

# **PART 4**

## **RULES OF PROCEDURE**

# **1 - Council Procedure Rules**

## **1. Annual Meeting of the Council**

### **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.

The annual meeting will:-

- (i) elect a person to preside if the Mayor is not present;
- (ii) elect a person to be Mayor;
- (iii) appointment of a person to be Deputy Mayor;
- (iv) approve the minutes of the last meeting as a correct record to be signed by the person presiding;
- (v) receive any announcements from the person presiding;
- (vi) declarations of interest;
- (vii) elect the Executive Leader if there is a vacancy;
- (viii) appoint at least one Overview and Scrutiny Committee, a Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3, Table 1 of this Constitution);
- (ix) agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree (as set out in Table 3 of this Constitution);
- (x) approve a programme of ordinary meetings of the Council for the year; and
- (xi) consider any business set out in the notice convening the meeting.

### **1.2 Selection of Councillors on Committees and Outside Bodies**

At the annual meeting, the Council meeting will:

- (i) appoint such Committees as they are required to appoint by or under statute, and may at the annual meeting (or at any other time) appoint such other Committees as it considers necessary;

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- (ii) determine the terms of reference of each Committee appointed and of how many voting Members each Committee shall consist, in the case of any Committee discharging functions relating to disciplinary or appeals matters affecting staff, membership shall be restricted to those elected Members of the Council who have completed an approved training course in relation to the Council's disciplinary procedure and appeals procedure; in the case of Overview and Scrutiny Committee, membership shall not include any Member of the Council who is a Member of the Executive;
- (iii) decide the allocation of seats to Political Groups in accordance with the political balance rules;
- (iv) receive nominations of Councillors to serve on each Committee and appoint to those Committees;
- (v) receive nominations of Councillors to serve on each outside body and appoint to those outside bodies, except where appointment has been delegated by the Council or is exercisable only by the Executive.

## 2. **Ordinary meetings**

- (a) Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. Ordinary meetings will:
  - (i) elect a person to preside if the Mayor and Deputy Mayor are not present;
  - (ii) approve the minutes of the last meeting;
  - (iii) receive any declarations of interest from Members;
  - (iv) receive any announcements from the person presiding;
  - (v) to deal with any business which must by Statute be dealt with before any other business;
  - (vi) at the first meeting in any calendar year the Council shall name from the Members of the Council at that date, the Mayor-Elect and Deputy Mayor-Elect for the ensuing Municipal Year;
  - (vii) to receive any petitions;

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- (viii) receive questions from, and provide answers to, the public in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the meeting;
  - (ix) answer questions received from Members under Rule 11 in the order in which they were received;
  - (x) deal with any business from the last Council meeting;.
  - (xi) receive reports and recommendations from the Executive and receive questions and answers on any of those reports;
  - (xii) receive reports and recommendations from the Council's Committees and receive questions and answers on any of those reports;
  - (xiii) receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
  - (xiv) receive an annual report limited to a 5 minute presentation, from each portfolio holder each municipal year followed by a reply to any question raised by a member.
  - (xv) consider motions in the order in which they were received;
  - (xvi) consider any other business specified in the summons to the meeting, including consideration of proposals from the Executive in relation to the Council's budget and policy framework and reports of the Overview and Scrutiny Committee for debate.
- (b) The order of items (i), (ii), (iii), (iv) and (v) shall be not be varied. The order of business may be varied:
- (a) by the person presiding, but not so as to alter the order of items (i) to (v); or
  - (b) a resolution of the Council moved, seconded and put to the vote without comment, but not so as to alter the order of items (i) to (v).

### **3. Extraordinary meetings**

#### **3.1 Calling extraordinary meetings**

Those listed below may request the Chief Executive to call Council meetings in addition to ordinary meetings:-

- (i) the Council by resolution;

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- (ii) the Mayor of the Council;
- (iii) the Head of Paid Service and/or the Monitoring Officer or the Chief Finance Officer; and
- (iv) any five members of the Council if they have signed a requisition presented to the Mayor of the Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

### 3.2 **Business**

- (a) The business to be transacted at an extraordinary meeting of the Council shall be restricted to the business for which the meeting was requisitioned.
- (b) No extraordinary meeting of the Council to consider business which would have the effect of varying its cash limits shall be called within three months of the Council Tax being set, except where this is necessary to comply with current legislation or regulations.

## 4. **Appointment of substitute members of Committees and Sub-Committees**

### 4.1 **Appointment**

- (a) Each political group shall within 10 days of the Annual Meeting of the Council provide the Proper Officer with a list of names of substitutes for Members of each Committee or Sub-Committee to which Rule 1.2(i) and (iii) applies to be used in the event of the absence of Members of their political group from any meeting of such Committee or Sub-Committee .
- (b) Each political group may nominate substitutes from the above lists by giving written notice of each substitution to the Chief Executive prior to the commencement of the relevant meeting at which the substitution is to be made; and these arrangements described in Rule 1.2(i) and (ii) shall include arrangements for the substitution of the notified person or persons for existing appointed Members of that Committee or Sub-Committee for the duration of that meeting only. The preceding provisions for substitution of membership to any Committee discharging functions relating to disciplinary or appeals matters affecting staff shall be amended to the effect that only Members of the Council who have completed an approved training course in relation to the Council's disciplinary procedure and appeals procedure may be substituted into meetings of that Committee.

### 4.2 **Powers and duties**

Substitute Members will have all the powers and duties of any ordinary Member of the Committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting.

#### **4.3 Substitution**

Substitute Members may attend meetings in that capacity only:

- (i) to take the place of the ordinary Member for whom they are the designated substitute;
- (ii) where the ordinary Member will be absent for the whole of the meeting; and
- (iii) after notifying the Chief Executive prior to the commencement of the meeting of the intended substitution.

#### **5. Time and place of meetings**

- (a) The annual meeting of the Council shall be convened under Schedule 12 of the 1972 Act and shall normally be held at the Council House, Walsall, at 6 o'clock in the afternoon.
- (b) Other ordinary meetings of the Council shall normally be held at the Council House, Walsall, at 6 o'clock in the afternoon on such dates as shall be agreed by the Council at its annual meeting.
- (c) Any special meeting of the Council shall be held at the Council House, Walsall, or such other place as the Mayor may specify.

#### **6. Notice of and summons to meetings**

The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least 5 clear days before a meeting, the Chief Executive will send a summons signed by him or her by post to every Member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

#### **7. Chair of meeting**

- (a) The person presiding at the meeting may exercise any power or duty of the Mayor. Where these rules apply to Committee and Sub-Committee meetings, references to the Mayor also include the Chairman of Committees and Sub-Committees.
- (b) Whether provided for by these Rules or not, the ruling of the person presiding at any meeting of the authority on all questions of order and of matters arising in debate, shall be final and shall not be open to discussion.

## **8. Quorum**

- (a) Twenty members of the Council shall form a quorum.
- (b) If, during any meeting of the Council, the person presiding after the number of Members present has been counted, declares that there is not a quorum, that person shall have the discretion to close the meeting or declare that it stand adjourned for up to fifteen minutes.
- (c) If after an adjournment the person presiding declares that there is still no quorum present the meeting shall end.
- (d) All business which is on the Summons of a meeting brought to an end under paragraph (c) above and which has not been completed shall be postponed to the next ordinary meeting of the Council, unless an extraordinary meeting is called for that business under Rule 3.
- (e) A quorum for any Committee or Sub-Committee shall be one third of the voting membership, subject to a minimum of 2.

## **9. Duration of meeting**

- (a) Unless the majority of Members present vote for the meeting to continue, any meeting that has lasted for 3 hours will adjourn immediately. Remaining business will be considered at a time and date fixed by the Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.
- (b) Any period of time during which the meeting is adjourned shall not be included in any calculation of the duration of any meeting.
- (c) This rule shall not prevent the consideration at any such meeting of any statutory or other business which by law must be transacted at Council or of any unopposed business.

## **10. Questions by the public**

### **10.1 General**

Members of the public may ask questions of Members of the Executive at ordinary meetings of the Council.

### **10.2 Order of questions**

Questions will be asked in the order of which notice of them was received, except that the person presiding may group together similar questions.

### **10.3 Notice of questions**

A question may only be asked if notice has been given by delivering it in writing to the Chief Executive no later than midday 7 clear days before the day of the meeting. Each question must give the name and address of the questioner and must name the Member of the Council to whom it is to be put. (A clear day is a day on which the Council House is open for Council business.)

### **10.4 Number of questions**

At any one meeting no person may submit more than one question and no more than one such question may be asked on behalf of one organisation.

### **10.5 Time allowed for questions**

A period of 30 minutes shall be allowed for questions by members of the public, subject to the provisions of paragraph 10.10 of these rules.

### **10.6 Scope of questions**

The Chief Executive may reject a question if it:-

- is not about a matter for which the local authority has a responsibility or which affects the borough;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or

requires the disclosure of confidential or exempt information.

### **10.7 Record of questions**

The Chief Executive will enter each question in a book open to public inspection and will immediately send a copy of the question to the member to whom it is to be put. Rejected questions will include reasons for rejection.

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

### **10.8 Asking the question at the meeting**

The person presiding will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the person presiding to put the question on their behalf. The person presiding may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

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## 10.9 Supplemental question

A questioner who has put a question in person may also put one supplementary question without notice to the member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The person presiding may reject a supplementary question on any of the grounds in Rule 10.6 above.

## 10.10 Written answers

Any question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the member to whom it was to be put, will be dealt with by a written answer.

## 10.11 Reference of question to the Executive or a Committee

Unless the person presiding decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Executive or the appropriate Committee or Sub-Committee. Once seconded, such a motion will be voted on without discussion.

## 11. Questions by members

- 11.1 (a) **On reports of the Executive or Committees** - A member of the Council may ask the Leader or the Chairman of a Committee any question without notice upon an item in a report of the Executive or the Cabinet or a Committee when that item is being received or under consideration by the Council.
- (b) **Portfolio holders annual report** - A member of the Council may ask the portfolio holder any question and an associated question without notice upon the annual portfolio holders report. Questioning by members of the Council shall be limited to 10 minutes for each report presented.

## 11.2 Questions on notice at Council

Subject to Rule 11.4, a member of the Council may ask:-

- a Member of the Executive;
- the Chairman of any Committee or Sub-Committee
- the Member nominated to a Joint Authority;
- a question on any matter in relation to which the Council has powers or duties or which affects the Borough.

### **11.3 Questions on notice at Committees and Sub-Committees**

Subject to Rule 11.4, a Member of a Committee or Sub-Committee may ask the Chairman of it a question on any matter in relation to which the Council has powers or duties or which affect the Borough and which falls within the terms of reference of that Committee or Sub-Committee.

### **11.4 Notice of questions**

A Member may only ask a question under Rule 11.2 or 11.3 if:

- (a) since the last council meeting they have given at least 7 clear days notice in writing of the question to the Chief Executive, or in the case of a Joint Authority of which the Council is a constituent authority or the Police Authority, in which case 10 working days are required;
- (b) the question relates to urgent matters, they have the consent of the person presiding to whom the question is to be put and the content of the question has been given to the Chief Executive by noon on the day of the meeting;
- (c) questions will be dealt with strictly in accordance with the order in which they are received by the Chief Executive except where one or more member has submitted more than one question. In that case the first question from each member shall be listed, then the second question and so on, in the order they were received.
- (d) every question shall be relevant to the authority's function, or the area of authority or part of it or the inhabitants of the area or some of them;

If the member is not present to ask the question, it shall lapse.

### **11.5 Response**

An answer may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

### **11.6 Supplementary question**

A Member asking a question under Rule 11.2 or 11.3 may ask one supplementary question without notice of the Member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

### **11.7 Miscellaneous**

No speech or motion shall be made, and no discussion shall take place upon any question or the answer given.

### **11.8 Time allowed for questions**

Not more than 30 minutes shall be allowed for dealing with questions received under this Rule.

### **12. Deputations**

Deputations to Cabinet and Committees will be dealt with in the manner set out in the protocol included in Part 5 of this Constitution.

### **13. Notices of motion**

#### **13.1 Notice**

- (a) Notices of motion shall be given in writing to the Chief Executive at least 7 clear days before the meeting of the Council and shall be signed by the Member or Members of the Council giving the notice;
- (b) Such notices shall be dated and numbered in the order in which they are received and entered in a book kept for that purpose at the Chief Executive's office, and shall be open for inspection by every Member of the Council.

#### **13.2 Inclusion on Summons**

- (a) The Chief Executive shall insert on the summons for any meeting of the Council the first three notices of motion duly given since the last meeting of the Council in the order in which they have been received except where a member has submitted more than one motion in which case the first motion from each member shall be listed, then the second motion and so on, in the order they were received. Any motion received that is not included on the summons as result of the above shall lapse.
- (b) The restriction of three new notices of motion in the Summons for any meeting of the Council shall not prevent any earlier notices of motion being included as unfinished business.
- (c) The Mayor may, in his or her absolute discretion, exclude from the Summons any notice on the grounds that its publication would by reason of either its substance or terms bring the Council as a whole, or the Borough, into disrepute, or that it contravenes paragraph 13.4(e) below.

#### **13.3 Scope**

If the Mayor considers that any notice of motion does not relate to a local issue of proper concern to the Council, the Member shall ask the leave of the Council to introduce such motion before proceeding to address the Council thereon. There shall be no speech or discussion upon asking for such leave to introduce, and if this is refused by the Council, the same or any similar notice of motion, shall be excluded from the Council Summons for at least one year from the date of such refusal.

#### 13.4 Procedural

- (a) A notice of motion in the name of one Member shall not be proceeded with in the absence of that Member, unless that Member shall have given consent in writing, prior to the commencement of the meeting, to it being taken up by some other Member, or unless it is business which, by law, the Council must transact. A motion not moved by its proposer(s) shall fall.
- (b) The notice of motion shall lapse if not so taken up, unless the Council shall agree on the request in writing of the Member concerned to defer the business to its next meeting.
- (c) In the event that a notice of motion is given in the name of more than one Member, then the provisions of paragraph (a) above shall not apply, provided that at least one of the Members concerned is present.
- (d) If a notice of motion does not appear to the Chief Executive to give enough factual information for the Council to consider it, the Chief Executive shall:
  - (i) put with it on the Council Summons a copy of any relevant report(s) which has already been to a Committee or Sub-Committee; or
  - (ii) report to the Council providing any further background information needed to consider the notice of motion.
- (e) It shall not be in order to give any notice of motion, or to move an amendment which would have the effect of materially increasing expenditure or materially reducing revenue, otherwise than in the form of a reference to the Executive for consideration and report, unless the matter has first been specifically referred to the Executive and a report has been received.
- (f) If at any time during the discussion of any motion, pursuant to notice given by a member of the Council, it appears to the person presiding that the Motion would, if carried, have the effect of materially increasing the expenditure or materially reducing the revenue of the Council or of a Committee, or would involve capital expenditure, it shall be competent for that person to rule that the motion shall stand adjourned without further debate to the next meeting of the Council, and the motion shall stand adjourned accordingly.
- (g) This paragraph shall not apply to consideration by the Council of a draft capital programme or draft revenue estimates.
- (h) It shall not be in order to give any notice of motion or to move any amendment which would have the effect of varying the Council's cash limits within 3 months of the Council Tax being set and thereafter otherwise than as set out in paragraph (e) above.

#### 14. **Motions without notice**

The following motions may be moved without notice:

- (a) to appoint a person presiding of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a Committee or Member arising from an item on the summons for the meeting;
- (f) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (g) to withdraw a motion;
- (h) to amend a motion;
- (i) to proceed to the next business;
- (j) that the question be now put;
- (k) to adjourn a debate;
- (l) to adjourn a meeting;
- (m) that the meeting continue beyond 3 hours in duration;
- (n) to suspend a particular council procedure rule;
- (o) to exclude the public and press in accordance with the Access to Information Rules;
- (p) to not hear further a member named under Rule 20.3 or to exclude them from the meeting under Rule 20.4; and
- (q) to give the consent of the Council where its consent is required by this Constitution.

#### 15. **Rules of debate**

##### 15.1 **No speeches until motion seconded**

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

## 15.2 **Right to require motion in writing**

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

## 15.3 **Seconders' speech**

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

## 15.4 **Content and length of speeches**

The mover of a motion shall not speak for more than 10 minutes and no other speaker shall speak for more than 5 minutes. For the purpose of this paragraph a person who moves an amendment is not moving a motion, and the length of time allotted to the mover of a motion does not include any time permitted under a right to reply. The Council may grant any Member one extension of time of 5 minutes on any one speech.

