process – this would include

- Planning and Licensing applications
- Council tax complaints and queries
- Housing benefit complaints and queries
- Issues currently under dispute in a court of law

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There are exclusions in statutory guidance for the Councillor Call for Action. The exclusions include:

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- Vexatious or persistent requests
- Requests which could be dealt with by formal complaints or appeals' processes (unless systematic failure can be demonstrated)

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The intention behind the legislation is that the Councillor Call for Action should be used as a last resort, where all other avenues have failed.

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## How do I submit my Call for Action?

Please complete a 'Councillor Call for Action Form' which is available on the Council's internet or by contacting Democratic Services on 01706 252423.

The form should outline what the issue is and what steps have been taken towards resolving the issue. It should then be submitted to Democratic Services and it will be acknowledged within five working days.

If it is agreed that it is a valid local government matter, you will then be informed of the date and time of the scrutiny committee which will consider your Call for Action, and whether the Committee wishes to hear any further representation.

## What will happen to my Councillor Call for Action?

The Overview and Scrutiny Management Sub-Committee will consider your Call for Action as it does any new item suggested for its work plan. In deciding whether to review or scrutinise decisions or actions, it will consider whether the issue affects a large number of people or a significant number of people within a smaller specialist interest group. It will consider what you have already done to resolve the matter and what representations you make as to why the Committee should take the matter up.

If the Committee decides to not to take the 'matter' further, it must explain the reasons.

If the committee decides to accept the referral it must decide how it intends to take the matter further. This could include:

- Asking the service/partner to respond to the Call for Action
- Asking for further evidence and/or witnesses to be brought to a future meeting then making recommendations to the Cabinet/partner agency
- Setting up a task and finish group to undertake an in-depth review

If it does take the matter up, it must make sure that the Member receives a copy of any reports or recommendations that it makes.

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## COUNCILLOR CALL FOR ACTION (CCfA) Request

Please note that this form must be:

- Signed personally by an Elected Member who wishes to make the Call for Action

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- Posted or handed in to Democratic Services at room 213 at Futures Park, Bacup, OL13 0BB

<p><b><u>What is the subject of your CCfA?</u></b>  <u>(please give a brief outline of the issue)</u></p>
<p><b><u>What do you want to be the outcome of your CCfA?</u></b></p>

**Some areas are statutorily excluded from the CCfA process. Please answer the following questions to help ascertain whether or not your request falls within the excluded area.**

<u>Does the issue relate to a problem in your electoral ward or any person who lives or works in it?</u>	<u>Yes/No</u>
<u>Does it relate to a local authority function/local Government matter?</u>	<u>Yes/No</u>
<u>Does it relate to a planning/licensing appeal process?</u>	<u>Yes/No</u>

**Guidance suggests that a CCfA should be made only when all other avenues have been exhausted. Please answer the following questions to show the action previously take to resolve the issue:**

**1. Has the issue been discussed with/through any of the following?**

<u>Overview and Scrutiny</u>	<u>Yes/No</u>	<u>Date:</u>
<u>Neighbourhood Forum</u>	<u>Yes/No</u>	<u>Date:</u>
<u>Member Enquiry Service</u>	<u>Yes/No</u>	<u>Date:</u>
<u>Other (please comment)</u>		

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**2. Have you discussed the issue with any of the following:-**

		<b><u>Date</u></b>	<b><u>Contact Name/Tel No</u></b>
<u>Cabinet Member</u>	<u>Yes/No</u>		
<u>Head of Service</u>	<u>Yes/No</u>		
<u>Council Officer</u>	<u>Yes/No</u>		
<u>Lancashire Local</u>	<u>Yes/No</u>		

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<u>Local County Councillor</u>	<u>Yes/No</u>		
<u>Other Person</u>	<u>Yes/No</u>		
<b>Partner Organisations</b> <u>Please give details of Partner organisations (NHS, Police, Fire and Rescue) with whom you have discussed the matter</u>			
<u>Other (please comment)</u>			

3. Please give brief details of the outcome of the discussions you have had?

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Details

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<u>Name:</u>	<u>Signature:</u>
<u>Date:</u>	

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Date and time of receipt of form .....

Receiving Officer.....

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12. Crime & Disorder

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The Overview and Scrutiny Management Committee will sit on at least one occasion pa, on a Crime and Disorder Committee.

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**ACCESS TO INFORMATION  
PROCEDURE RULES**

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1. **SCOPE**

These rules apply to all meetings of the Council, its Cabinet, Regulatory Committees, the Overview and Scrutiny Committees, the Standards and Monitoring Committee, Joint Committees and any Sub-Committees (together called meetings).

2. **ADDITIONAL RIGHTS TO INFORMATION**

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

3. **RIGHTS TO ATTEND MEETINGS**

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

4. **NOTICES OF MEETING**

The Council will give at least five clear days notice of any meeting by posting details of the meeting.

5. **ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports open to the public available for inspection at least five days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the Proper Officer shall make each such report available to the public as soon as the report is completed and sent to Councillors) will be open to inspection from the time the item was added to the agenda. If urgent business is allowed copies of any reports will be made available to the public.

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6. **SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) any other documents supplied to Councillors in connection with an item, if the Proper Officer thinks fit; to any person.

7. **ACCESS TO MINUTES ETC. AFTER THE MEETING**

The Council will make available copies of the following after a meeting:

- (a) the minutes of the meeting.
- (b) the agenda for the meeting; and
- (c) reports relating to items when the meeting was open to the public.

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8. **BACKGROUND PAPERS**

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## 8.1 List of Background Papers

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

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information.

## 8.2 Public Inspection of Background Papers

The Council will make available for public inspection one copy of each of the documents on the list of background papers.

## 9. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

### 9.1 Confidential Information - Requirement to Exclude Public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

### 9.2 Exempt Information – Discretion to Exclude Public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

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

### 9.3 Exempt Information – Public Interest Test

Information which falls within any of the paragraphs 1-7 at 9.4 below, and is not prevented from being exempt by virtue of any of the conditions listed below, is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### 9.4 Meaning of Confidential Information

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

9.5 **Meaning of Exempt Information (Schedule 12A of the Local Government Act 1972 – as amended)**

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Exempt information means information falling within the following categories (subject to any condition listed below):

	Category	Interpretation
1	Information relating to any individual	
2	Information which is likely to reveal the identity of an individual	
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	“Financial or business affairs” includes contemplated, as well as past or current, activities. “Person” includes both incorporated and unincorporated associations of persons and, as such, an unincorporated charity falls within the definition of person as well as a company.
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under, the authority	“Employee” means a person employed under a contract of service. “Labour relations matter” means – a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of the at Act); or b) any dispute about a matter falling within paragraph (a) above; and, for the purposes of this definition, the enactments mentioned at (a) above, with the necessary modifications, shall apply to office-holders under the authority as they apply to employees of the authority. “Officeholder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who hold any such office or is an employee of the authority.
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	
6	Information which, if disclosed to the public, would reveal that the authority proposes-	“Person” includes both incorporated unincorporated associations of persons and, such, an unincorporated charity falls within

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	(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	definition of person as well as a company.
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	

and in respect of a meeting of the Standards Committee, or a Sub-Committee of the Standards Committee or a Standards Board Panel, convened to consider a matter under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.

