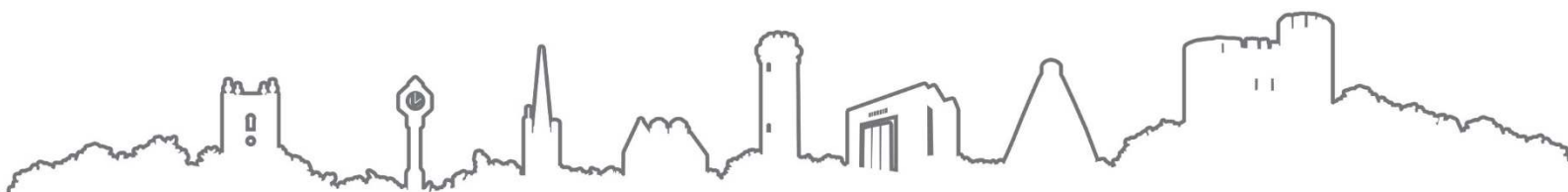




# Constitution



...the historic capital of the Black Country



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# **CONSTITUTION OF THE COUNCIL**

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## **PART 1**

### **SUMMARY AND EXPLANATION**

## **SUMMARY AND EXPLANATION**

### **The Council's Constitution**

Dudley Metropolitan Borough Council has agreed this Constitution setting out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols in this Constitution.

### **What's in the Constitution?**

Article 1 of the Constitution commits the Council to provide clear leadership, support the active involvement of citizens in decision-making and ensure that decision makers are accountable. Articles 2 – 16 explain the rights of citizens and how the key parts of the Council operate. These are:

- [Members of the Council \(Article 2\).](#)
- [Citizens and the Council \(Article 3\).](#)
- [The Full Council \(Article 4\).](#)
- [Chairing the Council \(Article 5\)](#)
- [Overview and Scrutiny \(Article 6\).](#)
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- [Finance, contracts and legal matters \(Article 14\).](#)
- [Review and revision of the Constitution \(Article 15\).](#)
- [Suspension, interpretation and publication of the Constitution \(Article 16\).](#)

## **How the Council operates**

The Council is composed of 72 Councillors with one-third elected three years in four. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors follow a code of conduct to ensure high standards in the way they undertake their duties.

All Councillors meet together as the Full Council. Meetings of the Council are normally open to the public. The Council decides the overall policy framework and sets the budget each year. The Council appoints the Leader, Scrutiny Committees, Community Forums and a number of other Committees as described in this Constitution.

## **How decisions are made**

The Cabinet and Cabinet Members are responsible for making executive decisions on behalf of the Council. Some day-to-day decisions are delegated to Officers. The Cabinet is made up of the Leader and nine other Councillors. When key executive decisions are to be discussed or made, these are published in a forward plan. If these major decisions are discussed at a meeting of the Cabinet, this will be open for the public except where personal or confidential ('exempt') ([See Access to Information Procedure Rules](#)) matters are being discussed. The Cabinet has to make decisions in line with the Council's overall policy framework and budget.

## **Overview and Scrutiny**

The Council has 4 Scrutiny Committees. Scrutiny Committees contribute to policy development and review in line with the Annual Scrutiny Programme. Scrutiny Committees may undertake scrutiny inquiries and make recommendations to the appropriate decision taker. Scrutiny Committees can 'call-in' a decision that has been made by the Cabinet (or a Cabinet Member) but not yet implemented. A Scrutiny Committee will review any decision that is called-in and make recommendations if appropriate. Scrutiny Committees may also be consulted on the development of the budget, key policies or specific decisions.

## **Community Forums**

The Council has ten Community Forums to give local citizens a greater say on local issues. The Forums cover groupings of electoral wards as shown in [Article 10](#). Community Forums make recommendations on the allocation of a local budget. Meetings involve all the ward Councillors for each area and are held in local venues. Police representatives also normally attend Community Forums.

## **The Council's Employees**

The Council employs staff (Officers) to give advice, implement decisions and manage the day-to-day delivery of services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. There are Codes of Conduct for Members and employees of the Council.

## **Citizens' Rights**

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in [Article 3](#). Some of these are legal rights, whilst others depend on the Council's own processes.

## **References to Statutory Provisions**

All references in the Constitution to Statutory provisions shall include any subsequent legislation, Statutory Instruments, Regulations, Orders or Guidance issued under those statutory provisions.



## **PART 2**

# **ARTICLES OF THE** **CONSTITUTION**

## ARTICLE 1 - THE CONSTITUTION

### 1.01 Powers of the Council

The full Council is the sovereign body under this Constitution. The Council will exercise all its powers and duties in accordance with the law and this Constitution.

### 1.02 The Constitution

This Constitution is the Constitution of the Dudley Metropolitan Borough Council.

### 1.03 Purpose of the Constitution

The purpose of the Constitution is to:

- (i) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (ii) support the active involvement of citizens in the process of local authority decision-making;
- (iii) help councillors represent their constituents more effectively;
- (iv) enable decisions to be taken efficiently and effectively;
- (v) create a powerful and effective means of holding decision-makers to public account;
- (vi) ensure that apart from decisions taken by the full Council, no one will review or scrutinise a decision which they have taken or were directly involved in taking;
- (vii) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (viii) provide a means of improving the delivery of services to the community.

### 1.04 Review of the Constitution

The Council will monitor and evaluate the operation of the Constitution as set out in [Article 15](#).

## ARTICLE 2 - MEMBERS OF THE COUNCIL

### 2.01 Composition and Eligibility

#### (a) Composition

The Council will comprise 72 Members, otherwise called Councillors. Three Councillors will be elected by the voters of each ward.

#### (b) Eligibility

Only registered voters of the district or those living or working there (at the time of election) will be eligible to hold the office of Councillor.

### 2.02 Election and Terms of Councillors

The ordinary election of a third (or as near as may be) of all councillors will be held on the first Thursday in May in each year except that in 2021 and every fourth year after there will be no regular election. The terms of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

### 2.03 Roles and Functions of all Councillors

#### (a) Key Roles

All Councillors will:

- (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (iii) effectively represent the interests of their ward and of individual constituents;
- (iv) respond to constituents' enquiries and representations, fairly and impartially;
- (v) participate in the governance and management of the Council; and
- (vi) maintain the highest standards of conduct and ethics

(b) Rights and Duties

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.
- (iii) For these purposes, 'confidential' and 'exempt' information are defined in the [Access to Information Procedure Rules](#) in Part 4 of this Constitution.

2.04 Conduct

Councillors will observe the Members' Code of Conduct and the Member/Officer Code set out in [Part 6](#) of this Constitution.

2.05 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in [Part 7](#) of this Constitution.

## ARTICLE 3 - CITIZENS AND THE COUNCIL

### 3.01 Citizens' Rights

Citizens have the following rights. Rights to information and to participate are explained in more detail in the [Access to Information Procedure Rules](#) in Part 4 of this Constitution:

#### (a) Voting and Petitions

Citizens on the electoral roll for the area have the right to vote. The Council has adopted a [Petitions Scheme](#) under Part 6 of the Constitution.

#### (b) Information

Citizens have the right to:

- (i) contact their local Councillor about any matters of concern;
- (ii) view the Constitution;
- (iii) attend meetings of the Council, Cabinet, Committees and Community Forums except where, for example, confidential or 'exempt' matters are discussed;
- (iv) view the Cabinet's forward plan containing details of what key decisions are to be discussed and decided by the Cabinet, Cabinet Members or officers;
- (v) view documents relating to meetings that are open to the public;
- (vi) inspect the Council's accounts during defined periods of the year.

#### (c) Complaints

Citizens have the right to complain to:

- (i) the Council under its corporate customer feedback procedure;
- (ii) the Local Government and Social Care Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after exhausting the Council's internal complaints process;
- (iii) the Monitoring Officer about a breach of the Councillors' Code of Conduct.

### 3.02 Citizens' Responsibilities

Citizens must not be violent, abusive or threatening to Councillors or officers and must not wilfully harm things owned by the Council, Councillors or officers.

## ARTICLE 4 - THE FULL COUNCIL

### 4.01 Meanings

#### (a) Policy Framework

The Policy Framework means the following plans and strategies:-

Children and Young People's Plan

Council Plan

Crime and Disorder Reduction Strategy

Development Plan Documents which comprise the Development Plan

Food Service Plan

Licensing Authority Policy Statement

Local Transport Plan

Sustainable Community Strategy

Youth Justice Plan

#### (b) Budget

The budget includes the allocation of financial resources to different services and projects, setting the council tax and the Council's capital strategy.

#### (c) Housing Stock Transfer

Housing Stock Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

#### 4.02 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution (apart from amendments to the Scheme of Delegation in Part 3 which are approved by the Leader of the Council by way of a Delegated Decision Sheet (NB: The Leader of the main opposition group will be notified of any proposed changes before a decision is made by the Leader) or where amendments are made by the Monitoring Officer under delegated powers).
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Stock Transfer;
- (c) subject to the urgency procedure contained in the [Access to Information Procedure Rules](#) in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the budget;
- (d) electing the Leader of the Council and removing him/her from office at any time by passing a resolution to that effect;
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them but the Monitoring Officer is authorised to make any necessary changes to the composition of Committees that might arise from time to time in accordance with the requirements of the Leaders of political groups.
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) appointing an independent remuneration panel and adopting a members' allowances scheme under [Article 2.05](#);
- (h) changing the name of the area, conferring the title of honorary alderman or freedom of the borough;
- (i) confirming the appointment of the head of paid service (Chief Executive) and designating an officer as the head of paid service.
- (j) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;
- (k) approving other plans and strategies which the Council decides should be undertaken by itself rather than the Cabinet;



- (l) designating an officer as the monitoring officer;
- (m) approving and amending the annual Pay Policy Statement;
- (n) considering any recommendations from the Appointments Committee on new appointments or severance packages that exceed a £100,000 threshold.
- (o) all other matters which, by law, must be reserved to Council.

#### 4.03 Council Meetings

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings

and they will be conducted in accordance with the [Council Procedure Rules](#) in [Part 4](#) of this Constitution.