## 15.5 **When a Member may speak again**

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

- (a) if the Member has formally seconded a motion or amendment and reserved the right to speak later;
- (b) to speak once on an amendment moved by another Member;
- (c) to move a further amendment if the motion has been amended since he/she last spoke;
- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

## 15.6 **Amendments to motions**

- (a) Upon moving an amendment to a motion the mover shall, once it has been seconded, submit the amendment in writing to the person presiding and provide for circulation at the meeting sufficient copies for each member present prior to a vote being taken on the proposed amendment, failing which it shall fall.
- (b) An amendment to a motion must be relevant to the motion and will either be:
  - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;

- (ii) to leave out words;
- (iii) to leave out words and insert or add others; or
- (iv) to insert or add words.

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

- (c) 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.
- (d) If an amendment is not carried, other amendments to the original motion may be moved.
- (e) 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.
- (f) Before taking the vote on the amendment, the person presiding shall read the written amendment submitted to him under paragraph (a). After an amendment has been carried, the person presiding will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote as the substantive motion.

#### **15.7 Alteration of motion**

- (a) A Member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- (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 and shall be submitted in writing to the person presiding prior to a vote on the motion.

#### **15.8 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.

#### **15.9 Right of reply**

- (a) No Member shall address the Council on more than one occasion on any motion or amendment, subject to (b) and (c);

- (b) A Member may address the Council on an amendment, if after they have spoken to a motion, an amendment has been moved and seconded;
- (c) The mover of the original motion shall have a right of reply unless an amendment to that motion has been approved and has become the substantive motion to be voted upon.
- (d) In exercising the right of reply, no new matters may be introduced into the debate and it shall be confined to answering points raised in the debate;
- (e) Immediately after the right of reply, or if the mover elects not to exercise the right of reply, the person presiding shall proceed immediately to a vote.

#### **15.10 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;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) that the meeting continue beyond 3 hours in duration as provided for in Rule 9(a);
- (h) to exclude the public and press in accordance with the Access to Information Rules; and
- (i) to not hear further a member named under Rule 20.3 or to exclude them from the meeting under Rule 20.4.

#### **15.11 Closure motions**

- (a) A Member may move, without comment, 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.
- (b) If a motion to proceed to next business is seconded and the person presiding thinks the item has been sufficiently discussed, he or 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 person presiding thinks 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 person presiding thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### **15.12 Point of order**

A Member may raise a point of order at any time. The person presiding 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 identify and state the rule or law and the way in which he/she considers it has been broken. The ruling of the person presiding on the matter will be final.

#### **15.13 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 person presiding on the admissibility of a personal explanation will be final.

### **16. Previous decisions and motions**

#### **16.1 Motion to rescind a previous decision**

A motion or amendment to rescind, vary or negative 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 5 Members.

## **16.2 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 5 Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

## **16.3 Decisions of Committee**

If a Committee decides that a decision of the Council made within the previous 6 months ought to be rescinded or substantially varied then the Committee may recommend to the Council that the decision in question be rescinded or varied.

## **17. Voting**

### **17.1 Majority**

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

### **17.2 Person presiding's casting vote**

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

### **17.3 Show of hands**

Unless a ballot or recorded vote is demanded under Rules 17.4 and 17.5, the person presiding will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

### **17.4 Ballots**

The vote will take place by ballot if 5 Members present at the meeting demand it. The person presiding will announce the numerical result of the ballot immediately the result is known.

### **17.5 Recorded vote**

If 5 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.

## **17.6 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.

## **17.7 Voting on appointments**

In relation to appointments on outside bodies, where there are more candidates than available places on the outside body, the Mayor will require a vote be taken by a show of hands in relation to each individual candidate and the candidates with the simple majority will be duly appointed.

## **17.8 Voting on the budget**

A recorded vote will be taken on any decision relating to the Council's budget or Council tax.

## **18. Minutes**

### **18.1 Signing the minutes**

The person presiding will sign the minutes of the proceedings at the next suitable meeting. The person presiding 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.

### **18.2 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.

### **18.3 Form of minutes**

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

## **19. Exclusion of public**

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or Rule 21 (Disturbance by Public).

## **20. Members' conduct**

### **20.1 Standing to speak**

When a Member speaks at Council they must stand unless disabled from doing so and address the meeting through the person presiding. If more than one member stands, the person presiding will ask one to speak and the others must sit. Other members must remain seated whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

### **20.2 Person presiding standing**

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

### **20.3 Member not to be heard further**

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

20.4 If the Member continues to behave improperly after such a motion is carried, the person presiding 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 on without discussion.

### **20.5 General disturbance**

If there is a general disturbance making orderly business impossible, the person presiding 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 person presiding will warn the person concerned. If they continue to interrupt, the person presiding 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 person presiding 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 Rule 17.6 and 18.2 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.

### **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. Application to Committees and Sub-Committees**

All of the Council Rules of Procedure apply to meetings of the Council. None of the rules apply to meetings of the Executive. Only Rules 5–9, 11, 14-16, 17-21 (but not Rule 20.1) apply to meetings of Committees and Sub-Committees.

## **2 - Access to Information Procedure Rules**

### **1. Scope**

These rules apply to all meetings of the Council, Overview and Scrutiny Committees, the Standards Committee, Regulatory Committees and public meetings of the Executive (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, in particular the public may have additional rights of access to information under the Freedom of Information Act, 2000 and/or the Data Protection Act, 1998.

### **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 5 clear days notice of any meeting by posting details of the meeting at the Council House, Walsall.

### **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 the Council House, Walsall, at least 5 clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda where reports are prepared after the agenda has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors.

### **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

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- (c) if the Chief Executive thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs.

## **7. Access to minutes, etc. after the meeting**

The Council will make available copies of the following for 6 years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Executive, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. Background papers**

### **8.1 List of background papers**

The officer compiling the report 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, as defined in Rule 10 below, and in respect of Executive reports, the advice of a political advisor, if any.

### **8.2 Public inspection of background papers**

The Council will make available for public inspection for 4 years after the date if the meeting one copy of each of the documents on the list of background papers.

## 9. **Summary of public's rights**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Council House, Walsall, and these Access to Information Procedure Rules constitute that written summary.

## 10. **Exclusion of access by the public to meetings**

### 10.1 **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.

### 10.2 **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.

### 10.3 **Meaning of confidential information**

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

### 10.4 **Description of exempt information**

Exempt information means information falling within the following 8 categories (subject to any condition):

#### **Category**

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.



5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
  - (a) to give any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
8. Information being disclosed during a meeting of a Scrutiny and Performance Panel when considering flood risk management functions which:
  - (a) Constitutes a trades secret;
  - (b) Its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the risk management authority);
  - (c) It was obtained by a risk management authority from any other person and its disclosure to the public by the risk management authority would constitute a breach of confidence actionable by that other person.

### **Qualifications**

9. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:
  - (a) the Companies Act 1985(a);
  - (b) the Friendly Societies Act 1984(b);
  - (c) the Friendly Societies Act 1992(c);
  - (d) the Industrial and Provident Societies Acts 1965 to 1978(d);
  - (e) the Building Societies Act 1986(e); or
  - (f) the Charities Act 1993(f).
10. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992(a).
11. Information which:
  - (a) falls within any of paragraphs 1 to 7 above; and

- (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### **11. Exclusion of access by the public to reports**

If the Chief Executive thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” and the agenda shall indicate the category of information likely to be disclosed.

#### **12. Application of rules to the Executive**

Rules 13 – 24 apply to the Executive and its Committees. If the Executive 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 11.03 of this Constitution.

If the Executive or its Committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, 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 11.03 of this Constitution. This requirement does not include meetings, whose sole purpose is for officers to brief members.

#### **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 5 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 Executive or its Committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

## **14. The Forward Plan**

### **14.1 Period of forward plan**

Forward plans will be prepared to cover a period of 4 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 Leader has reason to believe will be subject of a key decision to be taken by the Executive, a Committee of the Executive, individual members of the Executive, officers, or under joint arrangements in the course of the discharge of an executive 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 taker is an individual, his/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 Executive 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;

- (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;
- (b) the Executive Director has informed the Chair of a relevant Overview and Scrutiny Committee, 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;
- (c) the Chief Executive has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear working days have elapsed since paragraphs (b) and (c) have been complied with.

## 16. **Special urgency**

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 chair of the body making the decision, obtains the agreement of the Chair of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair of a relevant Overview and Scrutiny Committee, or if the Chair of each relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice.

## 17. **Report to Council**

### 17.1 **When an Overview and Scrutiny Committee can require a report**

If a Overview and Scrutiny Committee 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 Committee Chair, or the Mayor/Deputy Mayor of the Council under Rule 16;

the Committee may require the Executive 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 5 Members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Overview and Scrutiny Committee.

### 17.2 **Executive's report to Council**

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 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 for that opinion.

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### **17.3 Quarterly reports on special urgency decisions**

In any event the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. 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 Executive 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. Executive meetings relating to matters which are not key decisions**

The Executive will decide whether meetings relating to matters which are not key decisions will be held in public or private.

### **20. Notice of private meeting of the executive**

Members of the Executive or its Committees will be entitled to receive 5 clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

### **21. Attendance at private meetings of the Executive**

#### **Executive members**

All Members of the Executive will be served notice of all private meetings of Committees of the Executive, whether or not they are Members of that Committee and will be entitled to attend.

#### **Overview and Scrutiny Committee members**

- (a) Notice of private meetings of the Executive and its Committees will be served on the chairs of all Overview and Scrutiny Committees and working groups, at the same time as notice is served on Members of the Executive. Where a Overview and Scrutiny Committee does not have a Chair, the notice will be served on all the Members of that Committee.

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- (b) Where a matter under consideration at a private meeting of the Executive, or a Committee of it, is within the remit of a Overview and Scrutiny Committee/working group, the Chair of that Committee or in his/her absence the Vice Chair may attend that private meeting with the consent of the person presiding, and speak though not speak unless those present agree.

## **Officers**

- (a) The Chief Executive, the chief financial officer and the monitoring officer, and their nominees are entitled to attend any meeting of the Executive and its Committees. The Executive may not meet unless the Chief Executive has been given reasonable notice that a meeting is to take place.
- (b) A private executive meeting may only take place in the presence of the Chief Executive or his/her nominee with responsibility for recording and publicising the decisions

## **22. Decisions by individual members of the Executive**

### **22.1 Reports intended to be taken into account**

Where an individual Member of the Executive receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least 5 clear days after receipt of that report.

### **22.2 Provision of copies of reports to Overview and Scrutiny Committees**

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chair of every relevant Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

### **22.3 Record of individual decision**

As soon as reasonably practicable after an executive decision has been taken by an individual Member of the Executive or a key decision has been taken by an officer, he/she will prepare, or instruct the Chief Executive to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Executive. This does not require the disclosure of exempt or confidential information or advice from a political or mayor's assistant.

## **23. Overview and Scrutiny Committee access to documents**

### **23.1 Rights to copies**

Subject to Rule 23.2 below, a Overview and Scrutiny Committee (including its working groups) will be entitled to copies of any document which is in the possession or control of the Executive or its Committees and which contains material relating to

- (a) any business transacted at a public or private meeting of the Executive or its Committees; or
- (b) any decision taken by an individual Member of the Executive.

### **23.2 Limit on rights**

A Overview and Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

## **24. Additional rights of access for members**

### **24.1 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 Executive or its Committees and contains material relating to any business previously transacted at a private meeting unless either (a) or (b) below applies.

- (a) it contains exempt information falling within categories of exempt information; or
- (b) it contains the advice of a political adviser.

### **24.2 Material relating to key decisions**

All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Executive or its Committees which relates to any key decision unless paragraph (a) or (b) above applies.

### **24.3 Nature of rights**

These rights of a Member are additional to any other right he/she may have.

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### **3 - Budget and policy framework procedure rules**

#### **1. The framework for Executive decisions**

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

#### **2. Process for developing the framework**

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

- (a) After consulting stakeholders and ward Councillors in a manner appropriate to the matter under consideration, the Executive will draw up initial proposals in relation to any plan, or strategy which forms part of the Council's policy framework. Details of the executive's consultation process shall be included in relation to each of these matters in the council's published forward plan.
- (b) The Overview and Scrutiny Committee will consider the plan or strategy at its next meeting and decide whether to respond to the Executive's initial proposals and whether any consultation by it is appropriate. If so the Overview and Scrutiny Committee will conduct a consultation exercise and will reflect any representations made to it in its response to the Executive within the timescale set for decision by the Executive.
- (c) The Executive will finalise its proposals for the Council to consider having taken into account any comments from the Overview and Scrutiny Committee. The report to Council will show the Executive's response to those comments.
- (d) Where the Executive has submitted a draft plan or strategy and the Council has objections to it, the Council must, before amending, approving or adopting it, notify the Leader of its objections and give to him or her instructions requiring the Executive to reconsider the plan or strategy in the light of those objections.
- (e) Where the Council gives the Leader instructions under paragraph (d) it must specify a period of at least 5 working days beginning on the day after the date the Leader receives the instructions during which the Executive may either:
  - (i) submit a revised plan or strategy together with its reasons for any amendments to the Council for its reconsideration; or

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- (ii) inform the Council of any disagreement it has with any of the Council's objections specifying its reasons.
- (f) When the period specified in paragraph (e) has expired the Council must take into account any amendments included in the revised plan or strategy, the Executive's reasons for those amendments, any disagreement that the Executive has with any of the Council's objections and the Executive's reason for that disagreement submitted to the Council within the period specified when:
- (i) amending the draft plan or strategy;
  - (ii) approving the plan or strategy for submission to the Secretary of State or Minister of the Crown;
  - (iii) adopting the plan or strategy with or without modification.

If the Executive objects to the decision of the Council, the Leader shall give written notice to the Chief Executive to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. If such notification is received, the Chief Executive shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.

The Council meeting must take place within 10 working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.

For the budget

- (g) Where before the 8 February in any financial year the Executive submits to the Council:
- (i) estimates of amounts in making any calculation in accordance with sections 30, to 37, section 40 (calculated by precepting authorities in accordance with sections 43 to 48); and chapter 4ZA of the Local Government Finance Act 1992;
  - (ii) estimates of such a calculation; or
  - (iii) amounts required to be stated in a precept under Part I of the Local Government Finance Act 1982,

Following the consideration of those estimates or amounts the Council has any objections to them it must before making a calculation or issuing a precept notify the Leader of its objections and give to him or her instructions requiring the Executive to reconsider those estimates or amounts in the light of those objections and in accordance with the Council's requirements.

- (h) Where the Council gives the Leader instructions under paragraph (g) it must specify a period of at least 5 working days beginning on the day after the date the Leader receives the instructions during which the Executive may either:
  - (i) submit a revision of those estimates or amounts together with its reasons for any revision to the Council for its reconsideration; or
  - (ii) it may inform the Council of any disagreement it has with any of the Council's objections specifying its reasons.
- (i) When the period specified in paragraph (h) has expired, the Council must take into account any amendments made to the estimates or amounts, the Executive's reasons for those amendments, any disagreement that the Executive has with any of the Council's objections and the Executive's reason for that disagreement submitted to the Council within the period specified when making calculations or issuing a precept under the provisions set out in paragraph (g).
- (j) Paragraphs (g) to (i) shall not apply in relation to calculations in accordance with section 52(I), 52(J), 52(T) or 52(U) or amounts stated in a precept issued to give effect to calculations under section 52(J) or 52(U) of the Local Government Finance Act 1992.
- (k) The Council shall make its final decision on the matter on the basis of a simple majority. In all events that decision must be made before 11 March in the financial year preceding that for which it is set. The decision shall be made in public in accordance with Article 4, of this Constitution and shall be implemented immediately.

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

- 3.1 The Executive, Committees of the Executive, individual members of the Executive and any officers, or joint arrangements discharging Executive functions may only take decisions which are in line with the budget and the policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by Council, then that decision may only be taken by the Council, subject to 4 below.

- 3.2 If the Executive, Committees of the Executive, individual members of the Executive and any officers, or joint arrangements discharging Executive functions want to make such a decision, they shall take advice from 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 wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.

#### **4. Urgent decisions outside the Budget or Policy Framework**

- 4.1 The Executive, a Committee of the Executive, an individual member of the Executive or officers, or joint arrangements discharging Executive functions may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by 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 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 Council and the consent of the chairman of the relevant Overview and Scrutiny Committees 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 Committee the consent of the Mayor, and in the absence of both the Deputy Mayor, will be sufficient.

- 4.2 Following the decision, the decision taker 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.

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

The responsibility for agreeing the budget and the policy framework lies with the Council, and decisions by the Executive, a committee of the Executive an individual member of the Executive or officers, or joint arrangements discharging Executive functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals, except by referral to the Council. The process and limits of authority of decision-takers in respect of amendments to capital and revenue budgets are set out in the Council's Financial Rules.