	Category	Interpretation
7A	Information which is subject to any obligation of confidentiality	
7B	Information which relates in any way to matters concerning national security	
7C	The deliberations of a Standards Committee or of a Sub-Committee of a Standards Committee established under Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act	

### Conditions

- a) Information falling within any paragraph above is not exempt information by virtue of that paragraph if that information is required to have been made available to the public by virtue of any other law.
- b) Information falling within paragraph 3 is not exempt information by virtue of this paragraph if it is required to be registered under:-
- (a) the Companies Act 1985
  - (b) the Friendly Societies Acts 1974 and 1982
  - (c) the Industrial and Provident Societies Act 1965 to 1978
  - (d) the Building Societies Act 1986 or

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### Part 4 - 274

(e) the Charities Act 1993

“Registered” in relation to information required to be registered under the Building Societies Act 1986 means recorded in the public file of any building society (within the meaning of that Act).

- c) Information falling within any of paragraphs 1-7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

#### 10. **EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items which the meeting may decide should not to be open to the public. Such reports will be marked “Not for Publication” together with the category of information likely to be disclosed. If, at the meeting it is resolved that the matter should be dealt with in public, the relevant reports should be made available to the public.

#### 11. **URGENT BUSINESS**

In accordance with Section 100B(4)(6) of the Local Government Act 1972 The Mayor or Committee Chair may allow urgent items of business to be considered on the grounds of urgency. If an item is allowed the Chair must give reasons for the special circumstances which require an urgent decision.

#### 12. **APPLICATION OF RULES TO THE CABINET**

Rules 13 – 21 apply only to the Cabinet and its Committees. If the Cabinet or its Committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 14.3 of this Constitution.

#### 13. **PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least five clear days have elapsed since the publication of the Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notices of meetings).

#### 14. **THE FORWARD PLAN**

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### Part 4 - 275

#### 14.1 Period of Forward Plan

Forward plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

#### 14.2 Contents of Forward Plan

The Forward Plan will contain matters which the Cabinet has reason to believe will be subject of a Key Decision to be taken by the Cabinet, officers, or under joint arrangements in the course of the discharge of an Cabinet function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision-maker is an individual, his or her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

The Forward Plan must be published at least 14 days before the start of the period covered.

The Chief Executive will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that key decisions are to be taken on behalf of the Council;
- (b) that a Forward Plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;

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- (c) that the plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a Forward Plan and confidential information cannot be included.

#### 15. GENERAL EXCEPTION

If a matter which is likely to be a key decision has not been included in the Forward Plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates; and
- (b) the Chief Executive has informed the chairman of a relevant Overview and Scrutiny Committees, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made; and
- (c) the Chief Executive has made copies of that notice available to the public at the offices of the Council; and
- (d) at least three clear days have elapsed since the Chief Executive complied with (a) and (b).

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

#### 16. SPECIAL URGENCY

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If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chairman of the body making the decision, obtains the agreement of the chairman of a relevant Overview and Scrutiny Committees that the taking of the decision cannot be reasonably deferred. If there is no chairman of a relevant Overview and Scrutiny Committees, or if the chairman of each relevant Overview and Scrutiny Committees is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice Chairman of the Council will suffice.

## **17. REPORT TO COUNCIL**

### **17.1 When an Overview and Scrutiny Committees can require a report**

If an Overview and Scrutiny Committees thinks that a key decision has been taken which was not:

- (a) included in the Forward Plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with a relevant Overview and Scrutiny Committees chairman, or the Chairman/Vice Chairman of the Council under Rule 16;

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the Committee when so requested by (the chairman or any seven members). Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Overview and Scrutiny Committees.

### **17.2 Cabinet's Report to Council**

Following receipt of a requisition under Rule 17.1, the Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons or that opinion.

### **17.3 Quarterly Reports on Special Urgency Decisions**

In any event the Leader will submit reports to each ordinary meeting of the Council on the Cabinet decisions taken in the circumstances set out in Rule 16 (special urgency) since the last occasion when a report was made.

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The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **18. RECORD OF DECISIONS**

After any meeting of the Cabinet or any of its Committees, whether held in public or private, the Chief Executive or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **19. CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

The Cabinet will hold meetings relating to matters which are not key decisions in public except where the public is excluded by Rule 10.

## **20. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS**

### **20.1 Rights to copies**

(b) Subject to Rule 20.2 below, an Overview and Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relevant to its area of work relating to any business which will be or was transacted at a meeting of the Cabinet or its committees;

### **21.2 Limit on Rights**

Overview and Scrutiny Committees will not be entitled to:

- a) any document that is in draft form;
- b) the advice of a political adviser.

## **22. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **22.1 Material relating to previous business**

All Members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its Committees and contains material relating to any business previously transacted at a meeting unless it contains the advice of a political adviser.

### **22.2 Material relating to Key Decisions**

All Members of the Council will be entitled for their work as a councillor to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its Committees which

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## **Part 4 - 279**

relates to any key decision unless it contains the advice of a political adviser.

### 22.3 Nature of rights

These rights of a Member are additional to any other right he or she may have.

**9.**

## **STANDARDS COMMITTEE PROCEDURE RULES**

### **ROSSENDALE BOROUGH COUNCIL** **ASSESSMENT CONSIDERATION /PRE-HEARING AND HEARING PROCEDURE**

#### **INTERPRETATION**

**Part 4 - 280**

Constitution of the Rossendale Borough Council – amended at 7<sup>th</sup> October 2009 V11

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- 1) 'Subject Member' means the Member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
- 2) 'Investigating Officer' means the Monitoring Officer or Ethical Standards Officer and includes their nominated representative.
- 3) The Matter' is the subject matter of the investigator's report.
- 4) 'Committee' also refers to a Sub-Committee.
- 5) 'Legal Adviser' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the Authority, or someone delegated by the Monitoring Officer to so advise
- 6) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Standards Committee discharge of its functions and recording the decisions of the Standards Committee.
- 7) 'The Chairman' refers to the person presiding at the Hearing.

## ROSSENDALE BOROUGH COUNCIL

### PROCEDURE FOR THE ASSESSMENT, REFERRAL AND INVESTIGATION OF COMPLAINTS OF BREACH OF THE CODE OF CONDUCT

#### Introduction

1. This procedure applies when a complaint is received that a Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Members Code of Conduct.
2. The person making the complaint will be referred to as "the complainant" and the person against whom the complaint is made will be referred to as the "subject member."
3. The procedure will also apply if a complaint is referred back to the Standards Committee by the Standards Board for England.
4. No Member or Officer will participate in any stage of the assessment process if he or she has or may have any personal conflict of interest in the matter.

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#### Assessment Sub-Committee

5. Upon receipt of a complaint that a Councillor, Co-opted Member or Parish Councillor has failed or may have failed to comply with the Members Code of Conduct, the Monitoring Officer will liaise with the Committee and Members

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Services Manager or her representative to convene as soon as possible and in any event within 20 working days a meeting of an Assessment Sub-Committee.

6. The Assessment Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman. Where the complaint relates to a Parish Councillor, the Assessment Sub-Committee will include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Monitoring Officer or her representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Assessment Sub-Committee will not include a councillor of the same group as the subject member or the complainant.

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7. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another Legally qualified officer.

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8. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint, either as an investigation or some other action. The Assessment Sub-Committee will not make any findings of fact.

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9. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a pre assessment report prepared by the Monitoring Officer or her representative which will set out the following details:

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- Whether the complaint is within the jurisdiction of the Standards Committee;
- The paragraphs of the Code of Conduct the complaint may refer to, or the paragraphs the complainant has identified;
- A summary of key aspects of the complaint if it is lengthy or complex;
- Any further information that the Officer has obtained to assist the Assessment Sub-Committee with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents;
- Any clarification obtained by the Officer from the complainant if the complaint was unclear.