#### 4.04 Responsibility for Functions

The Council will maintain the tables in [Part 3](#) of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

## ARTICLE 5 - CHAIRING THE COUNCIL

### 5.01 Role and function of the Mayor

The Mayor and Deputy Mayor will be elected by the Council annually. The Mayor (and in his/her absence the Deputy Mayor) will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution and to interpret the Constitution when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members are able to hold the Cabinet to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council; and
6. to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

## ARTICLE 6 – OVERVIEW AND SCRUTINY

### 6.01 Appointment and Terms of Reference

The Council will appoint Scrutiny Committees as set out in the Scrutiny Committee Procedure Rules contained in Part 4 of this Constitution.

### 6.02 General Role

Scrutiny Committees will:-

- (i) contribute to policy review and development in respect of matters in their Annual Scrutiny Programme;
- (ii) undertake scrutiny investigations/inquiries;
- (iii) consider any decisions that are ‘called-in’ in accordance with the Scrutiny Committee Procedure Rules;
- (iv) submit reports and recommendations to the relevant decision-taker(s).
- (v) submit an annual report to the Council.

### 6.03 Meetings of Chairs and Vice-Chairs of Scrutiny Committees

The Chairs and Vice-Chairs of Scrutiny Committees will meet on a programmed basis as set out in the Scrutiny Committee Procedure Rules.

### 6.04 Proceedings of Scrutiny Committees

Scrutiny Committees will conduct their business in line with the Scrutiny Committee Procedure Rules.

### 6.05 Conflict of Interest

Members may participate in the scrutiny of decisions or other items of business provided that they have not been directly involved in making the specific decision(s) under scrutiny. This shall not apply to decisions that have been taken by the full Council. Members shall not participate in any business if they are precluded from doing so by having an interest under the Members’ Code of Conduct.

### 6.06 Access to Information

Scrutiny Committees will comply with the Access to Information Procedure Rules in Part 4 of this Constitution.

## ARTICLE 7 - THE CABINET

### 7.01 Role

The Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### 7.02 Form and composition

The Cabinet will consist of the Leader together with at least two, but not more than nine, Councillors appointed to the Cabinet by the Leader.

### 7.03 Leader

The Leader will be a Councillor elected to that position by the Council. The Leader will hold office for a period of four years or until:

- (a) his/her term of office as a Councillor expires; or
- (b) he/she resigns from the office; or
- (c) he/she is no longer a councillor; or
- (d) he/she is removed from office by resolution of the Council.

### 7.04 Other Cabinet members

Other Cabinet members shall be called "Cabinet Members" and shall hold office until:

- (a) they resign from office; or
- (b) they are no longer councillors; or
- (c) they are removed from office, either individually or collectively, by the Leader.

The Leader will appoint a Deputy Leader to carry out any functions that are required to be undertaken by the Deputy Leader in line with this Constitution or pursuant to any necessary legal requirements due to the absence or inability to act of the Leader of the Council.

### 7.05 Proceedings of the Cabinet

Proceedings of the Cabinet shall take place in accordance with the [Cabinet Procedure Rules](#) set out in [Part 4](#) of this Constitution.

#### 7.06 Responsibility for functions

The Leader will maintain a list in [Part 3](#) of this Constitution setting out which individual Cabinet Members, officers or joint arrangements are responsible for the exercise of particular executive functions.

Subject to any legal restrictions, in exceptional circumstances (eg: where a decision is likely to attract significant public interest) and following consultation with the Monitoring Officer:-

- (a) a Cabinet Member may refer a matter falling within his/her area of responsibility to the Cabinet for determination.
- (b) an Officer may refer a matter falling within his/her area of responsibility to the relevant Cabinet Member for determination.

#### 7.07 Access to Information

Proceedings of the Cabinet will comply with the [Access to Information Procedure Rules](#) in [Part 4](#) of this Constitution.

#### 7.08 Ethical Behaviour

As the Council's senior elected member, the Leader will set an example to all members and employees of the Council in their conduct and the performance of their functions. The Leader will take particular care in promoting the Codes of Conduct and will encourage attendance at training events organised by the Council.

Similarly the leaders of opposition groups should set an example to the members of their respective group by promoting the Codes of Conduct and attendance at training events organised by the Council.

## ARTICLE 8 - REGULATORY AND OTHER COMMITTEES

### 8.01 Regulatory and Other Committees

The Council will appoint the following Committees to discharge the functions as set out in the terms of reference in [Part 3](#) of this Constitution:

- [Appeals Committee](#)
- [Appointments Committee](#)
- [Audit and Standards Committee](#)
- [Development Control Committee](#)
- [Ernest Stevens Trusts Management Committee](#)
- [Licensing and Safety Committee](#)
- [Taxis Committee](#)

### 8.02 Access to Information

Regulatory and other Committees will comply with the [Access to Information Procedure Rules](#) in [Part 4](#) of this Constitution.

### 8.03 Membership of Regulatory and Other Committees

With the exception of the Appointments Committee and the Ernest Stevens Trusts Management Committee, no Cabinet Members shall be appointed to serve on any of the Committees listed in [Article 8.01](#) above.

Members appointed to the Appeals, Appointments, Development Control, Licensing and Safety and Taxis Committees shall not be eligible to serve on those Committees until they have undertaken the necessary training required by the Council. It is a requirement that Members should receive or refresh their training every two years.

## ARTICLE 9 - STANDARDS

### 9.01 Standards Functions

With the exception of functions that may not be delegated, the Council will make arrangements for the implementation of the standards functions contained in the Localism Act 2011 to be the responsibility of the Audit and Standards Committee.

### 9.02 Composition

The Audit and Standards Committee shall comprise 9 elected members to be appointed by the Council. No Cabinet Member will be appointed to serve on the Committee. The Chair and Vice-Chair will be appointed at the annual meeting of the Council.

### 9.02 Role and Function

The Audit and Standards Committee will have responsibility for the functions as set out in [Part 3](#) of the Constitution.

### 9.04 Access to Information

The Audit and Standards Committee will comply with the [Access to Information Procedure Rules](#) in [Part 4](#) of this Constitution.

## ARTICLE 10 – COMMUNITY FORUMS

### 10.01 Community Forums

The Council may appoint Community Forums to ensure improved community engagement, community participation and greater transparency and accountability in the conduct of the Council's business.

### 10.02 Form, composition and function

- (a) Community Forums shall cover the areas included within the boundaries of the following electoral wards:-
- Amblecote, Cradley & Wollescote and Lye & Stourbridge North
  - Belle Vale and Hayley Green & Cradley South
  - Brierley Hill and Brockmoor & Pensnett
  - Castle & Priory, St James's and St Thomas's
  - Coseley East & Sedgley
  - Gornal and Upper Gornal & Woodsetton
  - Halesowen North and Halesowen South
  - Kingswinford North & Wall Heath, Kingswinford South and Wordsley
  - Netherton, Woodside & St Andrews and Quarry Bank & Dudley Wood
  - Norton, Pedmore & Stourbridge East and Wollaston & Stourbridge Town
- (b) Community Forums shall comprise the elected Members for the wards referred to above. A Member of the Council shall be entitled to attend meetings of other Community Forum(s) to which he/she is not normally appointed as a ward Councillor.
- (c) The principal focus of Community Forums is the opportunity for local people to engage with Councillors and others to discuss local issues. The Forums shall otherwise operate in accordance with any protocols that are adopted by the Council from time to time.
- (d) Community Forums are centred on the democratic representational role of local ward Councillors and involve discussion of local ward issues and matters raised by members of the public. Forums will also make recommendations on the allocation of local area budgets.
- (e) Community Forums may also:
- (i) Refer service matters to the appropriate Directorates for a response.
  - (ii) Request that reports are submitted to any Committee, a Cabinet Member, the Cabinet or the Council.
  - (iii) Refer matters to local partner organisations.



10.03 Chairs and Vice-Chairs of Community Forums

Community Forums shall appoint Members to serve as Chairs and Vice-Chairs of the Community Forums on an annual basis.

10.04 Conflicts of Interest

All Members of the Council shall observe the requirements of the Members' Code of Conduct when attending meetings of the Community Forums.

10.05 Action Notes

Action notes shall be produced of issues raised at Community Forums.

## ARTICLE 11 - JOINT ARRANGEMENTS

### 11.01 General Power of Competence

Pursuant to its general power of competence, the Council or the Cabinet may:

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

### 11.02 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities to exercise functions which are not executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, the Cabinet may only appoint Cabinet Members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) Details of any joint arrangements, including any delegations to joint committees, will be found in the approved terms of reference and governance arrangements of those Committees.

### 11.03 Access to Information

- (a) The [Access to Information Procedure Rules](#) in [Part 4](#) of this Constitution apply.
- (b) If all the members of a joint committee are Cabinet Members in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.
- (c) If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information provisions in the Local Government Act, 1972 will apply.

#### 11.04 Delegation to and from other Local Authorities

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the Cabinet of another local authority.
- (b) The Cabinet may delegate executive functions to another local authority or the Cabinet of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

#### 11.05 Contracting out

The Council, for functions which are not executive functions, or the Cabinet, for functions which are executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act, 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

#### 11.06 Power to Establish Companies

Pursuant to the provisions of the Local Government Act 2003 and the Localism Act 2011, the Council may set up companies to trade with a view to making profit in areas relating to any of their existing functions.