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## **6. Call-in of decisions outside the budget or policy framework**

- 6.1 Where an Overview and Scrutiny Committee is of the opinion that an Executive decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the monitoring officer and/or Chief Finance Officer.
- 6.2 In respect of functions which are the responsibility of the Executive, the Monitoring Officer's report and/or Chief Finance officer's report shall be to the Executive with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet to decide what action to take in respect of the Monitoring Officer's and/or Chief Finance Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that the decision was a departure, and to the Overview and Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
- 6.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer 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 shall consider the request of the Overview and Scrutiny Committee at its next meeting. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Finance Officer. The Council may either:
- (i) endorse a decision or proposal of the Executive decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (ii) amend the Council's financial regulations or policy concerned to encompass the decision or proposal of the body or individual responsible for that Executive 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 Executive to reconsider the matter in accordance with the advice of either the Monitoring Officer/Chief Finance Officer.

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## **4 - Executive Procedure Rules**

### **1. How does the Executive operate?**

#### **1.1 Who may make Executive decisions?**

The arrangements for the discharge of executive functions are set out in the Executive arrangements adopted by the Council.

If they are not set out there, then the Leader may decide how they are to be exercised. In either case, the adopted arrangements or the Leader may provide for executive functions to be discharged by:

- (i) the Leader;
- (ii) the Executive as a whole;
- (iii) a Committee of the Executive;
- (iv) an officer;
- (v) joint arrangements; or
- (vi) another local authority.

but not by an individual Member of the Executive.

#### **1.2 Delegation by the Leader**

At the Annual Meeting of the Council, the Leader will present to the Council a written record of delegations to individual Executive Members for inclusion in the Council's scheme of delegation at Part 3 to this Constitution, insofar as this Constitution permits and insofar as these are not allocated by the Council itself. The document presented will contain the following information about executive functions in relation to the coming year:

- (i) the names, addresses and wards of the people appointed to the Executive by the Council;
- (ii) the extent of any authority delegated to Executive Members individually, including details of the limitation on their authority;
- (iii) the terms of reference and constitution of such Executive Committees as the Leader appoints and the names of Executive Members appointed to them;
- (iv) the nature and extent of any delegation of executive functions to any other authority or any joint arrangements and the names of those Executive Members appointed to any joint Committee for the coming year; and

- (v) the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.

### **1.3 Sub-delegation of executive functions**

- (a) Unless the Council directs otherwise, if the Leader delegates functions to the Executive, then the Executive may delegate further to a Committee of the Executive or to an officer.
- (b) Unless the Leader directs otherwise, a Committee of the Executive to whom functions have been delegated by the Leader may delegate further to an officer.
- (c) Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

### **1.4 The Council's scheme of delegation and executive functions**

- (a) Subject to (b) below the Council's scheme of delegation will be subject to adoption by the Council and may only be amended by the Council. It will contain the details required in Article 7 and set out in Part 3 of this Constitution.
- (b) If the Leader is able to decide whether to delegate executive functions, he/she may amend the scheme of delegation relating to executive functions at any time during the year. To do so, the Leader must give written notice to the Chief Executive and to the person, body or Committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, Committee or the Executive as a whole. The Chief Executive will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- (c) Where the Leader seeks to withdraw delegation from a Committee, notice will be deemed to be served on that Committee when he/she has served it on its chair.

### **1.5 Conflicts of Interest**

- (a) Where the Leader or any member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- (b) If every Member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

- (c) If the exercise of an executive function has been delegated to a Committee of the Executive, an individual Member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

The Code of Conduct contains specific rules relating to pecuniary and interests other than pecuniary interests as set out in Part 5. Members must declare their interest and proceed in accordance with the Code.

#### **1.6 Executive meetings – when and where?**

The Executive will meet in accordance with the calendar of meetings approved by the Council at the Annual Council Meeting. The Executive shall meet at the Council House or another location to be agreed by the Leader.

#### **1.7 Public or private meetings of the Executive?**

The Executive will normally meet in public in accordance with the Access to Information Rules in Part 4 of this Constitution, except where confidential or exempt information is likely to be disclosed. The Executive will follow the principles of decision making set out in Article 11, amongst other things, the presumption in favour of openness.

#### **1.8 Quorum**

The quorum for a meeting of the Executive, or a Committee of it, shall be one third of the number of Members of the Executive or its Committee respectively.

#### **1.9 How are decisions to be taken by the Executive?**

- (a) Executive decisions which have been delegated to the Executive as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.
- (b) Where executive decisions are delegated to a Committee of the Executive, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Executive as a whole.



## **2. How are Executive meetings conducted?**

### **2.1 Who presides?**

The Leader will preside at any meeting of the Executive or its Committees at which he/she is present. In his/her absence, then a person appointed to do so by those present shall preside.

### **2.2 Who may attend?**

- (a) These details are set out in the Access to Information Rules in Part 4 of this Constitution. The Executive may determine if these rules should be widened, for example to enable members of the public to attend meetings that would otherwise be private.
- (b) An Overview and Scrutiny Committee chair, vice-chair or group Leader may attend a meeting of the Cabinet (not a private meeting) and may without notice ask questions and or comment on any report that falls within their panels remit, subject to a maximum time limit of 5 minutes.

### **2.3 What business?**

At each meeting of the Executive the following business will be conducted:-

- (i) consideration of the minutes of the last meeting;
- (ii) declarations of interest, if any;
- (iii) matters referred to the Executive (whether by an Overview and Scrutiny Committee or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- (iv) consideration of reports from Overview and Scrutiny Committees; and
- (v) matters set out in the agenda for the meeting, and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

Amended 3.6.15

## 2.4 Consultation

All reports to the Executive from any Member of the Executive or an officer on 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. 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.

## 2.5 Who can put items on the Executive agenda?

- (a) The Leader may put on the agenda of any Executive meeting any matter which he/she wishes, whether or not authority has been delegated to the Executive, a Committee of it or any Member or officer in respect of that matter. The Chief Executive will comply with the Leader's requests in this respect.
- (b) Any Member of the Executive may require the Chief Executive to make sure that an item is placed on the agenda of the next available meeting of the Executive for consideration. If he/she receives such a request the Chief Executive will comply.
- (c) The Chief Executive will make sure that an item is placed on the agenda of the next available meeting of the Executive where a relevant Overview and Scrutiny Committee or the Council have resolved that an item be considered by the Executive.
- (d) Any Member of the Council, by notice to the Chief Executive, may ask the Leader to put an item on the agenda of an Executive meeting for consideration, and if the Leader agrees the item will be considered at the next available meeting of the Executive. The notice of the meeting will give the name of the Councillor who asked for the item to be considered. This individual may be invited to attend the meeting, whether or not it is a public meeting. However, there may only be one such item per Executive meeting. Where there is more than one item, the placement on the agenda or deferral to the following meeting of the Executive shall be at the discretion of the Leader.
- (e) The monitoring officer and/or the chief financial officer may include an item for consideration on the agenda of an Executive meeting and may require the Chief Executive 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 Executive needs to be called to consider a matter that requires a decision, they may jointly include an item on the agenda of an Executive meeting. If there is no meeting of the Executive soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

### 3. **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;
- (b) the Chief Executive has informed the Chair of a relevant Overview and Scrutiny Committee, 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;
- (c) the Chief Executive has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear working days have elapsed since the Chief Executive complied with (b) and (c).

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

### 4. **Special urgency**

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 chair of the body making the decision, obtains the agreement of the Chair of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair of a relevant Overview and Scrutiny Committee, or if the Chair of each relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice.

Amended 3.6.15

## 5 - Overview and Scrutiny Procedure Rules

### 1. Terms of reference

- (a) The Council shall at its Annual Meeting agree the number of Overview and Scrutiny Committees, their membership and their remit. These Committees will perform all of the overview and scrutiny functions on behalf of the Council.
- (b) The terms of reference of the Overview and Scrutiny Committee in respect of those functions for which it is responsible will be:
  - (i) the performance of all overview and scrutiny functions on behalf of the Council;
  - (ii) the appointment, determination of membership and terms of reference of such Working Groups as it considers appropriate to fulfil those overview and scrutiny functions (the Chairman and Members of a Working Group shall not have the power in respect of call-in of decisions as set out in paragraph 16(c)(i) below);
  - (iii) to approve an annual overview and scrutiny work programme, including the programme of any Working Groups it appoints so as to ensure that the Committees and Working Groups' time is effectively and efficiently utilised;
  - (iv) where a matter falls within the remit of more than one Overview and Scrutiny Committee or a Working Group proposed to be established by the Committee, the Committee or Working Group which is first due to have an ordinary meeting in the Council's calendar of meetings that could reasonably receive the matter shall assume responsibility for the matter and be the (Host Committee).
  - (v) The Chairman of the Host Committee shall invite members of all relevant Committees to all meetings of the host Committee when the matter is discussed. The members of the Host Committee will take regard of the views of the invitees when making recommendations upon the matter
  - (vi) to put in place a system to ensure that referrals from overview and scrutiny to the Executive, either by way of report or for reconsideration are managed efficiently and do not exceed the limits set out in this Constitution;

Amended 3.6.15

- (vii) In the event of reports to the Executive exceeding limits in this Constitution, or if the volume of such reports creates difficulty for the management of Executive business, the Executive will make decisions about the priority of referrals made.

## 2. **Membership**

All Councillors, except Members of the Executive, may be members of an Overview and Scrutiny Committee. However, no Member may be involved in scrutinising a decision in which he/she has been directly involved.

The membership of each Overview and Scrutiny Committee shall be determined by the Council, taking into account of the provisions to ensure political balance, together with, in the case of a Committee or Working Group, to deal with education matters, education representatives on the basis outlined below.

## 3. **Co-optees**

Each Overview and Scrutiny Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees; a Working Group shall be entitled to make recommendations in equivalent terms to the Committee by which it was established.

## 4. **Education representatives**

Each relevant Overview and Scrutiny Committee/Working Group dealing with education matters shall include in its membership the following representatives:-

- (a) at least one Church of England diocese representative (voting);
- (b) at least one Roman Catholic diocese representative (voting)
- (c) three parent governor representatives (voting);
- (d) representatives of other faiths or denominations as appropriate;
- (e) one representative from Primary School Teachers (non voting);
- (f) one representative from Secondary School Teachers (non voting).

A relevant Overview and Scrutiny Committee/Working Group in this paragraph is an Overview and Scrutiny Committee or Working Group of a local education authority, where the Committee or Working Group's functions relate wholly or in part to any education functions which are the responsibility of the authority's Executive. If the Overview and Scrutiny Committee/Working Group deals with other matters, these representatives shall not vote on those other matters, though they may stay in the meeting and speak.

Amended 25.5.16

5. **Meetings of the Overview and Scrutiny Committees (excluding meetings arising from the call-in procedure)**

Ordinary meetings of each Overview and Scrutiny Committee shall be held in accordance with the calendar of meetings approved by the Council at the Annual Council Meeting. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the Chairman of the relevant Overview and Scrutiny Committee if he/she considers it necessary or appropriate.

6. **Quorum**

The quorum for an Overview and Scrutiny Committee shall be one third of its voting membership, subject to a minimum of 2.

7. **Chairs and Vice-Chairs of Overview and Scrutiny Committee meetings**

Chairmen and Vice-Chairmen of Overview and Scrutiny Committees will be appointed by the Council from amongst the Councillors sitting on the panel.

8. **Work programme**

The Overview and Scrutiny Committees shall be responsible for setting their own work programmes and in doing so they shall take into account the wishes of Members on that Committee who are not Members of the largest political group on the Council; and shall endeavour to co-ordinate their work programmes with that of any other Overview and Scrutiny Committee through the Scrutiny Overview Committee. When the issue under consideration relates to the terms of reference of more than one Committee, then in accordance with 1(b)(v) above the host Committee shall be determined

9. **Agenda items**

Any Member (whether a Councillor or not) of a Overview and Scrutiny Committee or Working Group shall be entitled to give notice to the Chief Executive that he/she wishes an item relevant to the functions of the Committee or Working Group to be included on the agenda for the next available meeting of the Committee or Working Group. On receipt of such a request the Chief Executive will ensure that it is included on the next available agenda. Additionally, the Executive may ask an Overview and Scrutiny Committee to consider any matter.

Amended 3.6.15

## 10. **Policy review and development**

- (a) The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Overview and Scrutiny Committees or Working Groups may make proposals to the Executive for developments in so far as they relate to matters within their terms of reference.
- (c) 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 persons to attend to address them on any matter under consideration and may pay any advisers, assessors and other persons, a reasonable fee and expenses for doing so.

## 11. **Reports from a Overview and Scrutiny Committee**

- (a) Once it has formed recommendations on proposals for development, the Overview and Scrutiny Committee will prepare a formal report and submit it to the Chief Executive for consideration by the Executive (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- (b) If an Overview and Scrutiny Committee cannot agree on one single final report to the Council or Executive as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Executive with the majority report.
- (c) The Council or Executive shall consider the report of the Overview and Scrutiny Committee within one month of it being submitted to the Chief Executive.

## 12. **Making sure that overview and scrutiny reports are considered by the Executive or Policy Committees**

- (a) The agenda for Executive meetings shall include an item entitled 'Issues arising from overview and scrutiny'. The reports of Overview and Scrutiny Committees referred to the Executive shall be included at this point in the agenda (unless they have been considered in the context of the Executive's deliberations on a substantive item on the agenda) within one month of the Overview and Scrutiny Committee completing its report/recommendations;

Amended 3.6.15

- (b) Only one report from each ordinary meeting of an Overview and Scrutiny Committee be submitted by each Overview and Scrutiny Committee to the Executive

Overview and Scrutiny Committees will in any event have access to the Executive's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an Overview and Scrutiny Committee following a consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Executive's consultation process in relation to any key decision.

### **13. Rights of Overview and Scrutiny Committee members to documents**

- (a) In addition to their rights as Councillors, members of Overview and Scrutiny Committees and Working Groups have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the Executive and Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

### **14. Members and officers giving account**

- (a) Any Overview and Scrutiny Committee or Working Group may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions within their remit. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any Member of the Executive, the Chief Executive and/or an Executive Director or Assistant Director or Head of Service to attend before it to explain in relation to matters within their remit:
  - (i) any particular decision or series of decisions;
  - (ii) the extent to which the actions taken implement Council policy; and/or
  - (iii) their performance.

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

- (b) Where any Member or officer is required to attend an Overview and Scrutiny Committee under this provision, the Chair of that Committee will inform the Chief Executive. The Chief Executive shall inform the Member or officer in writing giving at least 7 working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. 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.

Amended 3.6.15



- (c) Where, in exceptional circumstances, the Member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the Member or officer arrange an alternative date for attendance to take place within a maximum of 28 days from the date of the original request.

#### 15. **Attendance by others**

An Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 14 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.

#### 16. **Call-in – principles**

The following principles shall apply:

- Overview and Scrutiny Committees should not normally scrutinise non key decisions made by officers under their delegated powers. Where necessary, such scrutiny should be confined to overall reviews of service performance.
- Overview and Scrutiny Committees should not normally scrutinise individual decisions made by other Committees of the Council (particularly in relation to development control, licensing, registration and other consents or permissions). Such scrutiny should normally form part of wider policy reviews.
- Individual Overview and Scrutiny Committee Members should not be involved in reviewing decisions made by other Committees of which they are Members, unless they can demonstrate that they were not in attendance at the meeting when that decision was made.

#### 17.01 **Call-in decisions that are not urgent**

Call-in should only be used in exceptional circumstances. These are where members of the appropriate Overview and Scrutiny Committee have evidence which suggest that the decision was not made in accordance with the principles set out in Article 11 (Decision Making).

- (a) When a decision is made by the Executive, a Committee of the Executive, or a key decision is made by an officer with delegated authority from the Executive, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made. Chairmen of all Overview and Scrutiny Committees will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision. Copies of all decisions will be placed on deposit in each Group Room of all political groups represented on the Council.

- (b) That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless a Overview and Scrutiny Committee objects to it and calls it in.
- (c) During that period:
- (i) the Chief Executive shall call-in a decision for scrutiny by the Committee if so requested by the Chairman or any 5 Members of the Committee;
  - (ii) five Members of the Council (not all being Members of the relevant Overview and Scrutiny Committee) may, within the first 4 working days of the period, give notice to the Chief Executive, requesting that he/she invite the Chairman of the Overview and Scrutiny Committee to exercise the powers of call-in set out above for the reasons set out in the request in respect of the decision specified though not yet implemented. If a Chairman declines the request of the Chief Executive to call-in a decision, he/she shall give reasons for that decision to the Members who made the request. In the absence of the Chairman, the Chief Executive shall refer the request to the Vice-Chairman for determination in place of the Chairman;
  - (iii) the Chief Executive shall then notify the decision-taker of any call-in and shall call a meeting of the Panel on such date as he/she may determine, where possible after consultation with the Chair of the Committee, and in any case within 5 working days of the decision to call-in. Such a meeting to be held within 7 working days of it being called.
- (d) 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 person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to the Council. If referred to the decision maker they shall then reconsider within a further 10 working days, amending the decision or not, before adopting a final decision.
- (e) If following an objection to the decision, the Overview and Scrutiny Committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body (except in the case of a reference of a decision to the Council), the decision shall take effect on the date of the Overview and Scrutiny Committee meeting, or the expiry of the period within which the meeting ought to have been held, whichever is the earlier.
- (f) If the matter is referred to the Council it shall meet to consider the matter within 28 days. If the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective from that date. However, if the Council does object, it has no power to make decisions in respect of an Executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget.

Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Executive as a whole or a Committee of it, a meeting will be convened to reconsider within 10 working days of the Council request. Where the decision was made by an individual, the individual will reconsider within 10 working days of the Council request.

- (g) If the Council does not meet the decision will become effective at the end of the 28 day period in which the Council meeting should have been held.

#### **17.02 Call-In - Decisions that are urgent**

- (a) The call-in procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Mayor of the Council must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the Chief Executive or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (b) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

#### **18. Councillor Call for Action**

- (a) Any member of the Council may submit a Councillor Call for Action (CCfA) on a local government or crime and disorder matter.
- (b) CCfA should only be used in exceptional circumstances. These are where Councillors have been unable to resolve issues and problems on behalf of their residents. CCfA will be a means of 'last resort' in a broad sense, with issues being raised at Overview and Scrutiny Committees after other avenues have been exhausted.
- (c) A local government matter means a matter which:
  - (i) relates to the discharge of any function of the authority;

- (ii) affects all or part of the electoral area for which the member is elected or any person who lives or works in that area, and;
  - (iii) is not an excluded matter.
- (d) A local crime and disorder matter, in relation to a member of a local authority, means a matter concerning:
- (i) Crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment), or
  - (ii) The misuse of drugs, alcohol and other substances.

which affects all or part of the electoral area for which the member is elected or any person who lives or works in that area.

- (e) Specifically excluded from becoming a CCfA are:
- (i) any matter relating to a planning decision;
  - (ii) any matter relating to a licensing decision;
  - (iii) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
  - (iv) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the Overview and Scrutiny Committee or at a meeting of a sub-committee of that panel.
- (f) A matter does not fall within a description in paragraph (e) (i) – (iv), if it consists of an allegation that a function for which the authority is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis, notwithstanding the fact that the allegation specifies or refers to a planning decision, a licensing decision or a matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to review or right of appeal conferred by or under any enactment.
- (g) All CCfA's need to be submitted, in writing, to the Chief Executive, on the supplied form, providing full details of the issue concerned, including an explanation of what the issue is, why it is being raised as a CCfA, the steps that have been taken to resolve the issue and the expected outcome to be achieved from the CCfA.
- (h) The Chief Executive will log the CCfA and then raise it with the nominated scrutiny officer as soon as reasonably practicable.

Amended 3.6.15

## 19. **The Party Whip**

When considering any matter in respect of which a Member of an Overview and Scrutiny Committee is subject to a party whip the Member must declare the existence of the whip, and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

## 20. **Procedure at Overview and Scrutiny Committee meetings**

- (a) Overview and Scrutiny Committees and Working Groups shall consider the following business:
- (i) minutes of the last meeting;
  - (ii) declarations of interest (including whipping declarations);
  - (iii) consideration of any matter referred to the Committee for a decision in relation to call in of a decision;
  - (iv) responses of the Executive to reports of the Overview and Scrutiny Committees; and
  - (v) the business otherwise set out on the agenda for the meeting.
- (b) Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the Committee may also ask people to attend to give evidence at Panel meetings which are to be conducted in accordance with the following principles:
- (i) that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (ii) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Committee/Working Group shall prepare a report, for submission to the Executive and/or Council as appropriate and shall make its report and findings public.

## 21. **Matters within the remit of more than one Scrutiny and Performance Panel**

Where an Overview and Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Overview and Scrutiny Committee, a Host Panel will be determined in accordance with 1b(v) above.

Amended 3.6.15

## 6 - Officer Employment Procedure Rules

### 1. Recruitment and appointment

#### (a) Declarations

- (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or 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 Director or an officer nominated by him/her.
- (iii) Where a relationship to a relative, or persons referred to above, has been declared it shall be specifically drawn to the attention of the appointing panel.

#### (b) Seeking support for appointment

- (i) 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) No Councillor, co-optee to a Council Committee or employee will seek to support any candidate for appointment. Councillors or co-optees to a Council Committee must not stand as referees for officers or candidates for appointment as officers of the Council.
- (iii) If a Councillor or senior officer becomes aware that they are related to someone who applies for a job with the Council, then they must notify in writing the Chief Executive and must not take part in the selection process. Senior Officer in this context means any first, second or third tier officer, any person with direct or indirect responsibility for the post which is the subject of the appointment or any person who is or would normally be involved in any way with the selection of the candidate. In such circumstances a Personnel Officer must scrutinise the shortlist to ensure that candidates are on the shortlist fairly and must also scrutinise the selection process adopted including the assessment/scoring of candidates before an appointment is made to the vacant post.

## 2. **Recruitment of Chief Executive and Executive Directors**

Where the Council proposes to appoint the Chief Executive or an Executive Director the post will be advertised externally unless there are exceptional circumstances, 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;
- (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 (1) to be sent to any person on request.

In carrying out the recruitment and selection process the Council, Committee or Sub-Committee will be guided by best practice on recruitment and selection and the advice of the Head of Personnel and Development. The Committee or Sub-Committee will have received training in equal opportunities in recruitment and selection.

## 3. **Appointment of Chief Executive**

- (a) The Council will appoint the Chief Executive following the recommendation of such an appointment by a Committee or Sub-Committee of the Council. That Committee or Sub-Committee must include at least one Member of the Executive.
- (b) The Council may only make or approve the appointment of the Chief Executive where no well-founded objection has been made by any Member of the Executive.
- (c) The appointment of the Chief Executive will be in accordance with Schedule 1, Part II of the Local Authorities (Standing Orders) (England) Regulations 2001. (See Appendix)
- (d) No dismissal of the Chief Executive will take place until that dismissal has been approved by the Council and no offer of appointment will be made until the Proper Officer has followed the notification requirements set out in Schedule 1, Part II 5(2) and Schedule 3 of the said Regulations. (See Appendix)

#### 4. **Appointment of Directors and Assistant Directors**

- (a) A Committee or Sub-Committee of the Council will appoint Directors and Assistant Directors. That Committee or Sub-Committee must include at least one Member of the Executive.
- (b) An offer of employment as a Director or Assistant Director shall only be made where no well-founded objection from any Member of the Executive has been received.
- (c) The appointment of those staff will be in accordance with Schedule 1, Part 2 of the Local Authorities (Standing Orders) (England) Regulations 2001, and no offer of appointment will be made until the Proper Officer has followed the notification requirement set in Schedule 1, Part II 5(2) of the said Regulations.
- (d) The function of dismissal and taking of disciplinary action against Directors or Assistant Directors will be discharged by the Committee or Sub-Committee referred to in (a) above and no notice of dismissal must be given until:
  - (i) the Proper Officer has followed the notification procedure as set out in Schedule 1, Part II 6(2) of the Local Authorities (Standing Order) (England) Regulations, 2001; (See Appendix)
  - (ii) no well founded objection has been received from the Executive.

#### 5. **Other appointments**

- (a) **Officers below Assistant Director** - Appointment of officers below Assistant Director (other than assistants to political groups and an assistant to the Mayor) is the responsibility of the Chief Executive or his/her nominee, and may not be made by Councillors.
- (b) **Assistants to political groups** - Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group provided that such is in compliance with any relevant statutory requirements.
- (c) Appointments shall otherwise be made in accordance with any scheme of recruitment and selection as may from time to time be approved or amended and adopted by the Council.
- (d) The function of dismissal of, and taking of disciplinary action against officers below Assistant Director will be discharged by the Chief Executive or his/her nominee.



- (e) **Appointment of Director of Public Health:** The Director of Public Health will be appointed by the Council in accordance with the requirements of the Health and Social Care Act 2012 and the relevant guidance issued by the Department of Health.

## 6. **Disciplinary action – statutorily protected officers**

- (a) **Suspension** - The Chief Executive may be suspended by the Appointments Board whilst an investigation takes place into alleged misconduct. Suspension of the Monitoring Officer and Chief Finance Officer shall rest with the Chief Executive pending an investigation into alleged misconduct. That suspension will be on full pay and last no longer than two months. The suspension period may only be extended beyond two months following a decision by the Appointments Board.
- (b) **Independent Panel** - No disciplinary action may be taken in respect of any of those officers (referred to in rule 6(a) above) except in accordance with a recommendation in a report made by a Panel, under Schedule 1 Part II and Schedule 3 of the Local Authorities (Standing Order) (England) Regulations, 2001 to the Appointments Board and the where there is no conflict the Councils Disciplinary Procedures.
- (c) **Decision making** - Any proposed disciplinary action of the said officers that is a lesser sanction than dismissal shall be determined by the Appointments Board and subject to appeal to the Councils Appeals Committee. Where the Appointments Board has determined dismissal of those officers is the appropriate action, that final decision shall only be undertaken by full Council upon recommendation from the Appointments Board in accordance with the provisions of Schedule 3 of the Local Authorities (Standing Order) (England) Regulations.

## 7. **Dismissal below Assistant Director**

Councillors will not be involved in the dismissal of any officer below Assistant Director except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals.

## 8. **Dismissal of the Director of Public Health – requirement for consultation with a the Secretary of State for Health**

No dismissal other than suspension may be taken in respect of the Director of Public Health, except following consultation with the Secretary of State.

9. **Implementation of the Officer Procedure Rules**

The detailed implementation of the Officer Procedure Rules will be in accordance with the policies approved by the Council and as set out in the Council's Personnel Guidance Manual.

NB In these procedure rules, the term Assistant Director means a person whose duties fall within the definition of a Deputy Chief Officer as defined by Section 2(8) of the Local Government and Housing Act 1989.

## **Appendix - Local Authorities (Standing Order) Regulations 2001, Part II and Schedule 3**

Authority with Leader and Cabinet Executive:

1. In this part:

“the 1989 Act” means the Local Government and Housing Act 1989;

“the 2000 Act” means the Local Government Act 2000;

“disciplinary action” has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;

“executive” and “executive leader” have the same meaning as in Part 1A of the 2000 Act;

“member of staff” means a person appointed to or holding a paid office or employment under the authority; and

“proper officer” means an officer appointed by the authority for the purposes of the provisions in this part.

2. Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority’s paid service or by an officer nominated by him.

3. Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against:

- (a) the officer designated as the head of the authority’s paid service;
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

4. (1) Where a Committee, Sub-Committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority’s paid service, the authority must approve that appointment before an offer of appointment is made to that person

(1A) Where a Committee, Sub-Committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that dismissal before notice is given to that person

(2) Where a Committee or a Sub-Committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) or paragraph 3, at least one member of the Executive must be a member of that Committee or Sub-Committee.

5. (1) In this paragraph "appointor" means, in relation to the appointment of a person as an officer of the authority, the authority or, where a Committee, Sub-Committee or officer is discharging the function of appointment on behalf of the authority, that Committee, Sub-Committee or officer, as the case may be.

(2) An offer of appointment as an officer referred in sub-paragraph (a), (b), (c) or (d) of paragraph 2 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 executive of the authority 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 to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and
- (c) either:
  - (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any member of the executive has any objection to the making of the offer;
  - (ii) the proper officer has notified the appointor that no objection was received by him within that period from the executive leader; or
  - (iii) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

6. (1) In the paragraph, “dismissor” means, in relation to the dismissal of an officer of the authority, the authority or, where a Committee or Sub-Committee or another officer is discharging the function of dismissal on behalf of the authority, that Committee, Sub-Committee or other officer, as the case may be.

(2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 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 executive of the authority 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 executive leader on behalf of the executive to the proper officer; and
- (c) either:
  - (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;
  - (ii) the proper officer has notified the dismissor that no objection was received by him within that period from the executive leader; or
  - (iii) the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

7. Nothing in paragraph 2 shall prevent a person from serving as a member of any Committee or Sub-Committee established by the authority to consider any appeal by:

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

**SCHEDULE 3**  
**PROVISIONS TO BE INCORPORATED IN STANDING ORDERS IN RESPECT OF**  
**DISCIPLINARY ACTION**

**Regulation 6**

**1.** In the following paragraphs--

- (a) "the 2011 Act" means the Localism Act 2011;
- (b) "chief finance officer", "disciplinary action", "head of the authority's paid service" and "monitoring officer" have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;
- (c) "independent person" means a person appointed under section 28(7) of the 2011 Act;
- (d) "local government elector" means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;
- (e) "the Panel" means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
- (f) "relevant meeting" means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) "relevant officer" means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.

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

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

**4.** In paragraph 3 "relevant independent person" means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

**5.** Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order--

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.

**6.** An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

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

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

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

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

## 7 – Financial rules

### 1.1 Application and use of financial rules (FRs)

1. Council officers are legally obliged to manage the Council's finances to a very high standard and are required by law to achieve Best Value. These Financial Rules (FRs) are designed to aid officers in complying with the legal obligations imposed. Failure to follow them may amount to a breach of the legal obligations owed by officers to the Council.
2. These rules are issued in compliance with current legislation. They are subject to any relevant regulatory or statutory requirements of English law, and also to the law and regulations of the European Union. Where there is a conflict between these procedure rules and UK law and/or EU law, then UK law and/or EU law shall take precedence.
3. These Financial Rules shall apply to:
  - (a) The Council's financial activities,
  - (b) Contracts and agreements under which payment is to be made by the Council and as provided for in paragraph 4 below; and
  - (c) Payments to be made to the Council where it enters into contracts and agreements with partners and other organisations.
4. These Financial Rules form part of the Council's Constitution and replace the Financial and Contract Procedure Rules approved by the Council on 24 April 2006. These rules shall only be amended or varied by the Council.
5. The following words have the following specific meaning:
  - (a) "Order/Ordering" means the placing of a request for the supply of works, goods or services once a tendering or quotation exercise has been undertaken,
  - (b) "Officer Responsible" means the officer empowered under these Financial Rules to take the proposed action,
  - (c) "Relevant Executive Director" means the Executive Director whose Directorate is involved and or affected by the proposed action to be taken under these Financial Rules,
  - (d) "Quotations" means the obtaining of a price or prices for goods, works or services following the provision of a written specification, and



- (e) "Tender/tendering" means the procuring of a contract for the supply of goods, works or services.
6. For the purposes of these Financial Rules; Executive Directors, Assistant Directors, Heads of Service and Service Managers shall be as set out in the list of senior officers as maintained by the Council.

### **1.2 Other instructions to be followed**

1. The Council's officers shall comply at all times with these rules. Failure to comply may be seen as a breach of the Council's Code of Conduct for Employees. Officers shall also follow further instructions contained in the Council's:
- (a) Budget management and control manual and Medium Term Financial Strategy
  - (b) VAT and accounting manuals,
  - (c) Resolutions regulating local taxation,
  - (d) The Grants Manual and
  - (e) Other relevant Council policies, and procedures.
2. These rules and the other documents listed above shall be made available to all Council officers on the Council's Intranet.

### **1.3 Role of the Cabinet and Executive Directors**

1. Where these rules require a decision of the Cabinet:
- (a) The Cabinet as a whole shall take the decision in accordance with authority given to it in the Council's constitution, and.
  - (b) Where the decision, is a 'key decision' as described in article 11.03 of the Council's constitution, it shall be taken only in accordance with the rules set out in the constitution.
2. The Executive Director responsible shall take all operational decisions affecting his or her Directorate, except where they are reserved or delegated to the Council, the Cabinet, the Chief Executive, or a specific Executive Director.
3. Where decisions pertain to more than one directorate, these shall be taken by either:
- (a) Two or more Executive Directors whose directorates are involved unless agreed otherwise between the Executive Directors whose directorates involved, or
  - (b) The Council's corporate management team

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#### **1.4 When Financial and Contract Rules apply**

1. These rules lay down minimum standards or policy and behaviour and shall apply to all:
  - (a) Officers of the Council wherever they;
    - (i) Hold any responsibility or undertake any action regarding the Council's finances or assets, or any systems used to control these, or
    - (ii) Intend to procure goods, works or services for the Council's use or in order to provide these to any other organisation or partner,
  - (b) Schools, except where the requirements of the Schools Standards and Frameworks Act 1998 or where other legislation shall provide otherwise,
  - (c) Sub-contracts where the Council specifies names or nominates a sub-contractor to a contractor or in a tender specification,
  - (d) Contracts where the Council is to commission or provide goods, works or services for other bodies, and
  - (e) Contracts where the Council is the accountable body or lead partner.
2. Use of grant funding to purchase works, goods and services.
3. Financial and contract rules shall not normally apply to:
  - (a) Employment of Council officers, except in the making of contracts with recruitment and staffing agencies,
  - (b) Interests in land, other than as set out,
  - (c) Contracts for treasury management and loans,
  - (d) Choosing a partner organisation where the cabinet has agreed that a public/private partnership shall be undertaken, in which case the system laid down in the appropriate legislation shall be followed, or
  - (e) The investment of assets belonging to charities and trusts for which an officer of the Council acts as treasurer.
4. Where managers take decisions involving the purchase or hire of vehicles, they shall first consult with the Council's officer for fleet management, the Council's treasury manager and then follow financial and contract rules.