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It should be noted, however, that pre-assessment inquiries will be limited, and will not be carried out in such way as to amount to an investigation.

### The Assessment Process

10. The Assessment Sub-Committee will first consider whether the complaint meets the following tests:

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- The complaint is against one or more named members or co-opted members of the Council or a parish council within its district;
- The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code of Conduct under which the subject member was operating at the time of the alleged misconduct.

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If the complaint fails and one or more of these tests, then it cannot be investigated as a breach of the Code of Conduct the decision of the Assessment Sub-Committee must be that no further action will be taken. The complainant must be informed that no further action will be taken in respect of the complaint.

11. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer, to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of Assessment Criteria which are to be approved by the Standards Committee, and which will from time to time be reviewed by the Standards Committee.

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12. The Assessment Sub-Committee will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.

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13. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within five working days after the date of the meeting.

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14. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within five working days after the date of the meeting.

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15. However, the Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would or might be against the public interest or would or might prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member or other person may seek to intimidate, or influence or pressurise the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-Committee will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

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### The Review Process

16. If the Assessment Sub-Committee decides not to take any action on a complaint, then the complainant has a right to request a review of that decision, and will be so advised when notified of the decision.

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17. When a request for review is received, the Monitoring officer will liaise with the Committee and Members Services Officer or her representative to convene as soon as possible and in any event within 20 working days a meeting of a Review

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Sub-Committee. The subject member will be informed when a review has been received

18. The Review Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman. None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. Where the complaint relates to a Parish Councillor, the Review Sub-Committee will include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Monitoring Officer or her representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Review Sub-Committee will not include a councillor of the same group as the subject member or the complainant.

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19. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee shall have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria referred to in paragraph 11 above. The Review Sub-Committee has the same range of decisions available to it as the Assessment Sub-Committee and will follow the process outlined above in paragraphs 10-15 above.

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20. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted. Within 5 working days of making its decision both the complainant and the subject member will be provided with notice in writing of both the decision and reasons for the decision .In the event that a Parish Councillor is involved the Parish Council will be informed.

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### Withdrawing Complaints

21. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:

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- Whether the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;
- Whether the complaint is such that action can be taken on it without the complainant's participation;
- Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the complainant may have been intimidated, influenced or pressurised by the subject member or other person to withdraw the complaint, or any witnesses involved may have been intimidated, influenced or pressurised.

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### Confidentiality

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22. If a complainant has asked for his or her identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.

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23. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the complainant has reasonable grounds for believing that he or she or any witness involved will be at risk of physical harm, or his or her employment will be jeopardised if his or her identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.

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24. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the complainant's identity known, and, in particular, whether the complainant's participation would be required if the complaint were referred.

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25. If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may offer the complainant the option to withdraw, rather than proceed with his or her identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have his or her identity withheld from the subject member

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### **Complaints about Members of more than one Authority**

26. Where a complaint is received about a councillor, a co-opted Member or parish councillor who is known to be a member of another authority, for example, the County Council, the Monitoring Officer will before the meeting of the Assessment Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.

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### **ROSSENDALE BOROUGH COUNCIL STANDARDS COMMITTEE**

Circumstances where the Assessment Sub-Committee may decide that no action should be taken in respect of the allegation:

1. Where the complaint is about someone who is no longer a Member of the Council or Parish Council. (Where the Member is no longer a Member of the Council or Parish Council, but is a Member of another Authority, the complaint will be referred to the Standards Committee of that other Authority to consider).

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2. Where the information provided by the complainant is not sufficient to enable the Sub-Committee to make a decision as to whether the complaint should be referred for investigation or other action. However, the complainant will be advised that it is possible to resubmit the complaint with further information.

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3. Where a substantially similar allegation has previously been made by the complainant to the Standards Board or the Standards Committee, or the complaint has been the subject of an investigation by another Regulatory Authority, (except where a Review Sub-Committee has taken the view that a request for review contains new information and should be considered by an Assessment Sub-Committee rather than the Review Sub-Committee). The Sub-Committee will only refer the complaint for investigation or other action if it considers that there is a compelling reason to do so.

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4. Where the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now. It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, it may be appropriate to refer the complaint for investigation or other action.

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5. Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

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6. Where the allegation discloses a potential breach of the Members' Code of Conduct, but the Sub-Committee considers that the complaint is not serious enough to warrant further action.

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7. Where the complaint appears to be malicious, politically motivated or tit-for-tat.

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Circumstances where the Assessment Sub-Committee may decide to refer the allegation to the Monitoring Officer for investigation

1. Where the allegation discloses a potential breach of the Code of Conduct that the Sub-Committee considers sufficiently serious to justify the cost of an investigation.

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Circumstances where the Assessment Sub-Committee may decide to refer the allegation to the Monitoring Officer for training, conciliation or other steps as appear appropriate to the Standards Committee

Note This approach may be appropriate where the Sub-Committee believes that the conduct, if proven, may amount to a failure to comply with the Code, and that some action should be taken in response to the complaint. If this approach is taken, the purpose of the action is NOT to find out whether the Member, who is the subject of the allegation, breached the Members' Code, and no conclusion will have been reached on whether the Member failed to comply with the Code. It should be noted that this approach may be taken after consultation with the Monitoring Officer.

1. Where the complaint suggests that there is a wider problem throughout the Authority and it is appropriate to extend the action to other Members who are not the subject of the complaint.

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2. Where it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction.

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3. Where it appears that even if the allegation was fully investigated, and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy.

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Circumstances where the Assessment Sub-Committee may decide to refer an allegation to the Standards Board

1. Where the Assessment Sub-Committee believes that the status of the member or members, or the number of Members about whom the complaint is made, would make it difficult for the Standards Committee to deal with the complaint. For example, if the complaint is about the Leader or Deputy Leader of the Council, a Group Leader or a Member of the Cabinet or Standards Committee.

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2. Where the Assessment Sub-Committee believes that the status of the complainant would make it difficult for the Standards Committee to deal with the complaint. For example, if the complainant is the Leader or Deputy Leader, a Group Leader or a Member of the Cabinet or Standards Committee, or the Chief Executive or a Statutory Officer.

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3. Where the Assessment Sub-Committee considers that there is a potential conflict of interest of so many Members of the Standards Committee that it could not properly deal with the matter itself.

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4. Where the Assessment Sub-Committee believes that there is a potential conflict of interest of the Monitoring Officer or other Officers, and that suitable alternative arrangements cannot be put in place to address the conflict.

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5. Where the case is so serious or complex that it cannot be handled locally.

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6. Where the complaint will require substantial amounts of evidence beyond that available from the Authority's documents, its Members or Officers.

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7. Where there is substantial governance dysfunction in the Authority or its Standards Committee.

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8. Where the complaint relates to long-term or systematic Member or Officer bullying which could be more effectively investigated by someone outside the Council.

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9. Where the allegation raises significant or unresolved legal issues on which a national ruling would be helpful.

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10. Where the public might perceive the Council to have an interest in the outcome of a case. For example, if the Authority could be liable to be judicially reviewed if the complaint were upheld.

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11. Where there are exceptional circumstances which could prevent the Authority or its Standards Committee investigating the complaint competently, fairly or in a reasonable period of time.

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## **PRE-HEARING STAGE**

### **THE PRE-HEARING PROCESS TO BE CARRIED OUT IN WRITING UNLESS THE CASE IS VERY COMPLICATED AND THE CHAIR OF THE STANDARDS COMMITTEE AND LEGAL ADVISER AGREE THAT A PRE-HEARING SUB-COMMITTEE SHOULD BE ORGANISED, THAT DECISION TO BE MADE AT STAGE 5 BELOW**

1. A Consideration, Pre-Hearing and Hearing Sub-Committee shall be convened with a composition in accordance with the principles set out below.