## ARTICLE 12 - OFFICERS

### 12.01 Management Structure

- (a) **General.** The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Executive, Deputy Chief Executive and Directors.** The Council will engage persons for the following posts:

<u>Post</u>	<u>Functions and Areas of Responsibility</u>
Chief Executive (Head of Paid Service)	<p>Operational responsibility as Head of Paid Service (including overall management responsibility for all officers).</p> <p>Overall corporate management, including human resources and organisational development, corporate performance, policy/strategy development, project management and executive support.</p> <p>Provision of professional advice to all parties in the decision making process.</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions. This includes being the Proper Officer for signing summonses for meetings of the Council under the Local Government Act 1972.</p> <p>Representing the Council on partnership and external bodies.</p> <p>Together with the Leader and Monitoring Officer, promoting high ethical standards for members and officers, particularly through training, and setting an example in their conduct and performance of their functions.</p>
Deputy Chief Executive	<p>Responsibilities as Deputy Chief Executive to discharge any functions that are required to be undertaken in line with the Constitution or pursuant to any necessary legal requirements due to the absence or inability to act of the Chief Executive.</p> <p>Overall responsibility for Digital, Customer and Commercial Services, Regeneration and</p>

	Enterprise, Housing and Community Services and Public Realm.
Director of Adult Social Care	Responsibility for adult social care functions, including related statutory duties.
Director of Children's Services	Responsibility for Children's Services functions, including related statutory duties.
Director of Public Health and Wellbeing	Responsibility for public health and wellbeing functions, including related statutory duties.
Director of Finance and Legal	Responsibility for Finance and Legal functions, including related statutory duties.
Director of Digital, Customer and Commercial Services	Responsibility for Digital, Customer and Commercial Services functions, including communications and public affairs and digital and ICT Services.
Director of Regeneration and Enterprise	Responsibility for Regeneration and Enterprise functions, including planning, culture, leisure, bereavement and corporate landlord services.
Director of Housing and Community Services	Responsibility for Housing functions, including Community Safety.
Director of Public Realm	Responsibility for Fleet and Waste Care, Street and Green Care.

- (c) **Head of Paid Service, Monitoring Officer, Chief Finance Officer and Statutory Scrutiny Officer.** The Council will designate the following:

<u>Post</u>	<u>Designation</u>
Chief Executive	Head of Paid Service
Lead for Law and Governance	Monitoring Officer
Director of Finance and Legal	Chief Finance Officer (Section 151 Officer)
Democratic Services Manager	Scrutiny Officer

Such posts will have the functions described in Article 12.02 - 12.05 below.

- (d) **Structure.** The Council will determine and publicise a description of the overall Directorate structure of the Council showing the management structure and deployment of officers. This is set out at [Part 8](#) of this Constitution.

#### 12.02 Functions of the Chief Executive

- (a) **Discharge of functions by the Council.** The Chief Executive will report to the Council on the manner in which the discharge of the Council's functions is co-ordinated, the officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Chief Executive may not be the Monitoring Officer or Scrutiny Officer but may hold the post of Chief Finance Officer if a qualified accountant.

#### 12.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up to date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the Chief Executive and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Audit and Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee.
- (d) **Receiving reports.** The Monitoring Officer will receive and act on reports associated with any standards investigations.
- (e) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters and make reports or recommendations to the Audit and Standards Committee (or a Sub-Committee).
- (f) **Proper Officer for Access to Information.** The Monitoring Officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available

- (g) **Advising whether Cabinet decisions are within the policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the policy framework.
- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Policy Framework issues to all Councillors.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer, Scrutiny Officer or the Chief Executive.

#### 12.04 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Chief Executive and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Cabinet in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and Policy Framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Advising whether Cabinet decisions are within the budget.** The Chief Finance Officer will advise whether decisions of the Cabinet are in accordance with the budget.
- (f) **Reporting to the Audit and Standards Committee.** The Chief Finance Officer will report to the Audit and Standards Committee as and when necessary on any matters relating to his/her statutory responsibilities.
- (g) **Restrictions on Posts.** The Chief Finance Officer cannot be the Monitoring Officer or Scrutiny Officer.

#### 12.05 Functions of the Statutory Scrutiny Officer

- (a) **Promoting the role** of Overview and Scrutiny Committees.
- (b) **Providing support** to the Council's Overview and Scrutiny function and to local Councillors.
- (c) **Providing guidance** to Members and Officers of the Council in relation to Overview and Scrutiny functions.
- (d) **Restrictions on post.** The statutory Scrutiny Officer cannot be the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer.

#### 12.06 Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer

The Council will provide the Monitoring Officer and the Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### 12.07 Conduct

Officers will comply with the Code of Conduct for Employees set out in [Part 6](#) of this Constitution.

#### 12.08 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in [Part 4](#) of this Constitution.

#### 12.09 Deputy Monitoring Officer and Deputy Chief Finance Officer

The Council shall designate Officers to act as the Deputy Monitoring Officer and the Deputy Chief Finance Officer. The designated deputies are authorised to discharge any functions that are required to be undertaken in line with the Constitution or pursuant to any necessary legal requirements due to the absence or inability to act of the Monitoring Officer or the Chief Finance Officer.



## ARTICLE 13 - DECISION MAKING

### 13.01 Responsibility for decision making

The Council will issue and keep up to date a record of which part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in [Part 3](#) of this Constitution.

### 13.02 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (ie, the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights;
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes;
- (f) an explanation of options considered; and
- (g) giving reasons for decisions.

### 13.03 Types of Decision

- (a) Decisions reserved to full Council. Decisions relating to the functions listed in [Article 4.02](#) will be made by the full Council and not delegated.
- (b) Key decisions.
  - (i) A key decision means an executive decision which is likely -
    - \* to result in the Council incurring expenditure, or the making of savings, of £250,000 or more (revenue or capital); or
    - \* to be significant in terms of its effects on communities living or working in two or more wards in the Borough.
  - (ii) A decision taker may only make a key decision in accordance with the requirements of the [Procedure Rules](#) set out in [Part 4](#) of this Constitution.

13.04 Decision making by the Full Council

Subject to [Article 13.08](#), the Council meeting will follow the [Council Procedure Rules](#) set out in [Part 4](#) of this Constitution when considering any matter.

13.05 Decision making by the Cabinet

Subject to [Article 13.08](#), the Cabinet will follow the [Cabinet Procedure Rules](#) set out in [Part 4](#) of this Constitution when considering any matter.

13.06 Decision making by Scrutiny Committees

Scrutiny Committees will follow the [Scrutiny Committee Procedure Rules](#) set out in [Part 4](#) of this Constitution when considering any matter.

13.07 Decision making by other Committees established by the Council

Subject to [Article 13.08](#), other Council Committees will follow those parts of the [Council Procedure Rules](#) set out in [Part 4](#) of this Constitution as apply to them.

13.08 Decision making by Council Bodies acting as Tribunals

The Council, a Councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in any applicable legal requirements.

## ARTICLE 14 - FINANCE, CONTRACTS AND LEGAL MATTERS

### 14.01 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in [Part 4](#) of this Constitution.

### 14.02 Contracts

Every contract made by the Council will comply with the Contract Standing Orders set out in [Part 5](#) of this Constitution.

### 14.03 Legal Proceedings

- (a) The Lead for Law and Governance is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Lead for Law and Governance considers that such action is necessary to protect the Council's interests.
- (b) Except for Article 14.03 (c) below no proceedings may be commenced in any Court other than by the Lead for Law and Governance and no authority may be sought to institute any prosecution unless subscribed to by the Lead for Law and Governance and unless the report indicates that the Attorney General's guidelines on prosecutions have been considered.
- (c) No proceedings regarding the collection and enforcement of the National Non-Domestic Rates, Community Charge or Council Tax may be commenced in any Court other than by the Lead for Law and Governance or the Chief Finance Officer.

### 14.04 Authentication of Documents

Where any document is necessary for any legal procedure or proceedings on behalf of the Council, it will be signed by the Lead for Law and Governance or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

### 14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Lead for Law and Governance. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Lead for Law and Governance should be sealed. The affixing of the Common Seal will be attested by the Lead for Law and Governance or some other person authorised by him/her.

## ARTICLE 15 - REVIEW AND REVISION OF THE CONSTITUTION

### 15.01 Duty to Monitor and Review the Constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

#### Protocol for Monitoring and Review of Constitution by Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended to achieve the purposes set out in [Article 1](#). In undertaking this task the Monitoring Officer may:

1. observe meetings of different parts of the member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### 15.02 Changes to the Constitution

Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer, after consultation with the Cabinet. However, the scheme of delegation set out in [Part 3](#) of the Constitution may be amended by the Leader, with the approval of the Leader of the main opposition group, through a decision sheet or by the Monitoring Officer under powers delegated by the Council.

## ARTICLE 16 - SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

### 16.01 Suspension of the Constitution

- (a) **Limit to Suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to Suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in [Article 1](#).
- (c) **Rules Capable of Suspension.** The following Rules may be suspended in accordance with Article 16.01 (a) and (b).

[Council Procedure Rules](#) (except Rules 16.5 and 17.2)

[Budget and Policy Framework Procedure Rules](#)

[Cabinet Procedure Rules](#)

[Scrutiny Committee Procedure Rules](#)

[Financial Regulations](#)

[Contract Standing Orders](#)

[Officer Employment Procedure Rules.](#)

### 16.02 Interpretation

- (a) The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in [Article 1](#).
- (b) A reference in any part of this Constitution to any statute or statutory instrument shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force.

### 16.03 Publication

- (a) The Monitoring Officer will ensure that this Constitution is made publicly available on the Council's Website.
- (b) Copies of the Constitution can be purchased by members of the press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that a summary of the Constitution is made available and is updated as necessary.