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5. Where tendering procedures are specified as part of a grant regime, or where officers are required to act upon written instructions received from a body with which the Council operates a formal agency agreement, the grantor's or principal's requirements shall take precedence over these procedures only to the extent that the agreement requires or where the conditions are more extensive or rigorous than those prescribed in either financial and contract rules.

## **1.5 Officers' interest in contracts**

As soon as any officer becomes aware that they, a family member or friend has any personal or prejudicial interest in any contract or other matter pertaining to the Council's affairs, the officer shall declare this in writing to the Monitoring Officer. This shall be done in accordance both with these rules and with the requirements of the Council's code of conduct for its employees.

## **2. Financial management**

### **2.1 Purpose**

Officers involved in the Council's financial management shall take appropriate action concerning:

- (a) Financial accounting standards,
- (b) Virements and budget transfers,
- (c) Treatment of Year-end Balances,
- (d) Accounting Policies,
- (e) Accounting Records and Returns,
- (f) The Annual Statement of Accounts, and
- (g) The Grants Manual

### **2.2 Financial management standards**

1. All officers and members of the Council have a duty to abide by the highest standards of probity in dealing with financial issues. This is made possible 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. It is each manager's responsibility, to ensure that officers they are responsible for are adequately trained to understand their responsibilities and perform their duties.
2. All officers shall ensure that financial controls are promoted throughout the areas of the Council's work in which they are involved. They should support and comply with all requirements to maintain a monitoring system to review compliance with financial standards.

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## 2.3 Virements and budget transfers

1. A scheme of virement shall be maintained to enable the Cabinet, Executive Directors and their staff to manage budgets with the degree of flexibility within the overall budget and policy framework determined by the Council, and therefore to optimise the use of resources. Virement is the process of moving a budget from one financial code to another and reflects changes in council policy or operational decisions within officer delegations. A virement can be made on a permanent (transfer of staff) or temporary basis (one-off allocation of contingency).

### 2. Virements

(a) Steps taken by the Executive, (a committee of the Executive, an individual member of the Executive or officers discharging executive functions) to implement Council policy shall not exceed those budgets allocated to each budget heading, subject to paragraphs (c) to (h) below.

(b) Year end technical accounting transfers, realignment of central support services, allocation of new expenditure where grant or other income sources have come on stream in year, miscoding, transfers due to new allocation of grant or other funding sources, and internal recharges do not constitute a virement nor do those arising from changes in management responsibilities.

(c) Such bodies or individuals shall be entitled to vire across budget headings, sums not exceeding a specified limit for the financial year, as follows:

#### (i) Capital

A chief officer may vire capital up to £25,000 across budget headings (or, up to £250,000 with the approval of the Chief Finance Officer or Head of Finance, in consultation with the Executive Member for Finance).

The Executive may vire capital up to £500,000 across budget headings.

Any capital virement above £500,000 shall require the approval of the Council

#### (ii) Revenue

A chief officer may vire revenue up to £50,000 across budget headings (or, up to £250,000 with the approval of the Chief Finance Officer or Head of Finance, in consultation with the Executive Member for Finance).

The Executive may vire revenue up to £1,000,000 across budget headings.

Any revenue virement above £1,000,000 shall require the approval of the Council.

- (d) The Executive may:
- (i) Increase capital or revenue expenditure in-year by use of general reserves in accordance with the Councils approved Medium Term Financial Strategy, provided that the Chief Finance Officer or Head of Finance has certified in writing that such use of reserves would not cause the councils overall position to fall below the specified level.
  - (ii) Increase the capital budget provided that additional expenditure can be funded through:
    - Existing capital resources (i.e. due to capital carry forward or underspends in year) with the approval of the Chief Finance Officer or Head of Finance
    - Additional external resources (e.g. external grant, third party contributions, etc),
    - Additional capital receipts, over and above the level required to fund the approved capital programme
- (e) The Chief Executive may exercise any of the powers of the Executive, in consultation with the Leader, the Executive Member for Finance and the Chief Finance Officer and Monitoring Officer where the legal or financial position of the Council or the interests of the residents of Walsall would be prejudiced if the matter were not determined before the next scheduled Executive meeting. The Chief Executive will report any such decision to the next meeting of the Executive, and then to Council.
- (f) No virement relating to a specific financial year should be made after 31 March in that year (excluding year end technical accounting entries and realignments of internal recharges which are processed centrally).
- (g) Where an approved budget is a lump-sum revenue or capital budget or contingency intended for allocation during the year, its allocation will not be treated as a virement, provided that:
- (i) The amount is used in accordance with the purposes for which it has been established, or
  - (ii) The Cabinet 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 the Cabinet.
- (h) Where it is necessary to record changes in the council's accounting structure or to correct miscoding of entries in the Council's ledger accounting system, the Chief Finance Officer or nominee shall agree these adjustments in writing and effect them by journal entry or otherwise.

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## **2.4 Treatment of year-end balances**

1. The carry forward protocol in the MTFSS sets out how to deal with amounts remaining unspent in Heads' of Service/Service Managers budgets at the end of each financial year. Appropriate accounting procedures shall be maintained to ensure that carried forward totals are correct.
2. Schools' balances shall be available for carry-forward to support the expenditure of the school concerned in accordance with the Council's approved scheme of delegation. Where an unplanned deficit occurs, the governing body shall prepare a detailed financial recovery plan for consideration by the Cabinet member concerned, following evaluation by the Chief Education Officer and the Council's Chief Finance Officer or Head of Finance. Schools will normally be expected to agree a plan to recover the deficit within twelve months unless there are exceptional circumstances.
3. In exceptional circumstances, a school may seek to incur expenditure to be financed by anticipating the following year's budget share. Such arrangements require the prior approval of the Executive Director responsible for education in consultation with the Chief Finance Officer or Head of Finance. Proposals shall be accompanied by a detailed plan setting out how the arrangement is to be accommodated as the first call on the reduced budget share.

## **2.5 Accounting policies**

2. The Chief Finance Officer shall ensure that:
  - (a) Systems of internal control are in place that ensure financial transactions are lawful,
  - (b) Suitable accounting policies are selected and applied consistently,
  - (c) Proper accounting records are maintained, and
  - (d) Financial statements are prepared following the financial year-end that present a true and fair view of the financial position of the authority and its expenditure and income.

## **2.6 Accounting records and returns**

1. The Council shall maintain and comply with its statutory responsibility to prepare its annual accounts to present a true and fair view of its operations during the financial year. These accounts shall be subject to external audit.
2. Officers shall ensure that:
  - (a) All those involved in the Council's financial activities operate within the required accounting standards and timetables,

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- (b) All the Council'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, and
- (e) Prime documents are retained in accordance with legislative and other requirements.

## **2.7 The Annual Statement of Accounts**

The Council shall undertake its statutory responsibility to prepare and publish its own accounts to present a true and fair view of its operations during the year. The Council's Audit Committee shall be responsible for approving the statutory annual statement of accounts.

## **3. Financial planning**

### **3.1 Purpose**

1. All officers involved in preparation and operation of the Council's budgets shall take appropriate action to:
  - (a) Produce a budget in an appropriate form,
  - (b) Ensure medium term financial planning,
  - (c) Allocate available resource,
  - (d) Establish and maintain a capital programme, and
  - (e) Ensure the maintenance of the Council's general reserves.
2. Officers should undertake all actions in accordance with this rule, the MTFS and with its budget management control manual.

### **3.2 Format of the budget**

1. The Council shall produce a budget whose format provides an appropriate level of detail within which financial control and management will be exercised. This shall enable control of virement, the maintenance of cash limits and the level at which funds may be reallocated within budgets.
2. The Chief Finance Officer shall ensure that controls are maintained to ensure that the budget's format:
  - (a) Complies with all legal requirements, whole of government accounts reporting requirements; and CIPFA's Service Reporting Code of Practice

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- (b) Reflects the accountabilities of service delivery.
- (c) Ensures transparency and visibility of the council's budget to key stakeholders

### **3.3 Budgets and medium-term financial planning**

1. The Council is a complex organisation responsible for delivering a wide variety of services. It shall create and operate efficient plans to enable its resources to be allocated in accordance with agreed priorities. The budget shall form the financial expression of the Council's plans and policies.
2. The Council's revenue budget shall be constructed to ensure that resource allocation properly reflects the plans and priorities of the full Council. The budget shall enable the Council, through its cabinet and officers, to plan, authorise, monitor and control the way money is allocated and spent.
3. The Council shall operate a Medium Term Finance Strategy (MTFS), which shall be approved annually by Cabinet to ensure that it is preparing for events in advance.
4. The Council, through its Cabinet and Executive Directors, shall ensure that a budget exists to cover its entire operations, and shall create and maintain controls to ensure that:
  - (a) An appropriate budget is produced,
  - (b) Procedures are in place for forecasting and monitoring the revenue and capital budgets under their control.
  - (c) Regular reporting to Cabinet on the financial position of the budget is carried out.

### **3.4 Resource allocation**

1. The Council's needs and aspirations shall be carefully prioritised and its resources allocated to enable it to fulfil all legal responsibilities. Resources may include staff, money, equipment, goods and materials.
2. All officers responsible for any part of the Council's resources shall maintain and apply controls to ensure that resources are:
  - (a) Acquired in accordance with the law, these FRs and by the use of an approved authorisation process,
  - (b) Used only for the purpose intended, to achieve the approved policies and objectives, and are accounted for properly,

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- (c) Held securely for use when required,
- (d) Used with the minimum level of waste, inefficiency or loss for other reasons.
- (e) Allocated efficiently and that they can demonstrate value for money.

### **3.5 Capital programmes**

1. The Council shall establish and maintain a programme of capital expenditure to enable it to acquire or enhance fixed assets with a long-term value to the authority, such as land, buildings, and major items of plant, equipment or vehicles. This capital programme shall be approved annually by the Council to enable it to shape the way the Council's services are delivered in the long term.
2. Capital expenditure shall form part of the Council's investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources.
3. All officers responsible for capital programmes shall ensure:
  - (a) Approval is obtained for the programme of capital expenditure,
  - (b) Expenditure on capital schemes is subject to the preparation and approval of a capital finance report by the Chief Finance Officer or his/her nominee detailing the cost estimate, project plan, progress targets and associated revenue expenditure,
  - (c) Accountability for each proposal is accepted by a named manager,
  - (d) Monitoring of projects' progress is undertaken, comparisons made with approved budget and action taken to deliver the project on time, to standard and within budget.

### **3.6 Maintenance of reserves**

The Chief Finance Officer or Head of Finance shall ensure that:

- (a) Reserves are maintained in accordance with the "Code of Practice on Local Authority Accounting in the United Kingdom, and the Council's agreed accounting policies.
- (b) Reserves are established and used only following authorisation of the Chief Finance Officer and in accordance with the MTFS

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## **4. Risk management and control of resources**

### **4.1 Purpose**

All officers involved in risk management and control of the Council's resources shall take appropriate action concerning:

- (a) The need for adequate risk management and insurance, and
- (b) Provision of adequate controls.

### **4.2 Risk management and insurance**

1. Risk shall be defined as the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. The Council shall manage its risk through a planned, commercially balanced and systematic approach to its identification, evaluation and control. The objectives of risk management shall be to safeguard the Council's position and to ensure the continued financial and organisational well-being of the organisation.
2. The Audit Committee shall have overall responsibility for approval of the Council's risk management strategy, and shall promote a culture of risk management awareness throughout the authority.
3. The Council's risk management and insurance officers shall ensure:
  - (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,
  - (c) Managers are made aware of their responsibility for managing relevant risks and are provided with relevant information on risk management initiatives,
  - (d) Provision exists for losses resulting from the risks that remain,
  - (e) Procedures require investigation of claims within required timescales,
  - (f) Acceptable levels of risk are determined and insured against where appropriate, and
  - (g) The Council has identified business continuity plans for implementation in the event of disaster that results in significant loss or damage to its resources or significant interruption to the provision of services.

4. Managers shall ensure that they perform their duties in accordance with the Council's risk management framework.

#### **4.3 Internal Controls**

1. The Council shall operate a set of internal controls appropriate to the size and complexity of the organisation and its operations.
2. These shall be adequate to ensure that the Council is able to undertake and monitor compliance with the Council's statutory obligations, and to protect both the organisation and its officers from financial, administrative and commercial risks.
3. The system of internal controls shall be 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, and
  - (d) Risk Management

#### **4.4. Risk management.**

1. The Council's officers shall ensure:
  - (a) Key controls are reviewed regularly to enable the Council to make a formal statement annually, via its delegations to Audit Committee, to the effect that it is satisfied that the systems of internal control are operating effectively;
  - (b) Managerial control systems include 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, and
  - (c) Financial and operational control systems and procedures include for; physical safeguards for assets, segregation of duties, authorisation and approval procedures, and information systems.

### **5. Audit requirements**

#### **5.1 Purpose**

1. All officers involved in any way with the Council's finances, resources or management should cooperate and comply with reasonable action regarding:

- (a) Internal audit,
  - (b) External audit, and
  - (c) Preventing fraud and corruption.
2. Officers should undertake all actions in accordance with this rule, along with:
- (a) The Council's Anti-fraud and Corruption policies and strategy, and
  - (b) The Council's Confidential Reporting Policy (Whistle blowing).

## **5.2 Internal Audit**

1. The Council, through its Head of Internal Audit, shall maintain an internal audit service, which complies with the requirements of section 151 of the Local Government Act 1972, and the Accounts and Audit Regulations 2011. It shall provide an independent and objective assurance function for reviewing the system of internal control. It shall examine, evaluate and report on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.
2. The internal audit function shall be properly maintained and resourced so as to operate efficiently and in accordance with the principles contained in;
- (a) Public Sector Internal Audit Standards, and
  - (b) Any other statutory obligations and regulations.
3. The Council shall ensure;
- (a) Internal audit is independent in its planning and operation, and
  - (b) The Head of Internal Audit has direct access to the Chair of the Audit Committee, Head of Paid Service, Chief Finance Officer, all levels of management and directly to elected members of the Council.

## **5.3 External audit**

The Council's accounts are to be scrutinised by external auditors, who must be satisfied that the statement of accounts 'presents fairly' the financial position of the Council and its income and expenditure for the year in question and complies with the legal requirements.

## **5.4 Preventing fraud and corruption**

1. The Council shall not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the authority. All officers of the Council shall adhere to legal requirements, rules, procedures and practices concerning propriety and accountability of their actions, and to require this from those to whom they are responsible.

2. The Council shall require all individuals and organisations with which it has any dealings to act towards it with integrity and without thought or actions involving fraud and corruption.
3. The Head of Paid Service shall ensure:
  - (a) The Council has an effective anti-fraud and anti-corruption policy which maintains a culture that will not tolerate fraud or corruption,
  - (b) All members and officers act with integrity and lead by example,
  - (c) 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 registers of interests for members and officers in which any hospitality or gifts accepted shall be recorded,
  - (f) Confidential reporting (Whistleblowing) procedures are in place and operate effectively, and
  - (g) Compliance with legislation including but not limited to the Public Interest Disclosure Act 1998.
4. Every officer of the Council shall inform his or her line manager of any benefits, gifts or hospitality which may be provided during the course of his or her duties or by way of his or her employment with the Council.
5. Each Directorate shall maintain a register of officers' interests and of any gifts or hospitality received by them, which are declared in accordance with this paragraph.

## **6. Assets**

### **6.1 Security**

1. The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that all 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.
2. The Council shall create and maintain controls to ensure that:
  - (a) Resources are used only for purposes for which they are provided,

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- (b) All resources are available for use when required,
  - (c) Items no longer required are disposed of in accordance with legal requirements and with the Council's rules so as to maximise benefits,
  - (d) A terrier of property is maintained,
  - (e) 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,
  - (f) 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, and
  - (g) All staff are aware of their responsibilities with regard to safeguarding the security of the Council's computer systems, including maintaining restricted access to the information held on them and compliance with the Council's computer and internet security policies.
3. Inventories shall be maintained to cover all items of plant, equipment, furniture and fittings whose value is believed to exceed £500 in value. Each Head of Service or Service Manager shall maintain a record of all such items under his or her control, to be kept in a suitable form. The inventory shall be reviewed at least annually or if any item passes permanently into or out of the service.