2. The Subject Member will be asked for a written response to the Investigating Officer (IO's) report within fifteen working days and shall state whether he/she

- disagrees with any of the findings of fact in the report, giving the reasons for any disagreement;
- wishes to detail other evidence relevant to the complaint
- wishes to be legally represented or by any other person;
  
- wishes to give evidence to the Sub-Committee, either orally or in writing;

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- confirm if any party has specific needs (e.g. access requirements)
- confirm they are attending the Hearing
- wishes to call relevant witnesses to give evidence to the Sub-Committee (and to outline that evidence);
- wishes any part of the Hearing to be held in private;
- wishes any part of the IO's report or other relevant documents to be withheld from the public;
- wishes to outline any representations to be taken into account if the Subject Member is found to be in breach.

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3. The Subject Member shall be informed that if, at the meeting of the Sub-Committee, he/she seeks to dispute any matter contained in the IO's report without having previously notified the intention to do so, the Sub-Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.

4. The IO shall be invited to comment on the Subject Member's response within ten working days of receipt, and shall state whether or not he/she

- wishes to call relevant witnesses to give evidence or submit written or other evidence to the Sub-Committee;
- wishes any part of the Hearing to be held in private;
- wishes any part of the report or other relevant documents to be withheld from the public;

5. Witnesses may only give evidence with the express approval of the Chair of the Sub Committee.

6. The Subject Member and the IO are entitled to request the Chair's approval for the attendance of such witnesses as are necessary. However, in consultation with the Monitoring Officer, the Chair may limit the witnesses to be called, if he/she believes the number requested for the relevant party is unreasonable or that the relevant witnesses will be repeating the evidence of other witnesses to be called, or else not likely to provide such relevant evidence that will assist the Sub-Committee to reach its decision.

7. The Chairman may request the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.

8. The Monitoring Officer or the Legal Adviser (who must not be the IO), in consultation with the Chair of the Sub Committee, will write to the Subject Member and the IO to:

- confirm a date, time and place for the Hearing, which must be within three months from the date on which the IO's report was completed and not less than fourteen working days after the report was sent to the Subject Member
- confirm the main facts of the case that are agreed

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- confirm the main facts that are not agreed
- provide copies of any written evidence to the relevant parties
- confirm which witnesses will be called by the parties
- provide the parties with copies of the proposed procedure for the Hearing, specifying which parts of the proceedings, if any, may be considered in private

The Monitoring Officer will also write to update the complainant.

### **CONSIDERATION, PRE-HEARING AND HEARING SUB-COMMITTEE PROCEDURE FOR A HEARING**

1. The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interests of fairness.

### **REPRESENTATION**

2. The Subject Member may be legally represented, or with the permission of the Sub-Committee, by another person. It is the responsibility of the Subject Member to arrange for their own representation.

### **LEGAL ADVICE**

3. The Sub-Committee may take legal or procedural advice from its Legal Adviser (who may be the Monitoring Officer) at any time during the Hearing or during the Sub-Committee's deliberations. The substance of any advice given to the Sub-Committee will be shared with the Subject Member and Investigating Officer (IO) if they are present at the Hearing.

### **INTRODUCTIONS AND SETTING THE SCENE**

4. At the start of the Hearing, the Chairman shall introduce each of the members of the Sub-Committee, the Subject Member (if present), the IO (if present), and the Legal Adviser, and shall then explain the procedure, which the Sub-Committee will follow.

### **PRELIMINARY PROCEDURAL ISSUES**

5. The Sub-Committee shall deal with the following preliminary procedural matters:

#### **a) Disclosures of interest**

The Chairman shall ask members of the Sub-Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

#### **b) Quorum**

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The Chairman shall confirm that the Sub-Committee is quorate.

**c) Exclusion of Press and Public**

The Chairman shall ask the Subject Member, the Investigator and the Legal Adviser to the Sub-Committee whether they wish to ask the Sub-Committee to exclude the Press or Public from all or any part of the Hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude the press and public from all or any part of the Hearing.

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#### d) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Sub-Committee will follow in determining the matter.

#### e) If the Subject Member is not present at the start of the hearing:

- The Chairman will ask the Legal Adviser whether the Subject Member has indicated his/her intention not to attend the hearing;
- The Sub-Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing;
- If it is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Sub-Committee shall decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.

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#### MAKING FINDINGS OF FACT

6. After the preliminary procedures, the Sub-Committee will consider whether or not there are any significant disagreements about the facts contained in the IO's report.

If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

7. If there is disagreement, the IO will present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The Subject Member and the Sub-Committee members may ask questions of the IO or any witness.

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8. The Subject Member or his/her representative will then present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The IO and the Sub-Committee members may ask questions of the Subject Member or any witnesses.

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9. At any time, the Sub-Committee may question any of the people involved or any witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Subject Member.

10. If the Subject Member disagrees with most of the facts, the Investigator will make representations on all the relevant facts, instead of discussing each fact individually.

11. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject member's explanation, the Sub-Committee may continue with the hearing, relying on the information in

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the report; may allow the Subject Member to make representations about the issue and invite the IO to respond and call witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.

12. The Sub-Committee will consider in private all the evidence which has been heard or received as written evidence first, to establish its findings of fact.

13. On their return, the Chairman will announce the Sub-Committee's findings of fact.

14. At any stage in the consideration of the matter, the Sub-Committee may return to ask further questions of the IO or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

#### **DID THE SUBJECT MEMBER FAIL TO FOLLOW THE CODE OF CONDUCT**

15. The Sub-Committee will then consider whether, based on the facts it has found, the subject member has failed to follow the Code.

16. The Subject Member will be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.

17. The Sub-Committee will then consider any verbal or written representations from the Investigator.

18. The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.

19. The Subject Member will then be invited to make any final relevant points.

20. The Sub-Committee will consider in private the representations.

21. On their return, the Chairman will announce the Sub-Committee's decision as to whether the Subject Member has failed to follow the Code.

#### **IF THE SUBJECT MEMBER HAS NOT FAILED TO FOLLOW THE CODE OF CONDUCT**

22. If the Sub-Committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the Authority.

#### **IF THE SUBJECT MEMBER HAS FAILED TO FOLLOW THE CODE OF CONDUCT**

23. If the Sub-Committee concludes that the Subject Member has failed to comply with the Code of Conduct, the Sub-Committee will consider any verbal or written representations from the Investigator and the Subject Member as to:

- Whether the Sub-Committee should apply a sanction

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- What form any sanction should take

24. The Sub-Committee may ask questions of the Subject Member and the IO and take legal advice, to make sure they have the information they need in order to make an informed decision.

25. The Sub-Committee shall then consider in private whether to impose a Sanction on the Subject Member, and, if so, what sanction to impose and when that sanction should take effect.

26. The sanctions open to the Sub-Committee are:

- censure (to express formal disapproval or formally rebuke the actions and/or behaviour) of the Subject Member (suitable for members who are no longer members of the authority);
- restriction for a period not exceeding six months of the Subject Member's access to the premises of the authority or use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and do not unduly restrict the person's ability to perform the functions of a member;
- partial suspension of the Subject Member for a period not exceeding six months;
- suspension of the Subject Member for a period not exceeding six months;
- require the Subject Member to submit a written apology in a form specified by the Sub-Committee;
- require the Subject Member to undertake such training as the Sub-Committee specifies;
- partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member submits a written apology in a form specified by the Sub-Committee;
- partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies;
- suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has submitted a written apology in a form specified by the Sub-Committee;
- suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies;
- any combination of the above sanctions.