## **PART 3**

### **RESPONSIBILITY FOR FUNCTIONS**

#### **(SCHEME OF DELEGATION)**

## 1. RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

<b>Function</b>	<b>Decision making body</b>	<b>Members</b>	<b>Onward Delegation of Functions</b>
Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the Regulations")	Cabinet	Cabinet Members	Chief Executive, Deputy Chief Executive and Directors
The determination of an appeal against any decision made by or on behalf of the Authority.	Appeals Committee Cabinet	Cabinet Members	Chief Executive, Deputy Chief Executive and Directors
The making of arrangements to deal with the review of exclusion of pupils from schools.	Cabinet	Cabinet Members	Lead for Law and Governance
The making of arrangements for school admission appeals.	Cabinet	Cabinet Members	Lead for Law and Governance
The making of arrangements under all relevant legislation for enabling questions to be put on the discharge of the functions of Joint Authorities.	Council/ Cabinet	Cabinet Members	Lead for Law and Governance
The making of any nominations or appointments to other bodies.	Council/ Cabinet	Leader	Lead for Law and Governance
The conducting of Statutory Reviews.	Cabinet	Cabinet Members	Chief Executive, Deputy Chief Executive and Directors
Any function relating to contaminated land.	Cabinet	Cabinet Members	Directors
The discharge of any function relating to the control of pollution or the management of air quality.	Cabinet	Cabinet Members	Directors
The service of an abatement notice in respect of a statutory nuisance.	Cabinet	Cabinet Members	Directors
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act, 1993 should apply in the Authority's area.	Cabinet	Cabinet Members	Cabinet Member for Health and Adult Social Care

The inspection of the Authority's area to detect any statutory nuisance.	Cabinet	Cabinet Members	Directors
The investigation of any complaint as to the existence of a statutory nuisance.	Cabinet	Cabinet Members	Directors
The obtaining of information under section 330 of the Town and Country Planning Act, 1990 as to interests in land.	Cabinet	Cabinet Members	Directors
The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976.	Cabinet	Cabinet Members	Directors
The making of agreements for the execution of highways work.	Cabinet	Cabinet Members	Directors
<p>The appointment of any individual-</p> <p>(a) to any office other than an office in which he/she is employed by the Authority;</p> <p>(b) to any body other than-</p> <p>(i) the Authority;</p> <p>(ii) a joint Committee of two or more Authorities; or</p> <p>(c) to any Committee or Sub-Committee of such a body;</p> <p>and the revocation of any such appointment.</p>	Cabinet	Leader/ Cabinet Members	Lead for Law and Governance
The making of agreements with other local authorities for the placing of staff at the disposal of those other local authorities.	Cabinet	Cabinet Members	Chief Executive, Deputy Chief Executive and Directors



## 2. RESPONSIBILITY FOR COUNCIL FUNCTIONS

### TERMS OF REFERENCE

#### **Appeals Committee**

- (1) The determination of all appeals in cases where a right of appeal to elected Members exists under any of the Council's policies or procedures.

#### **Appointments Committee**

- (1) Recommending to the full Council the appointment of the Chief Executive (Head of Paid Service).
- (2) Recommending to the full Council on any new appointments or severance packages that exceed a threshold of £100,000.
- (3) The appointment of the Deputy Chief Executive and Directors.
- (4) Determining the salaries, conditions of service, and all other employment matters.
- (5) Recommending to the Council on the appointment of officers to be responsible for the proper administration of the Council's financial affairs under Section 151 of the Local Government Act 1972 or to be designated as the Monitoring Officer pursuant to Section 5 of the Local Government and Housing Act 1989.
- (6) The power to appoint officers for particular purposes (appointment of 'proper officers' under Section 270(3) of the Local Government Act 1972) in cases where such officers are not otherwise designated within this Constitution or by a resolution of the Council, Cabinet or Committee.

#### **Appointments Committee – Onward Delegations**

##### **Chief Executive**

- (1) In consultation with the appropriate Director, determining the salaries, conditions of service and all other employment matters in respect of employees, other than the Chief Executive, Deputy Chief Executive and Directors.

## **Audit and Standards Committee**

- (1) Determination of appropriate action on recommendations of the External Auditors.
- (2) Determination of appropriate action on recommendations about the system of internal controls, both financial and otherwise.
- (3) Determination of appropriate action on recommendations arising from investigations of fraud, corruption or other irregularity.
- (4) Determination of appropriate action on recommendations arising from audits of construction and other contracts.
- (5) Determination of appropriate action regarding the organisation, management and performance of the external and internal audit functions.
- (6) Determination of appropriate action on recommendations about the performance of the treasury management function.
- (7) Approval of the Certified Statement of Accounts.
- (8) Oversight of the proper administration of financial affairs, under Section 151 of the Local Government Act, 1972.
- (9) Determination of appropriate action regarding the arrangements for the Corporate Risk Process.
- (10) Determination of any amendments to Financial Regulations and Contract Standing Orders, including those relating to Schools.
- (11) Determination of all necessary action associated with the Council's Corporate Governance Arrangements.
- (12) Consideration and approval of the Council's Anti Fraud and Corruption Strategy.
- (13) To review the Council's corporate governance arrangements against the good governance framework, including the ethical framework and approve the local Code of Corporate Governance.
- (14) To review the Annual Governance Statement prior to approval and consider whether it properly reflects the risk environment and supporting assurances, taking into account internal audit's opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and internal control.
- (15) To consider the Council's arrangements to secure value for money and review assurances and assessments on the effectiveness of these arrangements.

- (16) To consider the Council's framework of assurance and ensure that it adequately addresses the risks and priorities of the Council.
- (17) To review the governance and assurance arrangements for significant partnerships and projects.
- (18) To consider the reports and recommendations of external audit and inspection agencies and their implications for governance, risk management and internal control.
- (19) To support effective relationships between external audit and internal audit, inspection agencies and other relevant bodies and encourage the active promotion of the value of the audit process.
- (20) To promote and maintain high standards of conduct within the Council.
- (21) To advise the Council on the adoption or revision of the Members' Code of Conduct.
- (22) To monitor the operation of the Members' Code of Conduct.
- (23) To assist Councillors and co-opted Members to observe the Members' Code of Conduct including advising, training or arranging to provide training on matters relating to the Members' Code of Conduct.
- (24) Granting dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Members' Code of Conduct.
- (25) All other standards functions under the relevant provisions of, or Regulations made under, the Localism Act, 2011.
- (26) To advise the Council on an Employees Code of Conduct.
- (27) To advise the Council on confidential reporting policies and procedures ("whistle-blowing") and to monitor and review the operation of the procedures.
- (28) To appoint any Sub-Committees, as appropriate, to hear and determine complaints against Members and Co-opted Members under the provisions of the Members Code of Conduct and in accordance with locally agreed procedures.
- (29) The determination of appeals made by employees against a decision of the Officers concerning their inclusion in the list of Politically Restricted Posts.

### **Audit and Standards Committee – Onward Delegations**

#### **Director of Finance and Legal**

- (1) The approval of the payment of fees to External Audit for additional audit work necessary in the light of investigations.

- (2) The approval of the payment of fees to other bodies for carrying out audit work or other work associated with the performance of the audit function.

Lead for Law and Governance (Monitoring Officer)

- (1) To recommend to the Council on the appointment of Independent Person(s) required under the Localism Act 2011 and any relevant Regulations.

## **Children's Corporate Parenting Board**

- (1) To secure Councillor and cross-departmental involvement and commitment throughout the Council to deliver better outcomes for children in our care.
- (2) To agree and ensure the delivery of the pledge to children in care;
- (3) To ensure that the Council enables children in its care to:-
  - have safe and stable care;
  - be well looked after;
  - be prepared for adult life;
  - grow into emotionally balanced and resilient young people.
- (4) To raise the profile of looked after children and their carers, and act as champions for the needs and rights of looked after children in the Council's various service areas, political groups and settings;
- (5) To invite people other than Councillors and officers to attend meetings of the Board, on a regular or occasional basis, to act in an advisory role and to inform the Board of the views of children and young people in care.
- (6) To prioritise the needs of looked after children and their carers.
- (7) To raise the standards of core services to looked after children, promote achievement and help build aspirations.
- (8) To listen to the views of looked after children and young people and their carers and involve them in the development and assessment of services.
- (9) To encourage looked after children to become active citizens.
- (10) To monitor the Council's provision for looked after children.
- (11) To oversee the provision of work placements and apprenticeships for looked after children by the Council.
- (12) To identify best practice in other Councils and implement those practices where deemed appropriate.

## **Development Control Committee**

### **(1) Planning and Conservation**

Functions relating to Town and Country Planning and development control as specified in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations) (as amended).

#### **Determination of Planning Applications**

### **(2) Determination of all applications for planning permission where:-**

- (a) the proposed development is considered to be of strategic significance and where the recommendation of the Director of Regeneration and Enterprise is to grant planning permission for development defined in the Town and Country Planning (Consultation) (England) Direction 2009;
- (b) The Director of Regeneration and Enterprise, following formal consultation with the Chair (or in his or her absence, the Vice-Chair) refers, as he sees fit, any planning application to the Development Control Committee for its determination and for such decisions to be recorded;
- (c) A request is received from an elected Member from the ward in which the application is located provided that the request is in writing; gives material planning reasons for the request; and is received before the conclusion of the first period of public consultation on that application; or
- (d) notwithstanding the paragraphs above, all Community Infrastructure Levy (CIL) liable applications where exceptional circumstances relief is supported, under Sections 55 to 57 of the CIL Regulations 2010 (as amended).

### **(3) Trees**

To consider representations for and objections to Tree Preservation Orders made under Sections 198, 199 and 200 of the Town and Country Planning Act, 1990 and subsequently to determine such orders.

### **(4) Commons registration**

The registration of common land or town and village greens and to register the variation of rights of common as set out in Schedule 1 to the Functions Regulations.

(5) Ombudsman

The consideration of reports by the Ombudsman into complaints of maladministration and the local settlement of complaints to the Ombudsman for sums above £5,000.

(6) Charging for Discretionary Services

Power to charge for discretionary services falling within the terms of reference of the Committee.

**Development Control Committee – Onward Delegations**

**Director of Regeneration and Enterprise following Consultation with the Chair of the Development Control Committee**

- (1) With the exception of applications referred to the Development Control Committee in accordance with paragraph (2) above, the Director of Regeneration and Enterprise shall determine all other planning, tree and allied applications with significant material planning representations contrary to the recommendation following formal consultation with the Chair (or in his or her absence, the Vice-Chair) subject to the following procedure:-
  - (a) Determination shall be in the light of a full and detailed report by the Director of Regeneration and Enterprise, following formal consultation with the Chair (or in his or her absence, the Vice-Chair) of the Development Control Committee and such decisions shall be recorded and made available for public inspection;
  - (b) There shall be provision for the Director of Regeneration and Enterprise, following formal consultation with the Chair (or in his or her absence, the Vice-Chair) to refer as he sees fit, any planning application to the Development Control Committee for its determination and for such decisions to be recorded;
  - (c) There shall be provision for any Ward Member where the application is located, to request that any planning application be referred to the Development Control Committee for determination **provided the request is made in writing; gives material planning reasons for the request; and the request is received before the conclusion of the first public consultation period.**

**Director of Regeneration and Enterprise**

- (1) The day to day management and control of the Directorate and the administration of the service in accordance with the Council's policies and decisions.