## **6.2 Intellectual property**

- 1. The Council's intellectual property shall include all inventions, developments and writing created by its employees and contractors - subject to the terms of contract – created during the course of their employment, including the development of corporate software and systems.
- 2. All managers shall inform all staff engaged in work that may result in the creation of intellectual property of this requirement.
- 3. Where intellectual property is or has been created, the Executive Director whose directorate has been responsible for the creation of any item of intellectual property shall inform the Assistant Director for Legal and Democratic Services of the full extent and nature of the intellectual property created.

## **6.3 Treasury management**

- 1. All borrowing and investment shall be undertaken by the Chief Finance Officer, or an officer acting on their behalf and shall be in accordance with the CIPFA code of practice.

2. All investment of money is to be made in the Council's name or in that of one or more nominees approved by the Council.
3. Wherever possible, all trust funds and the funds of charities for which the Council undertakes to act shall be held in the Council's name or in the name of the charitable or other trust.
4. Imprest accounts shall be provided to relevant Council officers. They may be operated jointly with the officers of partner organisations providing it is agreed that the Council's Financial Rules shall be followed at all times. These accounts shall only be used for petty cash items whose value does not exceed the threshold set out in the Council's assets procedure.

## **7. Financial systems and procedures**

### **General**

1. The Council shall operate systems relating to the control of its assets, including purchasing, costing and management systems. It is increasingly reliant on computers for its 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.
2. The Chief Finance Officer has a professional responsibility to ensure that the Council's financial systems are sound and must therefore be notified of any new developments or changes.
3. The Council shall create and maintain controls to ensure that:
  - (a) Basic data exists to enable 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 provide security for equipment and data,
  - (e) Officers maintain high levels of security within the computerised and other systems to which they have access,
  - (f) Access to computerised and other systems holding the Council's data is provided to officers only to the extent required for them to undertake their duties, and

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- (g) Officers access the Council's computerised systems only in accordance with passwords and privileges supplied to them by the Chief Finance Officer or other officer appointed to control these systems.

## **8. Income, ordering and payment**

### **8.1 Purpose**

All officers involved with the Council's income and expenditure should take appropriate action regarding;

- (a) Income,
- (b) Ordering and paying for goods, works and services,
- (c) Payments to the Council's employees and members,
- (d) Taxation, and
- (e) Trading accounts.

### **8.2 Income**

1. The Council requires effective income collection systems to ensure that all income due is identified, collected, receipted and banked properly. Wherever possible, income should be obtained before goods or services are supplied, as this maximises the Council's cash flow and avoids the time and cost of administering debts.
2. Officers shall act to ensure that:
  - (a) Income due to the Council 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, promptly, using the correct procedures and appropriate stationery,
  - (c) All money received by an employee on behalf of the Council is paid immediately to the Chief Finance Officer or, as he or she directs, to the Council's bank or National Giro account, and properly recorded.
  - (d) Responsibility for cash collection should be separated from that for:
    - (i) Identifying the amount due, and
    - (ii) Reconciling the amount due to the amount received
  - (e) Effective action is taken to promptly pursue and collect non-payment within defined timescales,
  - (f) Formal approval for debt write-off is obtained,



- (g) Appropriate write-off action is taken within defined timescales,
- (h) Appropriate accounting adjustments are made following write-off action,
- (i) All appropriate income documents are retained and stored for the defined period in accordance with the Council's document retention schedule,
- (j) An officer who is not involved in the collection or banking process reconciles money collected and deposited to the bank account.

### 8.3 Ordering and paying for work, goods and services

1. Public money should be spent with demonstrable probity and in accordance with the Council's approved budget and policies. The Council has a statutory duty to achieve best value in part through economy and efficiency. The Council's rules and procedures should help to ensure that services obtain value for money from purchasing arrangements.
2. 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 Council, in accordance with appropriate codes of conduct.
3. Official orders must be in a form approved by the Chief Finance Officer or Head of Finance. They must be issued for all work, goods or services to be supplied to the Council, except for supplies of utilities, periodic payments - such as rent or rates - petty cash purchases or other exceptions specified by the Chief Finance Officer or Head of Finance. They must conform to requirements for central purchasing and the standardisation of supplies and materials.
4. Standard terms and conditions on official orders shall not be varied without the prior approval of the Chief Finance Officer or Head of Finance.
5. Apart from petty cash, schools' own bank accounts and other payments from advance accounts, the normal method of payment shall be by cheque bank automatic clearance transfer, or other approved instrument. The Chief Finance Officer or Head of Finance shall make payment from the Council's bank or National Giro account.
6. The use of direct debit or other methods of payment shall require the prior written agreement of the Chief Finance Officer or Head of Finance.
7. Official orders shall not be raised for any personal or private purchases, nor must personal or private use be made of the Council's contracts.

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8. All officers shall ensure that goods, works and services required by the Council are:
- (a) Requisitioned and ordered only in accordance with passwords and access levels assigned to individual officers as agreed by the Chief Finance Officer or Head of Finance,
  - (b) Authorised by an officer who holds an appropriate access level to the Council's ORACLE, I-PROCUREMENT or other software following confirmation that:
    - (i) The incurring of the expenditure has been authorised by an appropriate officer who holds the correct level of authority to incur the expenditure,
    - (ii) Uncommitted revenue budget is available from which to make payment for the items ordered,
    - (iii) The payment is for a utility or other commodity for which a revenue budget exists,
    - (iv) The items obtained will be provided to the area of the Council whose officer has created the order or to another area of the Council to which it has been agreed that a charge will be made,
    - (v) An amount has been set aside in an approved capital programme, or
    - (vi) The Council has a legal liability to make the payment.
  - (c) Requisitioned, ordered, receipted and paid for only as set out in the Council's rules and procedures for use of the ORACLE, I-PROCUREMENT or other software, except where the Chief Finance Officer or Head of Finance has previously approved otherwise in writing,
  - (d) Correctly recorded and coded in accordance with the procedures for use of the Council's ORACLE, I-PROCUREMENT and other systems,
  - (e) Ordered in accordance with the Council's rules and procedures for tenders and contracts, and
  - (f) Checked upon receipt wherever possible to ensure they are in accordance with the order. Goods should not be received by the person who placed the order
9. Payments for goods, works and services should normally be made only following receipt of the items ordered by the Council. Officers should ensure that payments are made only for items:

- (a) Ordered by the Council,
  - (b) Provided to it in accordance with the terms of a contract,
  - (c) Are the subject of a grant or other funding agreement, or
  - (d) Form a legal liability of the Council,
10. They should further ensure that payments are made only:
- (a) For the correct price, quantity and quality standards specified in the Council's official order, and,
  - (b) To the correct firm or person, for the correct amount and are properly recorded, regardless of the payment method.
11. All expenditure should be:
- (a) Evidenced with appropriate documents retained and stored for the defined period, in accordance with the Council's document retention schedule,
  - (b) Accurately recorded against the appropriate budget including the correct treatment of value added tax,
  - (c) Undertaken in the most efficient manner bearing in mind the requirements of e-business, e-commerce and electronic purchasing.

#### **8.4 Payments to employees and members**

1. Staff costs are the largest item of expenditure for most Council services. It is therefore important that payments are accurate, timely, made only where they are due for employees' services to the Council 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 members' allowances are authorised in accordance with the scheme adopted by the full Council.
2. All Council officers shall act to ensure that:
- (a) Proper authorisation procedures are in place and that there is adherence to corporate timetables in relation to:
    - (i) Officers joining or leaving the Council's workforce,
    - (ii) Variations to salaries and wages resulting from changes in rates of remuneration, hours worked or promotions of existing staff, and
    - (iii) Enhancements, allowances and honoraria to be paid to staff.

- (b) Frequent reconciliations are made between the Council's payroll, the approved budget, and the bank account,
- (c) Payroll documents are retained and stored for the defined period in accordance with the document retention schedule, and
- (d) All procedures comply with Inland Revenue regulations.

## **8.5 Taxation**

1. The Council is responsible for ensuring its treatment of tax is undertaken efficiently in order to avoid penalties for incorrectly accounting.
2. All officers need to be aware of the importance of correct treatment of taxes and shall ensure that;
  - (a) Budget holders are provided with relevant information and kept up to date on tax issues,
  - (b) Officers responsible for any form of taxation, including VAT, are instructed on required record keeping,
  - (c) All taxable transactions are identified, properly carried out and accounted for within stipulated timescales,
  - (e) Records are maintained in accordance with instructions, and
  - (f) Returns are made to appropriate authorities within stipulated timescales.

## **8.6 Trading accounts**

For Trading accounts authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost.

## **9. External arrangements**

### **9.1 Purpose**

1. All officers involved in the Council's financial management should take appropriate action regarding:
  - (a) Partnerships,
  - (b) External funding, and
  - (c) Work for third parties.

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## 9.2 Partnerships and Purchasing Consortiums

1. 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. The Council works in partnerships and consortia with others – public agencies/bodies, private companies, community groups and voluntary organisations. The Council still delivers some services, but its distinctive leadership role is to bring together the contributions of the various stakeholders. The mutual objective is to deliver a shared vision of services based on user wishes.
2. The Council 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.
3. The main reasons for entering into a partnership are:
  - (a) The desire of the Council to improve services and the well being of the population of Walsall
  - (b) The desire to find new ways to share risk,
  - (c) The ability to access new resources,
  - (d) To provide new and better ways of delivering services, and
  - (e) To forge new relationships.
4. A partner is defined as either:
  - (a) An organisation (private or public) undertaking, part funding or participating as a beneficiary in a project, or
  - (b) A body whose nature or status gives it a right or obligation to support the project.
5. Partners participate in projects by:
  - (a) Acting as a project deliverers, partners, stakeholder or sponsors, solely or in concert with others,
  - (b) Acting as a project funder or part funder, and/or
  - (c) Being the beneficiary group of the activity undertaken in a project.
6. 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, and
  - (f) To act wherever possible as ambassadors for the project.
7. All Council officers shall act to ensure that partners;
- (a) Are made and remain aware of the Council's responsibilities under its Financial and Contract Rules, associated procedures and policies,
  - (b) Undertake appropriate risk management processes,
  - (c) Ensure that project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise,
  - (d) Agree and accept formally the roles and responsibilities of each of the partners involved in the project before the project commences, and
  - (e) Communicate regularly with other partners throughout the project so that problems can be identified and shared to achieve their successful resolution.
8. A purchasing consortium is generally two or more public bodies working together jointly to purchase without the key characteristics of partnership working.
9. All partnerships and purchasing consortium purchases must be procured in accordance with these rules, except in the case of a purchasing consortium where another Public Body's constitution is followed and the procedure followed represent value for money and good practice in the view of the Council's corporate procurement unit.
10. Where the Council enters into a contract with a partner, the Executive Director responsible for the creation of that contract shall inform all other Executive and Assistant Directors of the contract's requirements. All Council officers shall comply with the requirements of the partnership contract except, where:

- (a) The contract specifically excludes or limits compliance, or
  - (b) Compliance in any specific instance would be unlawful, contrary to ministerial advice or an external grantor's conditions of funding.
11. In the case of schools, they shall not be required to comply with such partnership contracts where their governors act:
- (a) In accordance with the Education Framework and Standards Act or other legislation providing specific freedom of action to schools, or
  - (b) As a body corporate in matters to which the local management delegations do not pertain.

### **9.3 External funding**

All Council officers shall act to ensure that:

- (a) All conditions of funding and any statutory requirements can be and are fully met,
- (b) Responsibilities of the accountable body are clearly understood,
- (c) Funds are acquired only to meet the priorities approved in the policy framework by the Council,
- (d) Any match-funding requirements are given due consideration prior to entering into long-term agreements, and
- (e) Future capital and revenue budgets reflect grantors' requirements.
- (f) Requirements detailed within the Grants manual are met.

### **9.4 Work for other organisations**

1. Current legislation enables the Council 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 are managed properly and that such work is within the scope of the law.
2. All Council officers shall act to ensure that they:
  - (a) Cost proposals in accordance with guidance provided by the Chief Finance Officer or Head of Finance.
  - (b) Consult the Monitoring Officer or his nominee regarding the appropriate form of contract, and
  - (c) Follow the Council's procedures regarding the financial aspects of making contracts with other organisations and maintenance of the contract register.

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## 8 - Contract Rules

### 1 Background and Purpose

- 1.1 These Contract Rules (“the Rules”) are made under Section 135 of the Local Government Act 1972.
- 1.2 The Rules form part of the Council’s Constitution.
- 1.3 The purpose of the Rules is to:
  - 1.3.1 To achieve Best Value;
  - 1.3.2 be consistent with the highest standards of integrity and fairness;
  - 1.3.3 comply with all legal requirements;
  - 1.3.4 support the Council’s corporate aims and policies including a commitment to support a sustainable local economy;

### 2 Application

- 2.1 The Rules shall apply to:
  - 2.1.1 Contracts (including Council set up Frameworks Agreements) for purchasing, commissioning, leasing or hire of goods, works or services for the Council;
  - 2.1.2 Sub-contracts where the Council specifies, names or nominates a sub-contractor to a Contractor or Supplier in a tender specification;
  - 2.1.3 (Unless the Council expressly agrees otherwise), contracts on behalf of any Partnership for which the Council is the accountable body;
  - 2.1.4 Schools, except statutory provisions require otherwise.
- 2.2 Where the Council is required to follow rules laid down by Central Government or other organisation that provides grant funding (“the Grantor”) to the Council, Officers shall follow the Grantor’s contract procedure rules where they are more stringent than the Council’s.
- 2.3 The Rules do not apply to:
  - 2.3.1 Contracts of employment for the Council’s Officers and contracts for interim or temporary Chief Officers, except in the making of contracts with recruitment and staffing agencies (other than for the appointment of interim or temporary Chief Officers); or
  - 2.3.2 Subject to Rule 22, Contracts relating to the purchase or sale of interests in land; or
  - 2.3.3 Contracts for treasury management and loans; or



- 2.3.4 The investment of assets belonging to charities and trusts for which an Officer acts as treasurer; or
- 2.3.5 Grants made by the Council; or
- 2.3.6 Purchases from Framework Agreements.

### **3 Compliance**

- 3.1 All procurements shall be conducted in accordance with the following:
  - 3.1.1 All relevant statutory provisions including the Public Contracts Regulations 2015 (“the Regulations”) or equivalent;
  - 3.1.2 The relevant EU Rules;
  - 3.1.3 The Council’s Constitution; and
  - 3.1.4 Any Corporate Procurement Strategy or Procurement Code, if the Council has one in place at the time of procurement.
- 3.2 Failure to comply with the Rules may leave the Council, or individual Officers or Members, open to risk of legal challenge. Breaches will be regarded as a serious matter which may be considered gross misconduct and could lead to disciplinary action and/or dismissal.
- 3.3 Officers must declare any interests which could bring them into conflict with the Council’s interests.
- 3.4 Members must disclose all relevant interests on their register of interest forms, and any meeting they attend.

### **4 Preparing to contract**

- 4.1 Authority for all contracts must be granted before they are entered into. Authority can be in the form of:
  - 4.1.1 A Cabinet resolution; or
  - 4.1.2 A decision made properly within the powers of Cabinet or Chief Officer under the Scheme of Delegations; or
  - 4.1.3 A decision by Cabinet delegating authority to an Authorised Officer.
- 4.2 Subject to Rule 9, the following conditions must be met:
  - 4.2.1 The contract must comply with the Rules and the Financial Regulations; and
  - 4.2.2 There must be enough budget to cover the financial commitment being made including ongoing revenue costs, Authorised Officers will need to seek approval for the power to offset any shortfall in budget.

- 4.3 Executive Directors have overall responsibility for the operation of the Council's functions. All requirements for goods, services or works that fall within those areas must first have been consulted on with the relevant Officer as set out in this rules as authorised to award a tender prior to the commencement of any procurement or commissioning exercise.