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27. Any sanction imposed by the Sub-Committee shall commence immediately unless the Sub-Committee directs that a sanction shall commence on another date within six months from the imposition of the sanction.
28. In deciding to impose a sanction, the Sub-Committee shall consider all the relevant circumstances and shall have regard to any relevant Guidance issued by the Standards Board.
29. If the Sub-Committee has determined that the action which it could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient then it may decide to refer the matter to the Adjudication Panel for determination. The reference itself can be made only if the President or Deputy President has agreed to accept it.
30. The Chairman will announce the decision of the Sub-Committee. Written notice of the findings of the Sub-Committee will be given as soon as it is reasonably practicable to the Subject Member, the Standards Board, the Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation. Public notices shall be given in accordance with the Regulations.
31. Where the Sub-Committee determines that the Subject Member has failed to comply with the Code of Conduct, the Chairman shall inform the Subject Member of the right to seek permission to appeal against the Sub-Committee's findings or any sanction imposed by sending a notice in writing to:

**The President of the Adjudication Panel for England at  
23 Victoria Avenue, Harrogate, HG1 5RD**

within 21 days of receipt of the written notice of findings.

#### **RECOMMENDATIONS TO THE AUTHORITY**

32. The Sub-Committee may consider making recommendations with a view to promoting higher standards of conduct among members.

#### **COMPOSITION OF THE CONSIDERATION, PRE-HEARING AND HEARING SUB-COMMITTEE**

1. The Sub-Committee shall comprise three Members of the Standards Committee and at least one shall be an Independent Member.
2. An Independent Member will be the Chair of the Sub-Committee.
3. Where the Subject Member is a Parish or Town Councillor, at least one Parish or Town Representative will be a member of the Sub-Committee.
4. Subject to the above, the pool of Members drawn from the Standards

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Committee will be selected in rotation, taking into account their availability for the proposed hearing date, and any possible conflicts of interest.

5. Independent members may also be temporarily appointed to another Standards Committee to consider a particular Assessment, Review or Hearing or for a particular period of time.
6. Once a Sub-Committee has been selected for a Hearing, if a Member becomes unavailable to attend, a substitute will be selected in accordance with the above.

### **TERMS OF REFERENCE OF THE CONSIDERATION, PRE HEARING AND HEARING SUB-COMMITTEE**

1. Consideration of investigation reports prepared by or on behalf of the Monitoring Officer following a referral by the Assessment Sub-Committee on an initial assessment and determine:
  - a. That it accepts the Monitoring Officer's finding of no failure (a finding of acceptance) to comply with the code of conduct
  - b. That the matter should be considered at a Hearing of the Standards Committee Consideration and Hearing Sub-Committee
  - c. That the matter should be referred to the Adjudication Panel for determination
2. After making a finding of acceptance, the Consideration, Pre-Hearing and Hearing Sub-Committee shall give written notice to the Subject Member and Complainant / Town Council as required by Regulations.
3. At the request of the Monitoring Officer and Chair of the Standards Committee to hold a Pre hearing to:
  - Identify whether the subject member disagrees with any of the findings of fact in the investigation report
  - Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
  - Identify whether evidence about those disagreements will need to be heard during the hearing
  - Decide whether there are any parts of the hearing that are likely to be held in private
  - Decide whether any parts of the investigation report or other documents should be withheld from the public prior to the Hearing, on the grounds that they contain "exempt" material
4. To conduct the Hearing of an allegation that a Subject Member or Co-opted Member is in breach of the Code of Conduct in accordance with the law and Standards Board Guidance.

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5. Following a Hearing, make one of the following findings:

- a. That the Subject Member has not failed to comply with the Code of Conduct;
- b. That the Subject Member has failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters considered at the Hearing;
- c. That the Subject Member has failed to comply with the Code of Conduct and that a sanction should be imposed.

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6. If the Sub-Committee makes a finding under paragraph 4(c) it shall impose any one of or any combination of sanctions that are available to a Standards Committee by law and outlined in the Procedure for a Hearing.

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7. As soon as reasonably practicable, after making a finding under paragraph 4, it shall provide written notice of the finding and the reasons for it to the Subject Member / Complainant / Town Council, the Standards Board and the Standards Committee of any other authority concerned.

8. The Sub-Committee shall comprise three Members of the Standards Committee.

9. The Chair of the Sub-Committee will be an Independent Member

10. The Quorum for meetings of the Sub-Committee will be three members.

11. Decide on exempt information

**ROSSENDALE BOROUGH COUNCIL STANDARDS COMMITTEE**

**PROCEDURE FOR CASES REFERRED FOR INVESTIGATION TO THE MONITORING OFFICER**

1. When an allegation is referred to the Monitoring Officer (MO) for investigation, he/she will within five working days, unless otherwise directed by the Assessment Sub-Committee or the Ethical Standards Officer (ESO) inform the member who is the subject of the allegation ("the Subject Member"), the person who made the allegation ("the Complainant"), the clerk to any parish council concerned, and the standards committee of any other authority concerned, that the matter has been referred for investigation and who will carry out the investigation.

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MEMBERS SHOULD NOTE THAT UNTIL THIS TIME THE MONITORING OFFICER HAS NO AUTHORITY TO DISCUSS THE SUMMARY OF THE COMPLAINT WITH THE SUBJECT MEMBER. GROUP LEADERS WILL BE INFORMED AT THIS STAGE

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2. Unless the Assessment Sub-Committee or ESO have directed that it would be contrary to the public interest or prejudicial to the investigation, the MO will at the same time provide the Subject Member with a written summary of the allegation.

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3. The MO will appoint an Investigating Officer (IO) who may be an officer of the Council, or an external person. The IO may appoint persons to assist him/her in the conduct of the investigation, and may obtain such professional advice as may be necessary.

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4. In carrying out the investigation, the IO shall have regard to any relevant guidance issued by the Standards Board, and shall comply with any relevant direction given by the Standards Board.

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5. The IO may make such inquiries as he/she thinks necessary or expedient for the purposes of conducting the investigation, and may require any person to give such information or explanation as the IO thinks necessary. The IO may require any relevant authority concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation, and to provide reasonable access to such documents in the possession of that authority as appear to the IO to be necessary for the purpose of conducting the investigation.

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6. Statements will be prepared and agreed with each person interviewed during an investigation. The Subject Member may be accompanied by a professional representative or advisor, a political colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative. Interviews will be tape recorded with the agreement of the Subject Member.

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7. The IO will try to complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation required.

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8. Where during the investigation, as a result of new evidence or information, the IO forms an opinion that the matter is materially more serious or materially less serious than may have seemed apparent to the Assessment Sub-Committee, when it made its decision to refer the matter for investigation, he/she shall refer the matter to the Assessment Sub-Committee who shall consider the matter as if it were a new allegation.

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9. If the Subject Member has died, is seriously ill or has resigned from the authority concerned, and the IO of the opinion that it is no longer appropriate to continue with the investigation, he/she shall refer the matter to the Assessment Sub-Committee

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10. The IO, having concluded the investigation, will consider whether to produce a draft report before the final report. A draft report may be appropriate where the facts are complex or ambiguous, or where the facts are disputed. Any draft report will be issued to the Subject Member and Complainant for comment, and will indicate that it does not necessarily represent the IO's final finding.