### Determination of applications

- (2) The approval of all other applications except where:
- (a) the proposed development is considered to be of strategic importance or where the recommendation of the Director of Regeneration and Enterprise is to grant planning permission for development defined in the Town and Country Planning (Consultation)(England) Direction 2009;
  - (b) the proposed development would be of wider significance, for example being accompanied by an environmental impact assessment or significantly impacting upon a neighbouring authority;
  - (c) notwithstanding paragraphs (a) and (b) above, all Community Infrastructure Levy (CIL) liable applications where exceptional circumstances relief is supported, under Sections 55 to 57 of the CIL Regulations 2010 (as amended).

Provided that:-

- (a) the period for statutory publicity and consultation has expired;
  - (b) there is no departure from the Council's planning policies;
  - (c) no referral to Committee has been made by a Ward Member, in writing, with material planning reasons and received within the first period of public consultation.
- (3) The refusal of applications for development of land where there is conflict with the NPPF or Local plan.
- (4) The determination of applications under the Town and Country Planning (Control of Advertisements) Regulations 2007 and the service of discontinuance notices thereunder.
- (5) The determination of all development that affects the stopping up, diversion, creation or setting of highways, where planning permission is required.

### Trees

- (6) To revoke, vary or modify Tree Preservation Orders.
- (7) Powers relating to the preservation of trees.
- (8) Power to licence planting, retention and maintenance of trees etc in part of the highway.
- (9) The determination of requests for works to trees in Conservation areas.



- (10) Power to licence planting, retention and maintenance of trees etc in part of the highway, subject to consultation with the relevant ward councillors.
- (11) The service of Notices under Sections 207, 208 and 209 of the 1990 Act requiring replacement trees.
- (12) The administration of all decisions relating to Part 8 of the Anti-Social Behaviour Act, 2003 (complaints about high hedges).
- (13) The service of Remedial Notices under Sections 69, Part 8 of the Anti-Social Behaviour Act 2003.

#### Enforcement

- (14) The removal or obliteration of placards or posters under Section 225 of the Town and Country Planning Act 1990 (or as amended).
- (15) The issue of Building Preservation Notices under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 (or as amended).
- (16) The issue of Listed Building Enforcement Notices under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act, 1990.
- (17) The issue of Notices of intention to execute urgent works for the preservation of unoccupied buildings under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (18) The issue of Notices requiring the proper maintenance of land and premises under Section 215 of the Town and Country Planning Act, 1990 (as amended).
- (19) The issue and service of Planning Contravention Notices under Section 1 of the Planning and Compensation Act 1991 and Sections 171C and 171D of the Town and Country Planning Act 1990 (as amended).
- (20) The issue and service of Breach of Condition Notices under Section 187A of the Town and Country Planning Act, 1990 (as amended).
- (21) The serving of enforcement notices and all other enforcement powers and functions under the Town and Country Planning Act 1990 (as amended).
- (22) To serve stop notices and temporary stop notices, together with any necessary enforcement notice under the Town and Country Planning Act 1990 (as amended).

- (23) The issue of Notices under Section 103 of the Law of Property Act 1925 (enforced sales) and the taking of any appropriate action under any enactment in respect of an enforced sale of a property and/or land.

#### Ombudsman

- (24) The local settlement of complaints to the Ombudsman up to a maximum of £5,000.

#### Building Regulations

- (25) The determination of applications for approval of plans, and the inspection of construction works in association with those applications, to ensure compliance under the Building Regulations and Sections 16, 19, 21 (3) (4) (5) (6), 24 and 25 of the Building Act 1984 and Section 16 of the Clean Air Act 1993.
- (26) The determination of applications for relaxation of the Building Regulations and the making of representations to the Secretary of State in connection with them.
- (27) The issue of Certificates and Notices under the Building Act 1984 relating to the Building Regulations (or as amended).

#### Miscellaneous

- (28) The making of Directions under Article 4 of the Town and Country Planning (General Permitted Development) Order (England ) 2015 and the confirmation of such directions under Article 6 which are unopposed.
- (29) The giving of written notice to the Council that he proposes to seek permission to develop on behalf of the Committee, in respect of any future proposed development.
- (30) Under the Hedgerow Regulations 1997:-
- (i) the determination of Hedgerow Removal Notices and where relevant the issue of Hedgerow Retention Notices, pursuant to regulation 5, except in cases where the Director of Regeneration and Enterprise is responsible for the management of the land on which the hedgerow is situated.
  - (ii) the issue of a Hedgerow Replacement Notice pursuant to Regulation 8.
  - (iii) the authorisation in writing for any person to enter land pursuant to Regulation 12.
- (31) The issue of screening and scoping opinions under the Town and Country Planning (Environmental Impact Assessment Regulations) 2017.

- (32) The issue of responses to consultations from other Local Planning Authorities arising from Article 10 of the Town and Country Planning General Development Procedure Order (England) 2015 (as amended).
- (33) The issue of a notice of intent not to determine an application under Section 70A of the Town and Country Planning Act, 1990 (as amended).
- (34) The issue of notices requiring the submission of further information to enable an application to be determined, including:
  - (i) Directions under Article 3(2) of the Town and Country Planning General Development Procedure Order, (England) 2015 (as amended).
  - (ii) Directions under Article 4 of the Town and Country Planning (Applications) Regulations 1988.
  - (iii) Article 19 of the Town and Country Planning (Environmental Impact Assessment Regulations) 2017.
- (35) All other matters which are not dealt with by the Development Control Committee, provided that the decision does not conflict with any other decision taken by the Council or Cabinet.
- (36) The registration of common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to:
  - (i) an exchange of lands affected by an Order under Section 19(3) of or paragraph 6(4) of Schedule 3 to, the Acquisition of Land Act 1981 or
  - (ii) an Order under Section 147 of the Inclosure Act 1845.
- (36) Decisions required in accordance with Contract Standing Orders.
- (37) The power to stop up or divert highways under Section 247 and 248 of the Town and Country Planning Act 1990

#### Community Infrastructure Levy (CIL)

- (38) To determine all CIL Liable planning applications, except where the exceptional circumstances relief policy is supported.
- (39) To issue CIL Liability Reminders.
- (40) To serve Warning Notices and CIL Stop Notices under Sections 89 to 94 of the CIL Regulations 2010 (as amended).
- (41) The issue of Notices under Part 17, Classes K & M of Paragraph 5 and the making of associated directions of the Town and Country Planning (General Permitted Development) Order 2015 (or as amended).

- (42) Following formal consultation with the Lead for Law and Governance, the authorisation of amendments to/and removal of completed Section 106 agreements and Section 106 agreements which have been authorised but not completed.

### **Lead for Law and Governance**

The Lead for Law and Governance in his own right shall exercise the following powers and duties provided that such exercise does not conflict with a decision taken by the Council or Committee:

- (1) The institution of prosecution proceedings under Sections 171(g), 179 and 183, 184 and 187 or the 1990 Act for breaches of enforcement, stop notices and temporary stop notices.
- (2) The institution of prosecution proceedings under Section 216 of the 1990 Act for non-compliance with a notice as to waste land.
- (3) The institution of prosecution proceedings under Section 43 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 for non-compliance with a Listed Building Enforcement Notice.
- (4) The institution of prosecution proceedings under Sections 7, 8 and 9 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 for unlawfully executing works to a listed building.
- (5) The institution of prosecution proceedings under Section 59 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 for damaging a listed building.
- (6) The institution of prosecution proceedings under Section 224 of the 1990 Act for contraventions of the Town and Country Planning (Control of Advertisements) Regulations 1992 and all other matters relating to the Town and Country Planning (Control of Advertisements) Regulations 1992.
- (7) The institution of prosecution proceedings under Sections 189 and 190 of the 1990 Act for failing to comply with Orders under Sections 102-104 of the 1990 Act (Discontinuance Orders).
- (8) The institution of prosecution proceedings under the Building Act 1984 in respect of offences relating to the Building Regulations.
- (9) The service of notices requiring information as to interests in land and the institution of prosecution proceedings relating thereto under Section 330 Town and Country Planning Act 1990.
- (10) To give written consent in respect of rights of entry for enforcement purposes under section 11 of the Planning and Compensation Act 1991, and Sections

196A, 196B and 196C of the Town and Country Planning Act 1990 (as amended).

- (11) The prosecution of a person who removes or allows another person to remove a hedgerow in contravention of the Regulations, the application for injunctions under Regulation 11, and the prosecution of any person who wilfully obstructs a person acting in the exercise of a right of entry under Regulation 14 of the Hedgerow Regulations, 1997.
- (12) The making (and confirmation where unopposed) of Orders under Sections 257 and 258 of the Town and Country Planning Act, 1990 to stop up or divert any footpath or bridleway.
- (13) The making of an application for an injunction restraining a breach of planning control, in consultation with the Director of Regeneration and Enterprise and the Chair of the Development Control Committee.
- (14) To vary a Tree Preservation Order if no new trees or woodlands are added to the Order.
- (15) To vary a Tree Preservation Order, where new trees or woodlands are added to the Order, provided that there are no objections from any person affected by the Order.
- (16) The making (and confirmation where unopposed) of Tree Preservation Orders under Sections 198, 199, 200 and 201 of the 1990 Act, in consultation with the Director of Regeneration and Enterprise.
- (17) The institution of prosecution proceedings under Section 210 of the 1990 Act for contraventions of Tree Preservation Orders.
- (18) The institution of prosecution proceedings under Sections 211-214 of the 1990 Act for causing damage to trees in Conservation Areas.
- (19) To institute proceedings under the Anti-Social Behaviour Act 2003 and the Anti-Social Behaviour, Crime and Policing Act 2014 insofar as the proceedings relate to the Council's statutory functions and the functions of this Committee.
- (20) To institute prosecution proceedings under Section 93 to 111 of the Community Infrastructure Levy Regulations 2010 (as amended) for non-compliance with a CIL Liability Notice.
- (21) To institute proceedings in relation to the Enforced sale procedure under s103 Law of Property Act 1925 as the proceedings relate to the Council's statutory functions and the functions of this Committee.