## **5 Use of Existing Contracts and Local Suppliers**

- 5.1 Existing Council contracts, EU Rules and UK procurement law compliant purchasing consortium arrangements or Framework Agreements shall be used wherever available unless a Chief Officer has agreed otherwise in which case these rules shall apply. Before any procurement is commenced, Authorised Officers shall establish whether:
- 5.1.1 The Council has existing contracts or beneficial arrangements for the future purchase of goods, works and services; or
  - 5.1.2 Items are to be found in any available Council's i-Procurement online purchasing system; or
  - 5.1.3 The Council is able to purchase through a public authority purchasing consortium; or
  - 5.1.4 Buying Solutions' or other Central Purchasing Bodies' Framework Agreements are available.
- 5.2 When proposing to purchase using a purchasing consortium arrangement or Framework Agreement, Officers shall conduct due diligence to determine it is EU and UK procurement law compliant.
- 5.3 When undertaking any form of procurement Officers should have regard to any potential local suppliers who can engage the chain of supply and or tender for the supply of goods, works and services.
- 5.4 Where potential local suppliers have been indentified, Officers should seek to inform those suppliers of the Council's intention to procure and how they can engage in the procurement process but Officers must not act in any way anti-competitively or disclose any information that is not readily available to the general public.

## **6 Special Contracts**

### **Schools**

- 6.1 Where the Rules apply to the Council's schools, each school's governing body shall:
- 6.1.1 Act as the Head of Service for all procurement, commissioning, leasing, purchasing or sale of any goods, works or services over which the school has authority under the delegation of schools management or other legislation;

- 6.1.2 Delegate to the school's head teacher or other senior members of the school's staff such authority as it sees fit to take actions on its behalf; and
- 6.1.3 Seek authority of the Council's Executive or Assistant Directors or Cabinet wherever the Rules require.

### **Social Care Contracts**

- 6.2 The Chief Officers responsible for providing Social Care for Children and Adult Services shall:
  - 6.2.1 Consult with the Head of Legal and Democratic Services to create a set of rules governing the procurement of services relating to Social Care, which are awards of contracts for social and other specific services pursuant to Section 7 and Schedule 3 of the Regulations;
  - 6.2.2 Ensure such rules reflect the structure of the market for Social Care services; and
  - 6.2.3 Balance the need to achieve Best Value with that to make contracts rapidly to meet individual service users' needs.
- 6.3 Except where a set of rules have been created Officers shall procure services only in accordance with the Rules.

### **Consultants**

- 6.4 Chief Officers who wish to appoint consultants shall ensure:
  - 6.4.1 The Council has a genuine need for consultants;
  - 6.4.2 The nature and extent of the work is clearly defined;
  - 6.4.3 Suitably qualified and experienced consultants provide quotations or tenders;
  - 6.4.4 A written contract is made with the consultant who is appointed in a form approved by the Head of Legal and Democratic Services;
  - 6.4.5 Consultants provide insurance cover to a level approved by the Council's Insurance and Loss Control Manager; and
  - 6.4.6 The consultant shall formally accept the appointment before the work is commenced.

### **Appointments of Legal Advisors and Experts**

- 6.5 Where a Chief Officer seeks to appoint external legal advisors and experts, following consultation with the Head of Legal and Democratic Services, the following rules shall apply:
  - 6.5.1 Where the Council is a member of a pre procured legal services framework or consortium that should be the first selection point

for external legal advisers except on grounds of expediency and or specialism in which case rules 6.5.2 and 6.5.3 shall apply.

- 6.5.2 Tenders shall not be required for the engagement of counsel, medical experts, the clergy or experts at court proceedings; and
- 6.5.3 Tenders shall not be required for the instruction of legal advisers, who shall be appointed in consultation with the Head of Legal and Democratic Services.

## **7 Electronic Tendering, Advertising on Contracts Finder and Approved Lists**

- 7.1 Unless agreed by the Council's Head of Procurement or Head of Legal Services, all procurement must be undertaken using the Council's electronic procurement portal except where a compliant pre procured framework or consortium arrangement is being used.
- 7.2 All contracts to be tendered with a value in excess of £25,000 must be also advertised on Contracts Finder, unless agreed otherwise by the Council's Head of Procurement or Head of Legal and Democratic Services; or purchasing is proposed by using EU Rules-complaint purchasing consortiums or Framework Agreements.
- 7.3 Authorised Officers shall ensure that where proposed contracts, irrespective of their total contract value, might be of interest to potential tenderers located in other states of the European Union, a sufficiently accessible advertisement is published. Generally the greater the interest of the contract to potential tenderers from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:
  - 7.3.1 The Council's website;
  - 7.3.2 Portal websites specifically created for contract advertisements;
  - 7.3.3 National official journals; and
  - 7.3.4 The Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the Regulations).
- 7.4 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the Regulations apply.

## **8 Contract Value and Mixed Contracts Procedure**

- 8.1 The total contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made or potentially to be made under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options). Wherever possible, estimates shall be based on previous purchases, catalogue prices or Contractor's or Suppliers' estimates. There shall be no artificial splitting of a contract to avoid the application of the provisions of the Regulations and/or the Rules.
- 8.2 Where the need is for a mixture of works, goods and/or services, then the relevant procurement process will be determined having regard to the characteristics of the main subject matter in question.
- 8.3 The Appendix to these Rules set out in summary which procurement process should be used, dependent upon the total contract value as calculated in accordance with Rule 8.1.

## **9 Waiver of or Exemption from the Contract Rules**

- 9.1 If a Chief Officer believes that goods, works or services are needed urgently by the Council, he or she may in writing waive or suspend the requirement to follow the Rules and other instructions to the extent necessary to remedy the urgent situation. Such waiver or suspension shall only apply where:
- 9.1.1 A situation of genuine urgency is perceived to exist; or
  - 9.1.2 A breach of statutory duty will occur; or
  - 9.1.3 Action is required to safeguard the Council's assets or interests; or
  - 9.1.4 Grants or other funding will be lost unless urgent action is taken.
- 9.2 The Chief Officer responsible for waiving or suspending any part of these rules or procedures shall provide a written report to the Corporate Management Team as soon as practicable detailing the Rules or procedures they have set aside and the reasons requiring these actions.
- 9.3 **Please note** that the waiver of these Rules under Rule 9.1 above or exemption under Rule 9.4 below is: (i) not a waiver or exemption from the EU Rules, the Regulations and UK procurement law requirements, as these cannot be waived or exempted from; and (ii) is subject to the following restrictions:
- 9.3.1 The waiver under Rule 9.1 or exemption under Rule 9.4 from the Rules cannot be used or seen to be used as an attempt to avoid or circumvent compliance with EU Rules and UK procurement law including the Regulations and the legal duty to obtain Best Value.
  - 9.3.2 Any waiver under Rule 9.1 must be for the shortest period of time possible to permit a short term contract to be put in place to enable a fully Rule compliant procurement process to be undertaken.

- 9.4 A Chief Officer shall not be required to seek quotations or tenders where goods, works or services:
- 9.4.1 must be purchased from a supplier holding exclusive rights of manufacture, supply, authorship, editorial, publication or distribution and where no generic equivalent exists;
  - 9.4.2 are required by the Council as a partial replacement for or in addition to existing goods, works or services already purchased by the Council and to obtain them from a supplier other than the supplier which supplied the existing goods would oblige the Council to acquire goods, works or services having different technical characteristics which would result in:
    - 9.4.2.1 Technical incompatibility between the existing goods, works or services and the goods, works or services to be purchased; or
    - 9.4.2.2 Significant disproportionate technical difficulties in the operation and maintenance of the existing goods, works or services.
  - 9.4.3 have a price that is controlled Central Government regulations;
  - 9.4.4 are repairs or parts for existing plant or machinery provided by the original supplier and no equivalent exists;
  - 9.4.5 are the hiring of performance artists or other suppliers of fine art exhibits; and
  - 9.4.6 to be obtained at a public auction, fair or market.
- 9.5 Before an Authorised Officer procures using any of the exemptions set out in Rule 9.4 above, they must seek advice from the Head of Procurement and/or Head of Law as to the application of the Regulations.

## **10 Significant Contracts**

- 10.1 "Significant Contracts" are contracts for goods, works or services which exceed £50,000 but for goods and services do not exceed the current EU threshold and for works do not exceed £250,000.
- 10.2 An Authorised Officer shall take responsibility for the procurement of Significant Contracts. This Officer shall report regularly to a Chief Officer.
- 10.3 Tenders shall be invited in writing from at least two Contractors or Suppliers for Significant Contracts by inviting or directing potential tenderers to the means of submitting a tender. In the event that less than two Contractors or Suppliers show interest in submitting or do submit a tender following compliance with the requirements to advertise in Rule 7, then a tender shall be obtained from the Contractor or Supplier who is willing and able to submit a tender.

- 10.4 Tenders shall be sought, evaluated and awarded in accordance with Rules 16 and 17 below.
- 10.5 Tenders shall be returned to the Council as required by any Invitation to Tender and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 10.6 Tenders for Significant Contracts shall be opened by the relevant Authorised Officer or by a Procurement Officer.
- 10.7 The relevant Head of Service or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).
- 10.8 Significant Contracts shall be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services which, except for where the Council's Purchase Order Terms and Conditions of contract are used, shall be signed by the Head of Service responsible for the service on the Council's behalf and by an authorised signatory of the Contractor or Supplier.

## **11 Major Contracts**

- 11.1 "Major Contracts" are contracts for goods, works or services which exceed the Significant Contracts threshold but do not exceed £500,000.
- 11.2 The procurement of Major Contracts for goods and services shall follow the Regulations.
- 11.3 An Authorised Officer shall take responsibility for the procurement of Major Contracts in respect of works. This Officer shall report regularly to a Chief Officer.
- 11.4 Tenders shall be invited from at least three Contractors or Suppliers. In the event that less than three Contractors or Suppliers show interest in submitting or do not submit a tender following compliance with the requirements to advertise in Rule 7, then tenders shall be obtained from those Contractors or Suppliers who are willing and able to submit a tender.
- 11.5 Tenders shall be sought, evaluated and awarded in accordance with Rules 15 and 16 below.
- 11.6 Sealed tenders shall be returned to the Tenders – Postal/Courier and Filing Services Civic Centre and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 11.7 Tenders for Major Contracts shall be opened by the relevant Head of Service or by two Procurement officers.
- 11.8 The relevant Assistant Director or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).
- 11.9 Contractors or Suppliers appointed are to confirm acceptance of their appointment in writing. No work, other than the Contractor's or Supplier's off-

site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the Contractors or Supplier appointed has:

- 11.9.1 Formally accepted their appointment;
  - 11.9.2 Provided evidence of insurances to the satisfaction of the Council's Corporate Risk and Project Manager; and
  - 11.9.3 Provided any agreed surety or bond to the Council.
- 11.10 Major Contracts shall be evidenced by a written contract, in a form approved by the Head of Legal and Democratic Services, which shall be signed by Executive Director responsible for the service on the Council's behalf and by an authorised signatory of the Contractor or Supplier.
- 11.11 The Authorised Officer should be regularly informed the Assistant or Executive Director or Project Board responsible for the contract on the contract's performance and expenditure to date and the predicted out-turn including any areas of difficulty and propose remedial action.

## **12 Strategic Contracts**

- 12.1 "Strategic Contracts" are contracts for goods, works or services which exceed £500,000.
- 12.2 The procurement of Strategic Contracts for goods and services shall follow the Regulations.
- 12.3 The procurement of Strategic Contracts for works over the EU Threshold (for works) shall follow the Regulations.
- 12.4 An Authorised Officer shall take responsibility for the procurement of Strategic Contracts in respect of works up to the EU Threshold (for works). This Officer shall report regularly to a Chief Officer.
- 12.5 Tenders shall be invited from at least four Contractors or Suppliers by inviting or directing in writing potential tenderers to the means of submitting a tender. In the event that less than four Contractors or Suppliers show interest in submitting or do not submit a tender following compliance with the requirements to advertise in Rule 7, then tenders shall be obtained from those Contractors or Suppliers who are willing to submit a tender.
- 12.6 Tenders shall be obtained, evaluated and awarded in accordance with Rules 15 and 16 below.
- 12.7 Sealed tenders shall be returned to the Tenders – Postal/Courier and Filing, Civic Centre and shall be held securely in the custody of the Authorised Officer and remain unopened until the time set for their opening.
- 12.8 Tenders for Strategic Contracts shall be opened by the relevant Executive Director or Assistant Director in the presence of a Procurement Officer.



- 12.9 One or more tenders shall be accepted following a resolution of the Cabinet. Cabinet may resolve to delegate acceptance of tenders for individual contracts to a Chief Officer.
- 12.10 The Executive or Assistant Director responsible shall sign all letters of appointment but note that Rule 12.12 below the contract shall be sealed by the Council.
- 12.11 Contractors or Suppliers appointed are to confirm acceptance of their appointment in writing. No work, other than the Contractor's or Supplier's off-site preparations should be commenced, nor any delivery of goods, materials or services accepted, until the Contractors or Supplier appointed has:
- 12.11.1 formally accepted their appointment;
  - 12.11.2 Provided evidence of insurances to the satisfaction of the Council's Corporate Risk and Project Manager; and
  - 12.11.3 Provided any agreed bond or surety to the Council.
- 12.12 Strategic Contracts shall be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services. All Strategic Contracts exceeding £500,000 shall be made under the Council's seal.
- 12.13 The Authorised Officer should create a regular monitoring report for the Assistant or Executive Director and any Project Board responsible for the contract. This report should include up-to-date information on the contract's performance and expenditure to date and the predicted out-turn. The report should highlight any areas of difficulty and propose remedial action.

### **13 Contracts subject to the Regulations**

- 13.1 Where the total contract value of any Major or Strategic Contract exceeds EU Threshold the Regulations must be complied with.
- 13.2 The Regulations are lengthy and detailed and only the principal requirements are set out in the Rules. Advice must be sought from the Head of Procurement and/or the Head of Law before starting any procurement which is likely to be subject to the Regulations.
- 13.3 The Regulations specify how the contract shall be advertised, the types of the procedure to be used, timescales, evaluating the tender and how the contract shall be awarded (including mandatory debriefing and a standstill period). Failure to adhere correctly to the Regulations may result in legal proceedings being taken against the Council.
- 13.4 The Rules shall apply to contracts subject to the Regulations in so far as they do not conflict with the Regulations.
- 13.5 For the avoidance of doubt, it is not possible to waive all or any part of the Regulations.

## **14 Minor Contract Quotations**

- 14.1 Authorised Officers shall seek to obtain written quotations from at least two Contractors or Suppliers for all Minor Contracts whose value is anticipated to be up to £50,000. Authorised Officers shall:
- 14.1.1 Seek to obtain quotations only from Contractors or Suppliers known to be able to provide the goods, works and/or services required;
  - 14.1.2 Seek all quotations at a similar time, providing a written specification;
  - 14.1.3 Allow a reasonable time for Contractors or Suppliers to provide quotations;
  - 14.1.4 Receive quotations by letter, facsimile or email; and
  - 14.1.5 Evaluate all quotations received.
- 14.2 Subject to the Regulations, Authorised Officers shall retain quotations in accordance with document disposal guidelines, ensuring they remain available for inspection by the Head of Internal Audit or any representative of the Council's external auditor.
- 14.3 The relevant Service Manger or more senior Authorised Officer may accept one or more of the tenders received and award the contract(s).

## **15 Tenders**

- 15.1 Tenders shall be sought from Contractors or Suppliers who have responded to any advert placed by the Council in accordance with Rule 7 of the Rules and may be capable of being awarded the tender.
- 15.2 All Contractors or Suppliers invited to tender for Significant, Major or Strategic contracts shall be provided at no cost to themselves with identical Invitation to Tenders which shall specify and include:
- 15.2.1 The date and time by which tenders are to be received, and the address to which they are to be delivered;
  - 15.2.2 All documents to be completed, which shall include health and safety and equality and diversity questionnaires;
  - 15.2.3 A copy of the contractual terms and conditions to which the tenderer will be bound if they are awarded the tender;
  - 15.2.4 Instructions for the tender's return including where electronic tendering is unavailable or chosen to not be used a label which contains the name of the proposed contract and the Council Directorate to which the contract relates;
  - 15.2.5 The summary form of tender to be completed and signed by the tenderer; and

- 15.3 Information supplied shall include but not be limited to:
- 15.3.1 Full specification of all goods works or services to be provided;
  - 15.3.2 Intended duration of the proposed contract;
  - 15.3.3 Evaluation criteria to be used in assessing tenders; and
  - 15.3.4 The method by which any errors in tenders will be treated.
- 15.4 Each tender shall be informed that the Council:
- 15.4.1 does not bind itself to contract with the Contractors or Supplier offering the cheapest tender or with any Contractor or Supplier;
  - 15.4.2 will not be liable for any costs or expenses whatsoever incurred by the tenderers in respect of the preparation and submission of their tender and that the Council shall be at liberty to cancel the tender process at any time and shall not be liable for any costs or expenses whatsoever incurred by the tenderer as a result of such cancellation;
  - 15.4.3 will not consider any tender which is not accompanied by all tender documents;
  - 15.4.4 may not consider any tender received after the latest date and time;
  - 15.4.5 may not consider any tender bearing any mark or label identifying the tenderer, whether made by the sender, an agent or carrier;
  - 15.4.6 will not consider any tender offering a variant offer, except where it accompanies a compliant offer unless stated otherwise; or
  - 15.4.7 will not consider any tender requiring a form of contract other than that approved by the Council's Head of Legal and Democratic Services.
- 15.5 Subject to the Regulations, Authorised Officers shall retain tenders in accordance with document disposal guidelines, ensuring they remain available for inspection by the Head of Internal Audit or any representative of the Council's external auditor.