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11. The IO's final report will include a statement of his/her finding. This will be either that there has been a failure to comply with the code of conduct ("a finding of

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failure”), or that there has not been a failure to comply with the code of conduct (“a finding of no failure”). A copy of the report will be sent to the Subject Member and referred to the Standards Committee Consideration, Pre- Hearing and Hearing Sub-Committee.

### Consideration stage

12. When the Standards Consideration, Pre-Hearing and Hearing Sub-Committee considers the report of the IO, it shall make one of the following findings:

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- That it accepts the finding of no failure (“a finding of acceptance”)
- That the matter should be considered at a Hearing by a Consideration, Pre-Hearing and Hearing Sub- Committee of the Standards Committee, or
- That the matter should be referred to the Adjudication Panel for determination (but only if it has determined that the action it could take against the Subject member would be insufficient were a finding of failure to be made, and the president or deputy president of the Adjudication Panel has agreed to accept the referral)

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13. Where there is a finding of acceptance, written notice of that finding shall be given to those involved, and published as required by the relevant Regulations, unless the Subject Member requests otherwise.

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14. Where the Consideration, Pre-Hearing and Hearing Sub-Committee decides to hold a hearing, this shall be conducted in accordance with the Committee’s Pre-hearing and Hearing Procedures.

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15. If the investigation report finds that there has been a failure to comply with the Code a hearing must take place – unless the Standards Consideration, Pre-Hearing and Hearing Sub-Committee decides that the matter should be referred to the Adjudication Panel for England for determination.

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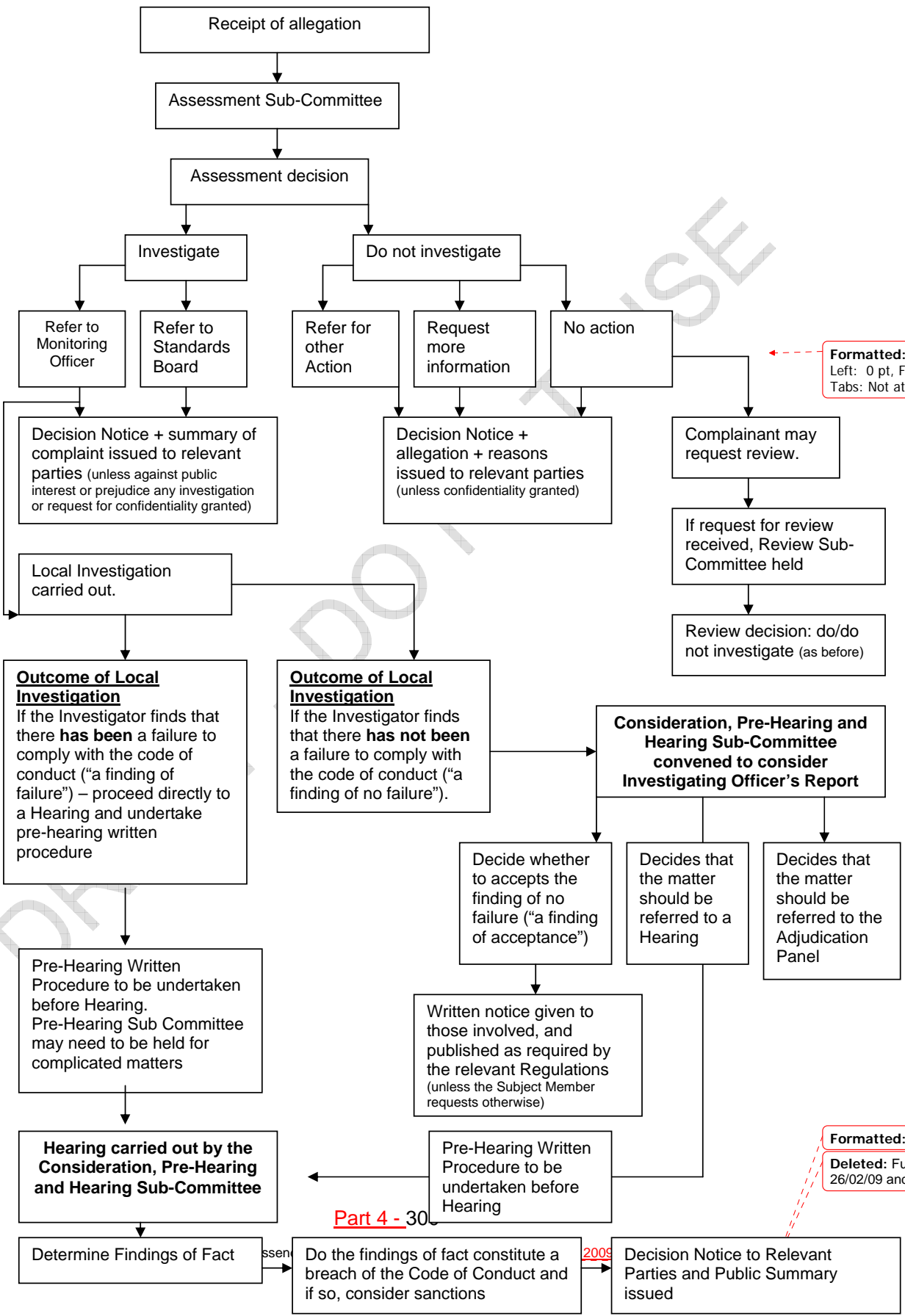
### Performance indicators

The IO will seek to complete reports within 6 months of the Assessment Sub Committee

Hearings will be held within 3 months of completion of the investigation

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2009

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SCRUTINY PROCEDURE  
RULES**1. RECRUITMENT AND APPOINTMENT**Deleted: EMPLOYMENT  
PROCEDURE RULES**1.1 Declarations**

- (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or an Officer of the Council; or of the partner of such persons.
- (ii) No candidate so related to a Councillor or an Officer will be appointed without the authority of the relevant Directors and Heads of Services or an Officer nominated by him or her.

**1.2 Seeking support for appointment.**

- (i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) Subject to paragraph (iii), no Councillor will seek support for any person for any appointment with the Council.
- (iii) Nothing in paragraphs (i) and (ii) above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment provided that Councillor has no role in the decision process of recruitment / appointment to that position.

**2. RECRUITMENT OF HEAD OF PAID SERVICE AND DIRECTORS AND HEADS OF SERVICE**

Where the Council proposes to appoint a Directors and Heads of Services and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;

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- b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

### **3. APPOINTMENT OF HEAD OF PAID SERVICE**

- 3.1 The Full Council must approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a Committee or Sub-committee of the Council before an offer of appointment is made to him/her. That Committee or Sub-committee must include at least one Member of the Cabinet.
- 3.2 An offer of employment as Head of Paid Service shall only be made where the procedure set out in Appendix 1 to the Officer Employment Procedure Rules has been completed.

### **4. APPOINTMENT TO DIRECTORS AND HEADS OF SERVICES POSTS**

- 4.1 The Full Council has decided to reserve to itself the approval of the appointment of the Directors and Heads of Service following the recommendation of such an appointment by a Committee or Sub-committee of the Council before an offer of appointment is made to him/her. That Committee or Sub-committee must include at least one Member of the Cabinet.
- 4.2 An offer of employment as a Directors and Heads of Services or an Officer paid on Directors and Heads of Services grades shall only be made where the procedure set out in Appendix 1 to the Officer Employment Procedure Rules has been completed.

### **5. OTHER APPOINTMENTS**

- 5.1 Deputy Directors and Heads of Service and Officers below.