- (22) To institute proceedings in relation to the Proceeds of Crime Act 2002 as the proceedings relate to the Council's statutory functions and the functions of this Committee.

## REFERRAL TO DEVELOPMENT CONTROL COMMITTEE

Notwithstanding the above, the Director of Regeneration and Enterprise may refer any matter to the Development Control Committee for consideration whether or not it falls within delegated powers and duties.

Where the Chair or Vice-Chair is consulted under delegated powers, the Chair or Vice-Chair may refer the application to the Development Control Committee for determination. In the event that the written confirmation is received that the application can be determined under delegated powers, or alternatively, within 7 days of consultation a request is not made for referral, the application may be determined under delegated powers.

The above powers are without prejudice to Members exercising their rights under the Council's Constitution, where any Ward Member may request in writing, giving material planning reasons, that any matter so delegated to the Director of Regeneration and Enterprise be referred to the Development Control Committee for determination, provided that request is received within the first public consultation period.

When a Ward Member requests in writing that an application is referred to the Development Control Committee, they must state that they either object to or support the application and give their material planning reason(s).

The application will only be reported to Committee under these criteria where:

- the recommendation by the Director of Regeneration and Enterprise is either for approval and the Ward Member has objected to the application; or
- where the recommendation is for refusal and the Ward Member has supported the application; and
- where the Ward Member confirms in their written request that they will attend the Development Control Committee to speak in accordance with the Public Speaking Protocol.

If a Ward Member does not confirm the wish to speak or to attend the Development Control Committee to speak, the application will be withdrawn from the agenda and determined under the delegated powers outlined in the Constitution.

## **Ernest Stevens Trusts Management Committee**

1. To consider and determine all matters that are the responsibility of the Trustee and which fall within the following terms of reference: -
  - (1) The administration of the Stevens Park Trust (Quarry Bank) as regulated by the Deed of Gift dated 29<sup>th</sup> January, 1921.
  - (2) The administration of Mary Stevens Park Trust (Norton) as regulated by the Deed of Gift dated 6<sup>th</sup> December, 1929.
  - (3) The administration of the Stevens Park and Recreation Ground Foundation Trust Wollescote as regulated by Deed of Gift dated 29<sup>th</sup> September, 1930 and by the Scheme of the Secretary of State under Section 18 of the Charities Act, 1960 on 24<sup>th</sup> May, 1966.
  - (4) The administration of the Mary Stevens Maternity Home and Public Park Charity as donated by the Deed of Gift dated 13<sup>th</sup> February, 1931, and regulated by the scheme of the Secretary of State under Section 18 of the Charities Act, 1960 on 3<sup>rd</sup> October, 1989.
2. To consider and determine all matters relating to Trust land in the Borough within the terms of the appropriate governing documents.
3. To ensure that officers of the Council work within the guidance of the Charity Commission and the Charities Act 2011.
4. To make decisions following consideration of all relevant reports, consultation papers and documents from officers of the Council within the terms of the appropriate governing documents.
5. To work with officers of the Council to achieve a result that is in the best interests of the beneficiaries of the Charity within the terms of the appropriate governing documents.
6. To ensure that an appropriate Member attends the Committee when dealing with any land/property that is not included within the Ernest Stevens Parks, in order to discuss the subject of the query regarding the particular parcel of land/property (but not to be part of the decision-making process).
7. To seek external legal advice in the event of a potential conflict of interest between the Council as Trustee and the Council as Local Authority and obtain advice from the Charity Commission.
8. To make recommendations to the Council on any matters relating to the Ernest Stevens Trusts which do not fall within the above terms of reference and which are not delegated to the Committee.

## **Ernest Stevens Trusts Management Committee – Onward Delegation**

### **Lead for Law and Governance**

Following consultation with the Chair and Vice-Chair to take action on matters of urgency that cannot reasonably be deferred until the next programmed meeting of the Ernest Stevens Trusts Management Committee.



## **Licensing and Safety Committee**

- (1) Gaming, food and miscellaneous licensing.
- (2) Functions relating to licensing (other than hackney carriage and private hire licensing) as set out in Schedule 1 to the Functions Regulations.
- (3) Licensing functions in respect of the registration service for births, deaths and marriages.
- (4) Designation Orders under Section 13 of the Criminal Justice and Police Act, 2001 regarding alcohol consumption in public places.
- (5) Functions relating to health and safety under any “relevant statutory provision” within the meaning of Part 1 of the Health and Safety at Work Act, 1974, to the extent that those functions are discharged otherwise than in the Council’s capacity as employer.
- (6) The consideration of reports by the Ombudsman into complaints of maladministration; and the local settlement of complaints to the Ombudsman for sums above £5,000.
- (7) Functions under the Vehicles (Crime) Act, 2001.
- (8) Licensing functions under the Licensing Act, 2003.
- (9) The power to appoint Licensing Sub-Committees in accordance with the appropriate legislative provisions.
- (10) The Council’s licensing functions under the Gambling Act 2005.
- (11) Functions relating to Smoke Free Premises pursuant to the Health Act 2006.
- (12) Licensing functions relating to sex shops, sex establishments and sexual entertainment venues.
- (13) To approve, monitor and review the operation and use of procedures under the Regulation of Investigatory Powers Act 2000.
- (14) Licensing functions under the New Roads and Street Works Act 1991.
- (15) Licensing functions under the Highways Act 1980.

## **Licensing and Safety Committee – Onward Delegations**

### **Director of Public Realm**

- (1) Determination of applications where no objection has been received for licences or consents for:-
  - (a) gaming and lotteries
  - (b) street and door to door collecting
  - (c) street trading
  - (d) scrap yards
  - (e) sex shops, sex establishments and sexual entertainment venues
  - (f) licensing functions under the Licensing Act, 2003
  - (g) licensing functions under the Gambling Act 2005.
  - (h) licensing functions under the New Roads and Street Works Act 1991.
  - (i) Licensing functions under the Highways Act 1980.
- (2) Suspension of licences;
- (3) Consultation with licence holders or their authorised representatives and the Police;
- (4) The issuing of notices under the provisions of Section 19 of the Criminal Justice and Police Act 2001;
- (5) The making of representations on behalf of the Licensing Authority in relation to any applications submitted under the Gambling Act 2005 for, and in relation to, premises licences.
- (6) The local settlement of complaints to the Ombudsman up to a maximum of £5,000.
- (7) The determination of applications for the registration of Motor Salvage Operators under the Vehicles (Crime) Act, 2001, where no objections are received.
- (8) Decisions required in accordance with Contract Standing Orders.
- (9) Operation of procedures relating to the Regulation of Investigatory Powers Act 2000.

- (10) Determine the officer responsible for undertaking the duties and functions of the Council as the 'responsible authority' under the Licensing Act 2003.
- (11) Determinations of applications under Sections 115E, 115F, 115G and 115K of the Highways Act, 1980.
- (12) In conjunction with the Lead for Law and Governance, to make any necessary arrangements for 'Expedited Reviews' to be considered pursuant to the provisions of the Licensing Act 2003.
- (13) Licensing functions associated with the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020.

#### Director of Public Health and Wellbeing

- (1) Functions relating to health and safety under any 'relevant statutory provision' within the meaning of Part I of the Health and Safety at Work Act, 1974, to the effect that those functions are discharged otherwise than in the Council's capacity as an employer.
- (2) Power to register and license premises for acupuncture, tattooing, cosmetic piercing and electrolysis.
- (3) Powers and functions relating to Smoke Free Premises pursuant to the Health Act 2006.
- (4) Power to issue, amend or replace safety certificates (whether general or special) for sports grounds.
- (5) Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.
- (6) Power to license premises for the breeding of dogs.
- (7) Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.
- (8) Power to register animal trainers and exhibitors.
- (9) Power to license zoos.
- (10) Power to license dangerous wild animals.
- (11) Power to license knacker's yards.
- (12) Power to grant consent for the operation of a loudspeaker.
- (13) Power to issue licences for the movement of pigs.
- (14) Power to license the sale of pigs.

- (15) Power to license collecting centres for the movement of pigs.
- (16) Power to issue a licence to move cattle from a market.
- (17) Power to sanction use of parts of buildings for storage of celluloid.
- (18) Power to grant approval of food business establishments for the production of products of animal origin and to refuse, withdraw or suspend approval.
- (19) Power to register auction and wholesale markets.
- (20) Duty to keep register of food business premises.
- (21) Power to register food business premises.
- (22) Power to register stalls/premises for sale of goods by bidding.
- (23) Power to license premises for the boarding of animals.
- (24) Power to license riding establishments.
- (25) Decisions required in accordance with Contract Standing Orders.

## **Taxis Committee**

- (1) Functions relating to hackney carriage and private hire licensing, including the functions set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

## **Taxis Committee – Onward Delegations**

### **Director of Public Realm**

- (1) Determination of all applications except where the applicant has a criminal record or has committed any Road Traffic offence(s) subject to the following:-
  - (i) the Director may grant an application for up to a six months period if an applicant has a 3 points endorsement on his/her driving licence.
  - (ii) An applicant falling within (i) above must be formally interviewed by an authorised officer.
- (2) Suspension of licences.
- (3) Consultation with licence holders or their authorised representatives and the Police.
- (4) The determination, in consultation with the Chair, of applications for exemption from the policies relating to private hire vehicles and hackney carriages.