## **16 Evaluation and Award of Tenders**

- 16.1 Tenders shall be assessed:
- 16.1.1 As soon as possible after they have been opened;
  - 16.1.2 In line with evaluation criteria set out in the Invitation To Tender; and
  - 16.1.3 By Authorised Officers or duly appointed consultants.

- 16.2 Assessment shall be restricted to:
- 16.2.1 Information contained within the tenders;
  - 16.2.2 Further information requested from tenderers following initial assessment of tenders and any clarification required; and
  - 16.2.3 Material provided at an interview or presentation (if available).
- 16.3 The Authorised Officer responsible for assessment of the tenders shall:
- 16.3.1 Examine all compliant offers and variant or alternative offers where applicable;
  - 16.3.2 Deal with errors in tenders using the method set out in the tender specification;
  - 16.3.3 Seek clarification and additional detail from each tenderer;
  - 16.3.4 Undertake financial evaluation of each tenderer; and
  - 16.3.5 Where appropriate invite tenderers to attend interviews and make presentations.
- 16.4 The Authorised Officer may also:
- 16.4.1 Seek additional information from tenderers in writing where that is relevant or needed to remove ambiguities from tenders. Where this is provided by telephone, Officers should keep a log of the questions asked and answers given;
  - 16.4.2 Create a small panel of appropriate Officers to interview some or all tenderers; and
  - 16.4.3 Interview tenderers following proper planning. Tenderers to be called should receive adequate details of what is required and sufficient time to prepare answers and presentations. Questions, answers and marks awarded should be written and retained.
- 16.5 The Authorised Officer shall produce an evaluation report to the Chief Officer who is to accept one or more tenders. In respect of Strategic Contracts this report shall be made available to the Cabinet, or any Project Board prior to their accepting one or more tenders.
- 16.6 The evaluation report shall offer clear, costed recommendations, to the Chief Officer responsible for accepting the tender.

## **17 Form of Contract**

- 17.1 The Council shall make contracts with Contractors or Suppliers appointed in accordance with the Rules and with the requirements of the Financial Regulations.

- 17.2 For all purchases of goods and services only the Council's Purchase Order Terms and Conditions shall be used for purchases up to the relevant EU Threshold in value unless agreed otherwise by the Head of Procurement or Head of Law.
- 17.3 Every contract made by the Council, whether by way of official purchase order, or by formal written agreement, shall require:
- 17.3.1 Goods, works or services to comply with any relevant British Standard or equivalent European Union standard wherever these exist;
  - 17.3.2 Evidence that Contractors or Suppliers maintain sufficient insurance as may be required by the Council's Risk and Insurance Department;
  - 17.3.3 Compliance with the relevant Construction (Design and Management) Regulations wherever these apply;
  - 17.3.4 An appropriate health and safety policy;
  - 17.3.5 An acceptable equality policy compliant with the provisions of the Equalities Act 2010;
  - 17.3.6 A signed statement agreeing that the Council may revoke the contract in the case of corrupt activity or behaviour by the Contractor or Supplier; and
  - 17.3.7 Where applicable a clause setting out when any bond or surety shall be returned and retention monies released.
- 17.4 All official purchase orders and written contracts shall:
- 17.4.1 Describe the goods, works or services to be provided;
  - 17.4.2 State the price to be paid and when it shall be paid, along with any discounts or other deductions;
  - 17.4.3 Indicate the time or times, within which the contract is to be performed, including any terms and conditions under which the contract may be extended;
  - 17.4.4 Include or refer to any terms and conditions set out by the Council or agreed with the Contractor or Supplier;
  - 17.4.5 Fulfil the requirements of the Council's Financial Regulations; and
  - 17.4.6 Comply with the requirements of the Council's ORACLE accounts payable system.
- 17.5 In all cases the official purchase order or written contract document shall be in a form approved by the Head of Legal and Democratic Services except where:
- 17.5.1 A contract is to be made with a statutory undertaking or utility company; or

- 17.5.2 Government purchasing agreement terms and conditions are to be used; or
- 17.5.3 Terms and conditions are agreed by a purchasing consortium which includes the Council; or
- 17.5.4 A Central Government office requires their terms and conditions are followed, or
- 17.5.5 The Head of Legal and Democratic Services agrees use of the Contractor's or Supplier's terms and conditions.

## **18 Execution of Contracts under seal**

- 18.1 Authorised Officers requiring a written contract to be made under the Council's seal shall provide the following:
  - 18.1.1 Written confirmation of compliance with the Rules and the exercise of authority by a Chief Officer;
  - 18.1.2 For Strategic Contracts a copy of the Cabinet decision accepting the tender and awarding the contract or delegated authority to an Officer to accept the tender and award the contract;
  - 18.1.3 Any other documents required by the Head of Legal and Democratic Services, to enable a contract to be sealed.
- 18.2 The seal is applied by the Head of Legal and Democratic Services or his or her nominated Officer. **Please note:** The application of the seal is an administrative function and not a legal review of the contract or the tendering exercise.
- 18.3 Where a contract has no consideration (i.e. no discernible money is being spent by the parties) the Council's seal shall be used.

## **19 Register of Contracts**

- 19.1 Executive Directors shall keep a register of all contracts subject to the Rules 10, 11 and 12 entered into by that Directorate ("the Register of Contracts"). Authorised Officers shall ensure contracts for which they are responsible are entered into this Register of Contracts: this includes any amendments or variations. The Register of Contracts shall be available for inspection by the Head of Internal Audit at all reasonable times.
- 19.2 A copy of every signed contract and every subsequent amendment and/or variation to it entered into by the Council will be retained by the service area to which it relates.
- 19.3 The original contract and any subsequent amendments and/or variations to it shall be forwarded to the Head of Law, and then kept securely in the Council's Central Records.

## **20 Contract Management and Variation**

- 20.1 An Authorised Officer shall:
  - 20.1.1 Take responsibility for communications between the Council and the Contractor or Supplier;
  - 20.1.2 Ensure that the Contractor or Supplier complies with the contract's terms, provides appropriate insurances, and complies with health and safety and other legislation;
  - 20.1.3 Represent the Council at meetings with the Contractor or Supplier and stakeholders;
  - 20.1.4 Report on the contract progress to Chief Officers, any Project Board or Cabinet as appropriate and its completion; and
  - 20.1.5 Examine the Contractor's or Supplier's final account.
- 20.2 The Authorised Officer shall ensure that there is in place adequate contract management and monitoring to ensure that the Council receives Best Value, that the contract terms are complied with and that supplies and services meet the required standards.
- 20.3 The Authorised Officer, or a duly appointed consultant acting on the Council's behalf, may instruct the Contractor or Supplier to vary the goods, works or services provided as follows:
  - 20.3.1 No variation can substantially or materially change the character of the contract and or goods, service or works originally procured;
  - 20.3.2 The Contract permits variation and the variation is included in accordance with the terms of the contract including the prices set out therein;
  - 20.3.3 All variation orders are created in writing, and are provided to the Contractor or Supplier, with a copy retained by the Authorised Officer;
  - 20.3.4 All variation orders are created at the time that the variation is instructed/agreed;
- 20.4 Chief Officers must approve all variations whose value exceeds £50,000. Where variations require additional funding or a change to the Council's capital programme, the Chief Finance Officer shall be consulted prior to the variation being approved.

## **21 Trading externally and surplus assets**

- 21.1 Executive and Assistant Directors shall sell goods works or services only after consultation with the Head of Legal and Democratic Services.
- 21.2 Paragraph 21.1 is subject to:
- 21.2.1 The provision of such trading activities and the manner in which it is provided is lawful;
  - 21.2.2 The proposal to dispose of Council-owned assets, including surplus or obsolete furniture or equipment shall be approved by the relevant Head of Service with their agreement that there is no further need for such assets. Surplus assets shall first be offered to other service areas or directorates within the Council (including schools maintained by the Council). Any such asset which remains to be disposed of externally shall be offered for sale at the highest price attainable;
  - 21.2.3 When considering the sale of an asset and the process to be followed to secure offers to purchase due regard shall be had to the reasonably anticipated value of the item and the associated costs of seeking the sale when determining the process for sale;
  - 21.2.4 A written contract is entered into by the Council for the provision of the goods works or services;
  - 21.2.5 Where it is a legal requirement for full Council to approve the fees or charges such approval is sought; and
  - 21.2.6 Where the anticipated income to be raised exceeds £500,000 in any financial year the appropriate Executive Director will first seek approval of Cabinet.

## **22 Disposal of Land and Property**

- 22.1 The Executive Director for Regeneration shall be responsible for acquisitions and disposals of land, whether by way of purchase sale or lease.
- 22.2 Before land is offered for sale or lease, an Authorised Officer shall arrange land sales and leases so that the Council obtains best consideration. An Authorised Officer shall obtain a qualified valuer's estimate of the likely sale price shall be obtained.
- 22.3 Prior to the making of a compulsory purchase order in order to acquire any land or property, a written report shall be presented to the Cabinet.
- 22.4 Where there is no provision for the cost of acquisition or redevelopment of the land in the Council's approved capital programme, a Capital Finance Report shall be considered by the Cabinet and by the Council if appropriate.



- 22.5 The written approval of the Cabinet shall be obtained prior to any advertisement being placed or contract executed where in the reasonable opinion of a Council Surveyor:
- 22.5.1 the value of land to be acquired or disposed of by way of sale is estimated to exceed £500,000; or
  - 22.5.2 leases of land or property are proposed whose rental value is anticipated to exceed £50,000 during any complete year; or
  - 22.5.3 the granting or receiving of an easement or covenant that has a value or diminution effect that exceeds £500,000.
- 22.6 Where Cabinet authority is not required, the Executive Director for Regeneration shall approve in writing:
- 22.6.1 Any purchase or sale whose price is not anticipated to exceed £500,000 in value; and
  - 22.6.2 Proposed leases whose rental value is not anticipated to exceed £50,000 during any complete year or
  - 22.6.3 the granting or receiving of an easement or covenant that has a value or diminution effect of up to £500,000.
- 22.7 Prior to disposal of land or property, the Executive Director for Regeneration in consultation with the Leader of the Council and in their absence the Deputy Leader and or relevant Cabinet portfolio holder, shall determine whether:
- 22.7.1 The land or property shall be disposed of to one particular person;
  - 22.7.2 Formal sealed tenders are to be obtained and the land transferred to the person providing the highest offer strictly in accordance with the terms of their tender;
  - 22.7.3 Sealed offers leading to negotiations for the sale to the person making the highest bid under mutually agreeable terms; or
  - 22.7.4 The land shall be sold by public auction.

## **23 Implementation, application and minor amendment**

- 23.1 The Head of Legal and Democratic Services shall compile and maintain the Rules and shall advise on their implementation and interpretation.
- 23.2 In the case of ambiguity regarding their interpretation the Head of Legal and Democratic Services shall determine the correct application and interpretation of the Rules.
- 23.3 Delegated Authority is given to Head of Legal and Democratic Services in consultation with the relevant Cabinet Member to amend and or update the Rules as appropriate to meet future and operational requirements to ensure the aims and principles of the Rules are given full effect.

Amended 9.7.18

## 24 Definitions and Interpretation

24.1 In the Rules the following terms shall have the following meanings:

Term	Meaning
“Approved List”	A list of Contractors or Suppliers of goods, works and services, drawn up or approved for use by Chief Officers, of persons ready and capable of supplying goods works and services.
“Authorised Officer”	An Officer who has the authority to deal with the contract in question given to the relevant Chief Officer in writing <u>and</u> who has received the required procurement training
“Best Value”	The duty, which Part 1 of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by Council
“Cabinet”	The Council Executive
“Central Purchasing Bodies”	A contracting authority which acquires goods or services intended for one or more contracting authority in accordance with the Regulations
“Chief Officer”	The Council’s Executive and Assistant Directors and Heads of Service
“Contract”	Any contract for the execution of works or the supply of goods and services and “contracts” shall be interpreted accordingly
“Contractor”	Any entity who is contracted by the Council to supply goods, works and/or services to the Council
“Contracts Finder”	The UK Government’s online procurement service where details of live opportunities over certain financial thresholds are published
“Corporate Management Team”	As defined in the Constitution
“Constitution”	The constitution of the Council which sets out: (i) how it operates; (ii) how it makes decisions; and (iii) the procedures which it must follow
“E U Rules”	The European Union Directives which have been embodied in the Regulations

“E U Threshold”	<p>The contract value at which the EU Rules and the Regulations apply and which are set every two years on 1<sup>st</sup> January. The values as at 1<sup>st</sup> January 2014 are:</p> <ul style="list-style-type: none"> <li>• Goods and services - £181,302</li> <li>• Works - £4,551,413</li> </ul>
“Executive and Assistant Directors”	The relevant Chief Officers
“Financial Regulations”	The procedures to be followed when planning, undertaking or reviewing any matter relating to the management of the Council’s finances which form part of the Constitution
“Framework Agreement”	An Agreement between one or more authorities and one or more economic operators the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and where appropriate the quantity envisaged and which is compliant with EU and UK procurement law (and “Framework Agreements” shall be interpreted accordingly)
“Grant”	A gift or donation by the Council under which it has no right to receive anything in return but may attach terms and conditions specifying how the grant is to be spent
“Grantor”	The organisation giving a Grant to the Council
“Invitation to Tender”	The invitation to tender documents in the form required by the Rules
“Opening”	When used in connection with tenders, includes opening manually or electronically
“Partnership”	An agreement between the Council and any public or private organisation to deliver a specific project or services
“Project Board”	A board of Officers formed to oversee the tendering of Strategic Contracts
Purchase Order Terms and Conditions	The terms and conditions that are contained as part of and referred to in the Council’s Purchase Orders

Amended 18.2.19

“Quotation”	A price quoted by a potential Contractor or Supplier without a formal issue of an Invitation to Tender
“Regulations”	The Public Contract Regulations 2015 (or any re-enactment thereof)
“Rules”	These contract rules
“Scheme of Delegations”	As defined in the Constitution
“Supplier”	Any entity who is contracted by the Council to supply goods, works and/or services to the Council
“Tender”	A formal proposal issued in response to an Invitation to Tender
“Tenderer”	Any person or organisation who submits a formal tender in response to an Invitation to Tender
“Total contract value”	<p>The whole value or estimated value (in money or equivalent value for a single purchase or disposal calculated as follows:</p> <ul style="list-style-type: none"> <li>• Where the contract is for a fixed period by taking the total price to be paid or which might be paid during the whole of the period; or</li> <li>• Where the contract is for one year and may continue until terminate by notice the total price to be paid or which might be paid over the first three years</li> </ul>

## Appendix – Summary of provisions

### GOODS AND SERVICES

Total Contract Value (£)	Type of Contract	Minimum number of tenders to be sought	Decision to award	Rule no.
Up to £10,000	Not subject to the Rules	Recommended minimum 2 competitive quotations	Service Manager or above	
£10,001 to £50,000	MINOR	Recommended minimum 2 competitive quotations	Service Manager or above	14
£50,001 up to EU Threshold	SIGNIFICANT	At least 3 written tenders	Head of Service or above	10, 15, 16, 17
Above EU Threshold and up to £500,000	MAJOR	The Regulations apply At least 4 written tenders	Assistant Director or above	11, 13, 15, 16, 17
£500,001 and above	STRATEGIC	The Regulations apply At least 4 written tenders	Cabinet or Delegated Approval	12, 13, 15, 16, 17, 18

### WORKS

Total Contract Value £	Type of Contract	Minimum number of tenders to be sought	Decision to award	Rule no.
Up to £10,000	Not subject to the Rules	Recommended minimum 2 competitive quotations	Service Manager or above	
£10,001 to £50,000	MINOR	Recommended minimum 2 competitive quotations	Service Manager or above	14
£50,001 up to £250,000	SIGNIFICANT	At least 3 written tenders	Head of Service or above	10, 15, 16, 17
£250,001 up to £500,000	MAJOR	At least 3 written tenders	Assistant Director or above	11, 15, 16, 17
Above £500,001 and up to EU Threshold (for works)	STRATEGIC	At least 4 written tenders	Cabinet or Delegated Approval	12, 15, 16, 17, 18
EU threshold (for works) and above	STRATEGIC	The Regulations apply At least 4 written tenders	Cabinet or Delegated Approval	13, 15, 16, 17, 18