Appointment of Deputy Directors and Heads of Service and Officers below Deputy Directors and Heads of Services (other than assistants to political groups) is the responsibility of the Head of Paid Service or his or her nominee, and may not be made by Councillors.

- 5.2 Assistants to political groups.

Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

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## 6. DISCIPLINARY ACTION

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- 6.1 Suspension of Head of Paid Service, Chief Finance Officer, and Monitoring Officer.

The Head of Paid Service, Chief Finance Officer and Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct; any such suspension must terminate no later than the expiry of two months beginning on the day on which the suspension takes effect, unless the designated independent person has directed that it may continue beyond that period.

- 6.2 Independent person.

No other disciplinary action may be taken in respect of the Head of Paid Service, the Chief Finance Officer or Monitoring Officer, except in accordance with a recommendation in a report made by a designated independent person under Regulation 7 of The Local Authorities (Standing Orders) (England) Regulations 2001 SI 2001/ 3384 (investigation of alleged misconduct).

- 6.3 Councillors will not be involved in the disciplinary action against any Officer who is not a Directors and Heads of Services or paid on Directors and Heads of Services grades except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of disciplinary action.

## 7. DISMISSAL

- 7.1 Councillors will not be involved in the dismissal of any Officer who is not a Directors or Head of Services or paid on Directors' and Heads of Services grades except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of dismissals.

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- 7.2 Where a Committee or Sub-Committee of the Council is discharging, on behalf of the Council, the function of or in relation to, the dismissal of the Head of Paid Service, a Directors and Heads of Services or Officer paid on Directors and Heads of Services grades, that Committee or Sub-Committee must include at least one Member of the Cabinet.

- 7.3 Head of Paid Service.

Where a Committee or Sub-Committee of the Council is discharging the function in relation to the dismissal of the Head of Paid Service, the Full Council must approve any recommendation of dismissal before notice of dismissal is given.

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7.4 Notice of dismissal of the Head of Paid Service, a Directors and Heads of Services or Officer paid on Directors and Heads of Services grades must not be given until the procedure set out in Appendix 2 to the Officer Employment Procedure Rules has been completed.

**8. DEFINITIONS**

8.1 “Directors and Heads of Service” means Strategic Directors and the Monitoring Officer and Chief Finance Officer

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**APPOINTMENT OF HEAD OF PAID SERVICE,  
DIRECTORS AND HEADS OF SERVICE AND OFFICERS PAID ON DIRECTORS  
AND HEADS OF SERVICES GRADES**

1. This procedure applies to the appointment of the Head of Paid Service, Directors and Heads of Service and officers paid on Directors and Heads of Services grades (“relevant officers”) and has been incorporated into these Rules, as required by the Local Authorities (Standing Orders)(England) Regulations 2001.
2. In this procedure, “appointor” means, in relation to the appointment of a relevant officer, the committee, sub-committee or panel making the appointment, or, in the case of the appointment of the Head of Paid Service, making a recommendation to the Council.
3. An offer of an appointment as a relevant officer must not be made by the appointor until:
  - (a) The appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
  - (b) The proper officer has notified every member of the Cabinet of:
    - (i) The name of the person to whom the appointor wishes to make the offer;
    - (ii) Any other particulars relevant to the appointment which the appointor has notified to the proper officer, and
    - (iii) The period within which any objection in the making of the offer is to be made by the Leader on behalf of the Cabinet to the proper officer; and
  - (c) either:
    - (i) The Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither s/he nor any member of the Cabinet has any objection to the making of the offer;
    - (ii) The proper officer has notified the appointor that no objection was received by him/her within that period from the Leader, or
    - (iii) The appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
4. The “proper officer” for the purposes of paragraph 3 will be the [Head of People and Policy](#).

## APPENDIX 2

### DISMISSAL OF HEAD OF PAID SERVICE, DIRECTORS AND HEADS OF SERVICE AND OFFICERS PAID ON DIRECTORS AND HEADS OF SERVICES GRADES.

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1. This procedure applies to the dismissal of the Head of Paid Service, Directors and Heads of Service and Officers paid on Directors and Heads of Services grades (“relevant officers”) and has been incorporated into these Rules, as required by the Local Authorities (Standing Orders)(England) Regulations 2001.
2. In this procedure, “dismissal” means, in relation to the dismissal of a relevant officer, the Council or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the Council, that committee, sub-committee or other officer, as the case may be.
3. Notice of the dismissal of a relevant officer must not be given by the dismissor until:
  - (a) The dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
  - (b) The proper officer has notified every member of the Cabinet of:
    - (i) The name of the person who the dismissor wishes to dismiss;
    - (ii) Any other particulars relevant to the dismissal which the dismissor has notified to the proper officer, and
    - (iii) The period within which any objection to the dismissal is to be made by the Cabinet leader on behalf of the Cabinet to the proper officer, and
  - (c) either;
    - (i) The Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither s/he nor any other member of the Cabinet has any objection to the dismissal;
    - (ii) the proper officer has notified the dismissor that no objection was received by him/her within that period from the Leader, or
    - (iii) The dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
4. The “proper officer” for the purposes of paragraph 3 will be the [Head of People and Policy](#).

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# 11.

## PLANNING CALL IN PROCEDURE

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### PLANNING CALL-IN PROCEDURE FOR DELEGATED APPLICATIONS

1. This procedure must be followed if a member is to require an application, which is delegated to be determined by the Executive Director of Business, to be referred to the Development Control Committee.

1. All members will receive a weekly list of all planning applications received.

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2. Any member considering calling in an application must first discuss the reason for call-in with the Executive Director of Business or the Planning Manager, to ensure reason for call in fits in with planning framework

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3. A member may only call-in an application if it is within their ward area and one of the nominated Councillors within the Groups on the Development Control Committee agrees that the matter should be called in.

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4. The call-in period is 14 working days from the receipt of the weekly list of planning applications.

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5. There will be two nominated Call-in Councillors on the Development Control Committee who will organise and submit the call-in and who must agree with the Ward member to the use of the planning call-in and that nominated Councillors will complete the call-in form. The names of the two nominated Councillor must be provided to the Executive Director of Business after Annual Council.

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6. Where an application is amended and subject to re-notification of neighbours, the ward member shall be re-notified in writing and a 10 day call-in period shall recommence.

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7. The attached Call-In Form must be used for Call-In. This will be attached to the weekly list. Call-ins will not be valid unless submitted on this form.

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8. Call-Ins will be date stamped on receipt. They must be emailed to the Planning Manager.

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9. Material Planning reasons for Call-In are required, eg not simply because Development Control Committee considered the matter previously.

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10. When a Call-In is received outside the Call-In period, the member will be notified that the Call-In is invalid. If there has been no Call-In within the Call-In period the application will be decided by the Executive Director of Business.

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11. Members may withdraw a call-in once made.

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NB

1. Call-Ins should be kept to a minimum, as they increase costs and processing times. They have also affected National Indicator performance targets as due to call-ins we have been unable to place all required applications on the agenda.