### 3. RESPONSIBILITY FOR EXECUTIVE (CABINET) FUNCTIONS

#### **The Cabinet**

- (1) Recommending the Policy Framework to the Council.
- (2) Approval of policies, plans and strategies not covered by the Policy Framework.
- (3) Recommending the budget and Council Tax to the Council.
- (4) Implementation of the Policy Framework, approved budget and Council Tax.
- (5) Approval of capital schemes and monitoring of the Capital Programme in accordance with the approved Capital Strategy.
- (6) Approval of urgent amendments to the Capital Programme (provided that timescales permit) that cannot reasonably be deferred to the next available meeting of the Council. Any urgent decisions will be reported to the Council for information.
- (7) The Council's internal management and structures.
- (8) The local implications of regional, national or international policies.
- (9) Matters arising from any reports from the Council's external auditors.
- (10) Matters relating to local government boundaries.
- (11) Salaries, conditions of service and employment matters generally of all employees of the Council.
- (12) Co-ordinating the implementation of the Council's Equality and Diversity Policy.
- (13) Services for elected members and the provision of accommodation for members and officers throughout the Council.
- (14) The mayoralty, civic ceremonial matters and civic links, civic hospitality and official cars.
- (15) Emergency planning.
- (16) All matters relating to the maintenance, administration, use, future use and development of all or part of the land and premises known as Himley Hall (including Ward House).
- (17) All matters relating to the impact generally on the Council of the European Union and its institutions.

- (18) All matters relating to funding through European grant systems and to approve all grant applications or to make arrangements for such approvals.
- (19) The consideration and approval of all applications for funding from the funding bodies associated with the National Lottery.
- (20) Consideration and approval of all other applications for external funding.
- (21) All matters relating to any strategic plan or document produced by the Health Service and any other major health proposal affecting the Borough.
- (22) Waiving Contract Standing Orders and Financial Regulations.
- (23) Approval of Standing Lists of contractors.
- (24) Determination of rents and charges for council houses and flats.
- (25) Functions relating to partnership working with other agencies, bodies, organisations and stakeholders as appropriate.
- (26) The consideration of the Annual Letter of the Local Government and Social Care Ombudsman and reports issued following the formal investigation into complaints in circumstances where this is recommended by the Ombudsman.
- (27) Power to charge for discretionary services falling within the terms of reference of the Cabinet.

#### **Black Country Joint Executive Committee**

All matters set out in the approved terms of reference of Black Country Executive Joint Committee including the making of decisions relating to funding applications into and funding received through or from the West Midlands Combined Authority.

## **The Cabinet – Onward Delegations**

### **All Cabinet Members**

- (1) To approve and amend policies of a significant and/or strategic nature (other than policies that require approval by the Cabinet and Council).
- (2) Partnership working with other agencies, bodies, organisations and stakeholders in relation to the functions of the Cabinet Member.
- (3) Any other function(s) as may be allocated from time to time by the Leader to individual Cabinet Members.
- (4) Any decisions relating to the implementation of the Council's equality and diversity policy and the implementation of statutory duties relating to equality in relation to the functions of the Cabinet Member.
- (5) The determination of any land and property matters within the functions of the appropriate Cabinet Member.
- (6) Any decisions required to be made by Cabinet Members pursuant to the provisions of the Council's Contract Standing Orders.
- (7) Authority to agree the settlement of complaints to the Ombudsman involving payments above £5,000 in consultation with the Chief Executive and/or appropriate Director.
- (8) Power to charge for discretionary or non-statutory services and the introduction of any new fees and charges following consultation with the appropriate Director.
- (9) Any decisions relating to the Anti-Social Behaviour Act 2003 and the Anti-Social Behaviour, Crime and Policing Act 2014 insofar as they relate to the functions of the Cabinet Member.
- (10) The submission of any documents to the Government in connection with the functions of the appropriate Cabinet Member.
- (11) All other powers and duties relating to the implementation of the Council Plan objectives and policy framework.



### **Leader of the Council**

- (1) Overall responsibility for the policy and strategic direction of the Council (other than policies that require approval by the Cabinet/Council).
- (2) Powers and duties for the implementation of the Council Plan objectives and policy framework, including matters relating to Communications and Public Affairs.
- (3) In cases of urgency the approval or amendment of policies, plans and strategies not covered by the Council Plan or policy framework.
- (4) Any function delegated to one or more Cabinet Members, including where a Cabinet Member has a conflict of interest.
- (5) Appointing the Deputy Leader and Cabinet Members and removing those Members from office.
- (6) Authority to amend the Scheme of Delegation in Part 3 of the Constitution with the approval of the Main Opposition Group Leader.
- (7) Approval of amendments to the Capital Programme in exceptional cases of urgency, where an item cannot be deferred until the next ordinary meeting of the Cabinet and following consultation with the Director of Finance and Legal (subject to the Leader of the Opposition Group being notified of any items dealt with under this urgency provision and the decision being reported to the Cabinet and Council for information).
- (8) The signing of urgent decision sheets in the absence (or inability to act) of a Cabinet Member.

### **Deputy Leader of the Council**

- (1) Any functions that are required to be undertaken in line with the Constitution or pursuant to any necessary legal requirements due to the absence or inability to act of the Leader of the Council.
- (2) Lead responsibility, working with all Cabinet Members, to ensure that the Council's strategic priorities, best practices and performance management arrangements are embedded and deliver improved outcomes.
- (3) Lead responsibility for partnership working with all other agencies, bodies, organisations and stakeholders.
- (4) Lead responsibility for ensuring the principles of the Member Officer Charter is embedded across the Council and for the provision of Member training and development.
- (5) All associated powers and duties for the implementation of the Council Plan objectives and policy framework, including matters relating to:
  - Human Resources and Organisational Development
  - Equality, Diversity and Inclusion
- (6) Policies relating to the Council's Human Resources.
- (7) Employee relations, negotiations and consultations with trade unions or other representative organisations of employees (except teaching staff) via a range of forums.

### **Cabinet Member for Children and Young People**

- (1) Functions relating to schools, Children's and Young People's Services, including the roles and responsibilities of the Cabinet Member for Children's Services under the Children Act 2004, all other relevant legislative requirements and statutory guidance.
- (2) Responsibility for the policy and strategic direction of functions relating to Children's and Young People's Services (other than policies that require approval by the Cabinet/Council).
- (3) All associated powers and duties for the implementation of the Council Plan objectives and policy framework, including matters relating to:
  - Children's and Young People's Safeguarding, Practice and Quality Assurance
  - Children in Care
  - Children and Families
  - Family Solutions
  - Business Support
  - Education Outcomes and Inclusion
- (4) The employment of children and young persons.
- (5) The administration of any charities, as registered by their respective Governing Instruments, in so far as they relate to areas of responsibility of the Cabinet Member.
- (6) The establishment and maintenance of an adoption service, including the establishment of an Adoption Panel in accordance with the Adoption and Children's Act 2002 and any subsequent legislation and guidance.
- (7) Functions relating to the Apprenticeships, Skills, Children and Learning Act 2009.

### **Cabinet Member for Public Realm**

- (1) Responsibility for the policy and strategic direction of functions relating to Public Realm, including environmental, highways and street services (other than policies that require approval by the Cabinet/Council).
- (2) All associated powers and duties for the implementation of the Council Plan objectives and policy framework including matters relating to:
  - Fleet and Waste Care
  - Street and Green Care
- (3) Water quality, private water supply, sewerage and drainage insofar as they relate to the responsibilities of the Cabinet Member.
- (4) The collection and disposal of waste including commercial, industrial and household waste.
- (5) The co-ordination and development of the environmental sustainability agenda.
- (6) Litter and dog fouling enforcement.
- (7) Approval and implementation of the Waste Strategy.
- (8) The provision, maintenance and management of public parks, leisure and recreation grounds, playing fields and open spaces.
- (9) The provision of allotments.
- (10) Functions of the Council under the following provisions, and any amendments thereof and orders, regulations, directions or byelaws made thereunder:-
  - (a) the Countryside Act 1968 concerning the Council's powers conferred for the purpose of providing opportunities for the enjoyment of the countryside by members of the public, including the power to provide country parks, picnic areas, camping sites, woodlands and access to these areas;
  - (b) the National Parks and Access to the Countryside Act 1949 concerning the establishment of nature reserves by local authorities;
  - (c) the Transport Act 1968 concerning the powers of the Council to assist in maintaining waterways for amenity purposes;

- (d) the Public Health Acts 1875 to 1961 concerning the Council's powers to purchase, improve and maintain lands for the purposes of public walks or pleasure grounds; the power to provide baths, bathing places and wash-houses; and the power to provide boating pools and lakes for recreational purposes.
- (11) Dangerous Trees.
- (12) Pest control and responsibility to keep the Borough free from public health pests.
- (13) Determine the officer responsible for undertaking the duties and functions of Traffic Manager under the Traffic Management Act 2004.
- (14) The management of the highway network.
- (15) The procurement, maintenance and management of the Council's fleet.
- (16) Civil parking enforcement.
- (17) The management of the Council's car parks.

### **Cabinet Member for Finance and Legal**

- (1) Responsibility for the policy and strategic direction of the Council's functions relating to Finance and Legal (other than policies that require approval by the Cabinet/Council).
- (2) All associated powers and duties for the implementation of the Council Plan objectives and policy framework, including matters relating to:
  - Audit Services
  - Data Protection and Information Governance
  - Financial Services
  - Law and Governance
  - Revenue and Benefit Services
- (3) The establishment and maintenance of systems of financial management.
- (4) The appointment of bankers, auditors, brokers and registrars of securities and the receipt of reports from any such appointees.
- (5) The control and investment of funds and the negotiation for and management of loans to and by the Council.
- (6) Housing advances and guarantees and loans and guarantees to industry.
- (7) The effecting of insurance and damage to personal effects not covered by insurance.
- (8) The management on behalf of the West Midlands District Councils of the loan debt of the former West Midlands County Council.
- (9) Applications for financial assistance from voluntary bodies and other organisations other than those applications which fall to be considered by other Cabinet Members.
- (10) The determination of policies in respect of applications for housing advances and guarantees and loans and guarantees to industry.
- (11) The determination of policies in relation to (a) the borrowing of money by the Council and (b) the making of loans by the Council not falling within the above provisions.
- (12) The publication of information relating to Local Government finance applicable to the Borough.
- (13) Implementation of the Housing Benefits and Council Tax system.
- (14) All matters relating to the collection of the National Non-Domestic Rate.
- (15) The collection of the (residual) Community Charge.