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Constitution of the Rossendale Borough Council – amended at 7<sup>th</sup> October 2009 V11

**Call in form  
for planning applications.**

**Planning Application number** 2009 /.....

**Material Planning reasons for call-in**

**Date the weekly list was received**

**(NB call-in to be received by the Planning Manager  
within 14 working days of receipt of the weekly list)**

**Councillor calling in the decision**

**Signed**

**Consultation with Nominated Councillors for call in** y/n

**(if the call-in is sent by email  
no signature will be required)**

**Dated**

**Signature of Planning Manager**

**Date received**

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## **12. LICENSING ACT 2003 HEARINGS PROCEDURE**

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1. Chair Opens the Meeting. ← Formatted: Bullets and Numbering
2. Chair introduces Members and Council Officers present. ← Formatted: Bullets and Numbering
3. Chair explains that Hearing will take the form of a discussion and that cross examinations by the parties will not be permitted with out the permission of the Panel. ← Formatted: Bullets and Numbering
4. Chair to ask each party to introduce themselves and their representatives. ← Formatted: Bullets and Numbering
5. Chair to ask each party if they have brought any other person to the hearing and how that person will be able to assist (advance notice of such persons should have been given). ← Formatted: Bullets and Numbering
6. Chair to ask what documentary evidence they have submitted in advance of the hearing in support of their application or representation. ← Formatted: Bullets and Numbering
7. Chair to ask if they wish to submit any documentary evidence at the hearing (all parties to consent to this). ← Formatted: Bullets and Numbering
8. Chair to enquire of the Licensing Manager(or if not present the Legal Officer) whether there are any parties who are not present at the hearing and who have made representations (Officer will give details of any such representation). ← Formatted: Bullets and Numbering
9. Chair to ask the Panel to decide if the hearing can go ahead in the event of any party not attending the meeting. ← Formatted: Bullets and Numbering
10. Chair to ask the Licensing Manager (or legal officer in their absence) to outline the application referring to the legislation, guidance and licensing policy. ← Formatted: Bullets and Numbering
11. Panel Members may then ask questions of the Officer for clarification. ← Formatted: Bullets and Numbering
12. Chair to invite any other party to ask questions of the officer for clarification. ← Formatted: Bullets and Numbering
13. Chair to invite the applicants to present their case in support or clarification of their application. Equal time to be allowed to each party but a maximum period of 15 minutes to be allowed. ← Formatted: Bullets and Numbering
14. Members are then invited to ask questions of the applicant. ← Formatted: Bullets and Numbering
15. If any other party wishes to ask a question, the Committee must give their consent. ← Formatted: Bullets and Numbering
16. The Chair will then invite any responsible authority that has made representation to speak in support or clarification of their case. Again, a maximum period of 15 minutes to be allowed. ← Formatted: Bullets and Numbering

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17. Panel members are then invited to ask questions of the responsible authority.

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18. If any other party wishes to ask a question the Committee must give their consent.

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19. The Chair will then invite any interested party who has made representations to speak in support or clarification of their case. A maximum period of 15 minutes will be allowed to each party. (Chair should ensure that only matters raised previously in their representation are discussed).

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20. Panel members are then invited to ask questions of the interested party.

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21. If any other party wishes to ask a question, the Committee must give their consent.

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22. If felt necessary, the Chair will invite the responsible authority to sum up their case. (Maximum 5 minutes)

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23. If felt necessary the Chair will invite the interested party to sum up their case (Maximum 5 minutes).

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24. If felt necessary the Chair will invite the applicant to sum of their case (Maximum 5 minutes).

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25. The Committee will then leave to make its decision. The licensing manager does not retire with the Committee.

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26. The Committee will normally give its decision at the hearing giving reasons for their decision (See Schedule 1).

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**LICENSING ACT 2003**  
**LICENSING HEARINGS PROCEDURE**

1. Chair of the Licensing Committee opens the meeting, introduces the members of the Committee and the officers, explains the nature of the decision to be taken and the procedure to be followed. The Chair will explain that the hearing will take the form of a discussion and cross examination will not be allowed without the Committee's consent. ← **Formatted: Bullets and Numbering**

2. The Chair will ask each party appearing to identify themselves and their representatives (if any). Parties will be asked to confirm whether they have brought any other person with them to appear at the hearing and how that person can assist at the hearing. (Note – advance notice of such person appearing should have been given prior to the hearing). ← **Formatted: Bullets and Numbering**

3. The Chair will ask each of the parties in turn to confirm: ← **Formatted: Bullets and Numbering**

a. What documentary evidence they have submitted for consideration by the Committee before the hearing. ← **Formatted: Bullets and Numbering**

b. What documentary evidence they wish to submit at the hearing. ← **Formatted: Bullets and Numbering**

4. The Chair will confirm with the Licensing Manager (or if not present the Legal Officer) whether there are any parties who have not attended and who have made representations. The Officer will provide details of the representations made. The Chair will ask for a decision from the Committee whether the hearing can proceed in that party's absence. ← **Formatted: Bullets and Numbering**

5. The Chair will call on the Licensing Manger (or if not present the Legal Officer) to outline the application to refer to the appropriate legislation, government guidance and the Council's Licensing Policy. Members and other parties may ask any clarification questions of the Officer. ← **Formatted: Bullets and Numbering**

6. The Chair will then call on each of the parties to the hearing to provide information in turn to support or clarify their representations. The order will be the applicant first, followed by the responsible authorities and finally, the interested parties. The Committee members will then have the opportunity to ask any questions. At the conclusion of a party's representation, if another party wishes to ask a question, the consent of the Committee should be sought. An equal maximum amount of time will be allowed for each party to make its representations – each party will be allowed 15 minutes unless the Committee agree otherwise. ← **Formatted: Bullets and Numbering**

7. The Committee will disregard any information given by a party which is not relevant to: ← **Formatted: Bullets and Numbering**

a. The application, representations or notice and ← **Formatted: Bullets and Numbering**

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b. The promotion of the licensing objectives or, in relation to a hearing to consider a notice given by the Chief Officer of Police, the time prevention objective.

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8. The Committee may require any person attending the hearing who, in their opinion is behaving in a disruptive manner to leave the hearing and may:

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a. Refuse to permit that person to return

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b. Permit that person to return only on such conditions as the Committee may specify.

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But such person may, before the end of the hearing, submit to the Committee in writing any information which they would have been able to give orally had they not been required to leave.

9. If necessary, the Chair will invite the applicant and any parties making representations to summarise their points – each party will have a maximum of 5 minutes unless the Committee agree otherwise. The order will be the responsible authorities followed by interested parties and finally the applicant.

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10. The Committee will satisfy itself that it has heard all the relevant information and will then decide whether it wishes to consider its decision in private. The Committee will leave the room if it goes into private session and will be accompanied by its legal advisor and the hearings administrator.

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11. The Committee will make its determination at the conclusion of the hearing but in certain circumstances it may make a determination within a period of 5 working days of the last of the hearing (See Schedule 1 for details).

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12. The Legal Officer will issue a notice of determination within the time period stipulated in point 11 above. The notice will include the reasons for determination and the right of appeal.

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13. The Hearings Administrator will provide a record in the form of minutes of the hearing to be kept in a permanent and intelligible form and kept for 6 years from the date of determination.

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#### Part 4 - 313

## SCHEDULE 1

All determinations will be made within 5 working days of the conclusion of the hearing except for the following types of hearings when determinations will be made at the end of the hearing:

1. Section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under Section 34 or 37). ← **Formatted:** Bullets and Numbering
2. Section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under Section 85). ← **Formatted:** Bullets and Numbering
3. Section 105(2)(a) (counter notice following police objection to temporary event notice). ← **Formatted:** Bullets and Numbering
4. Section 167(5)(a) (review of premises licence following closure order). ← **Formatted:** Bullets and Numbering
5. Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence). ← **Formatted:** Bullets and Numbering
6. Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate, or, ← **Formatted:** Bullets and Numbering
7. Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence). ← **Formatted:** Bullets and Numbering

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