- (16) The collection of the Council Tax.
- (17) The determination of applications for rating relief.
- (18) The approval of any scheme to grant discretionary relief from the payment of full National Domestic Rates.
- (19) The nature and content of any scheme to grant discretionary relief from having to pay the full National Non-Domestic Rates.
- (20) The Council's Local Council Tax and Housing Benefit Scheme.
- (21) In consultation with the Director of Finance and Legal, the waiver of Contract Standing Orders or Financial Regulations in appropriate circumstances.
- (22) The collection of debts and the determination of action to be taken in respect of debts.

### **Cabinet Member for Health and Adult Social Care**

- (1) Responsibility for the policy and strategic direction of functions relating to Health and Adult Social Care (other than policies that require approval by the Cabinet/Council).
- (2) All associated powers and duties for the implementation of the Council Plan objectives and policy framework including matters relating to:
  - Dudley Disability Services
  - Assessment and Independence
  - Access and Prevention
  - Adult Safeguarding and Mental Health
  - Integrated Commissioning, Performance and Partnerships
  - Public Health
  - Environmental Health and Trading Standards
- (3) The ongoing implementation and effective operation of the Dudley Health and Wellbeing Board.
- (4) The Council's executive responsibilities, in conjunction with the Dudley Health and Wellbeing Board, in relation to the following:
  - providing leadership and democratic accountability to improve health and well-being and reduce inequalities.
  - promoting integration and partnership working between the NHS, social care, children's services, public health and other local services and improving democratic accountability.
  - delivering better health and wellbeing outcomes, quality of care and value for money, reducing service overlaps or gaps in provision and facilitating services working together.
  - agreeing priorities for the benefit of patients and taxpayers, informed by local people and neighbourhood needs.
  - promoting integration and partnership working, through the encouragement of coherent commissioning strategies between the NHS, social care, public health, children's and other local services.
  - assessing the needs of the local population and contributing to the Joint Strategic Needs Assessment (JSNA).
  - developing a joint health and wellbeing strategy.
  - supporting joint commissioning and pooled budget arrangements as a means of delivering service priorities.
  - developing appropriate partnership structures.
- (5) The Council's powers regarding the development of facilities for, and the encouragement of, physical training and recreation and the establishment of centres for such activities.



- (6) In consultation with the Chief Executive, to establish the necessary arrangements to appoint an officer to carry out the statutory functions of the Director of Public Health.
- (7) Matters relating to the Sons and Daughters of Rest.
- (8) The determination of applications for grant aid.
- (9) Power to appoint officers for particular purposes including Section 47 of the National Assistance Act 1948, as amended.
- (10) The inspection of premises and any products, manufactured, stored or sold as appropriate, in accordance with relevant legislation as detailed within the functions of the relevant Directorate.
- (11) The control and authorisation of prescribed industrial processes.
- (12) The control of industrial air pollution; the management of air quality; the abatement of statutory nuisances as defined in the Environmental Protection Act 1990; the enforcement of the provisions of the Council's smoke control order.
- (13) The power to appoint officers for particular purposes including the Proper Officer under the Public Health (Control of Disease) Act 1984, as amended, and regulations made under the Act, and the Public Health Acts 1936 and 1961.
- (14) Communicable diseases including food poisoning.
- (15) Food safety and occupational health and safety.
- (16) Safety at sports grounds.
- (17) The control and licensing of premises and practices (with the exception of matters dealt with by the Licensing and Safety Committee).
- (18) Nuisances (including noise nuisance from domestic premises).
- (19) Offensive trades, premises and articles and rag flock and other filling materials and the determination of applications for the establishment or continuance of offensive trades.
- (20) Water quality, private water supply, sewerage and drainage insofar as they relate to the responsibilities of the Cabinet Member.
- (21) Trading standards including the provision of consumer advice and education.
- (22) The power to appoint officers for particular purposes.

- (23) Means of escape from fire (other than those functions conferred on the Development Control Committee).
- (24) Animal health and welfare, and functions relating to dangerous wild animals.
- (25) The determination of applications for hazardous substances, consent and related powers.
- (26) Stray Dogs.

### **Cabinet Member for Housing and Community Services**

- (1) Responsibility for the policy and strategic direction of functions relating to Housing and Community Services (other than policies that require approval by the Cabinet/Council).
- (2) All associated powers and duties for the implementation of the Council Plan objectives and policy framework including matters relating to:
  - Community Safety
  - Housing Estates and Communities
  - Housing Options and Support
  - Housing Strategy
  - Housing Assets and Development
  - Housing Maintenance
- (3) The development of the Council's Housing Strategy and functions in connection with homelessness, private sector housing, management of estates and the general management of the public sector Housing Revenue Account (HRA) stock in relation to all lettings, tenancies and property matters.
- (4) The acquisition of land and property for housing/housing related purposes, the declaration of HRA land as being surplus to requirements, and the approval of HRA demolitions and disposals.
- (5) Functions relating to travellers sites.
- (6) Functions in relation to Libraries and Archives.
- (7) Functions relating to community development and engagement.

### **Cabinet Member for Digital, Customer and Commercial Services**

- (1) Responsibility for the policy and strategic direction of functions relating to Digital, Customer and Commercial Services (other than policies that require approval by the Cabinet/Council).
- (2) All associated powers and duties for the implementation of the Council Plan objectives and policy framework including matters relating to:
  - Commercial Services
  - Digital Grid for Learning (DGfL)
  - Procurement and Contract Management
  - Social Value
  - Customer Services (including Dudley Council Plus, Coroners and Registrars)
  - Digital and Technology Services
- (3) Lead responsibility within the Cabinet for the Borough Vision and Future Council Programme (subject to the nomination of individual Cabinet Members to lead on specific aspirations/themes).
- (4) The registration service for births, deaths, marriages, nationality and citizenship.
- (5) The Coroner's service.
- (6) The Council's Digital and Technology Strategy and associated Information Systems.
- (7) The Council's Commercial Strategy and the identification and development of commercial opportunities that are congruent with the Strategy.

## **Cabinet Member for Regeneration and Enterprise**

- (1) Responsibility for the policy and strategic direction of functions relating to Regeneration and Enterprise (other than policies that require approval by the Cabinet/Council).
- (2) All associated powers and duties for the implementation of the Council Plan objectives and policy framework including matters relating to:
  - Culture, Leisure and Bereavement Services
  - Planning and Regeneration
  - Corporate Landlord Services
- (3) Strategic functions relating to Transportation/Policy Planning and promoting economic and social regeneration throughout the Borough.
- (4) Working to implement economic regeneration priorities for the sub region.
- (5) The preparation and implementation of any Local Plans.
- (6) Promoting the economic prosperity of the Borough through maximising investment and expenditure opportunities.
- (7) Promoting Tourism (Visitor Economy).
- (8) The provision of cultural facilities including museums, art galleries and public halls and the development of relevant strategies.
- (9) The provision of entertainments and the promotion of leisure facilities insofar as they relate to the functions of the Cabinet Member.
- (10) To promote the means to maximise the level of resources available to the Borough targeted towards the economic regeneration priorities of the Council.
- (11) Subject to any necessary approval of the Cabinet, to exercise Compulsory Purchase Order powers to facilitate economic regeneration.
- (12) In consultation with the Development Control Committee:-
  - (a) preparing supplementary planning documents under the Planning and Compulsory Purchase Act 2004.
  - (b) designating conservation areas.
  - (c) designating areas of architectural interest.
  - (d) designating nature reserves.

In consultation with the Development Control Committee or, in cases of urgency with the Chair (or in his/her absence the Vice-Chair) of the Development Control Committee: -

- (a) Article 4 Directions etc.

- (13) Leisure facilities and centres management, sports and activity strategy and other leisure management functions.
- (14) Responsibility for functions relating to local markets and the protection of the Council's interests in its markets.
- (15) Powers and duties in relation to Post 16 Skills and Adult Lifelong Learning.
- (16) Functions of the Council under the following provisions, and any amendments thereof and orders, regulations, directions or byelaws made thereunder:-
  - (a) the Local Government Act 1972 concerning financing of museums and galleries;
  - (b) the Open Spaces Act 1906 regarding the acquisition of open spaces or burial grounds, their maintenance and management.
- (17) All functions relating to mortuaries, crematoria and cemeteries, including the making of rules and regulations for the management of such facilities.
- (18) The management and letting of all commercial, retail, industrial and residential (non-Housing Revenue Account) properties.
- (19) The review of all of the Council's landholdings.
- (20) The repair and maintenance of buildings (excluding Council houses);
- (21) Matters relating to the acquisition, disposal, appropriation and management of land and buildings including the provision of accommodation for the Council's employees.
- (22) The provision of public clocks.
- (23) Dangerous structures and excavations (with the exception of functions that are the responsibility of Environmental Services).
- (24) The identification and remediation of contaminated land.
- (25) Lead responsibility in relation to Climate Change activity, including the development and implementation of a Carbon Reduction Plan.
- (26) Preparation and implementation of the Black Country Plan (Black Country Core Strategy).

### **Cabinet Member for West Midlands Combined Authority**

- (1) Lead responsibility within the Cabinet for matters relating to West Midlands Combined Authority, including developing close working relationships between the Council and the Combined Authority for the benefit of the Borough.
- (2) Lead responsibility for key schemes and projects funded by West Midlands Combined Authority to drive forward changes and improvements for the Borough and local residents.
- (3) Powers and duties for the implementation of the Council Plan objectives and policy framework relating to Projects and Delivery, including the following:
  - Metro
  - Very Light Rail
  - Portersfield Scheme
  - Castle Hill Development
  - St Thomas's Quarter
  - Enterprise Zone (DY5)
  - Resonance
  - Dudley People's Panel
- (4) Inward Investment – including working in partnership with the West Midlands Combined Authority and other agencies.

### **Black Country Executive Joint Committee**

- (1) To receive reports from any Sub Committee of the Joint Committee or Advisory Board of the Joint Committee.
- (2) At any time review and agree proposed changes to the Functions of the Committee, and seek approval of the same from the four Council Executives of the Black Country authorities.
- (3) To agree and approve any proposed governance and or reporting structure that the committee sees fit.
- (4) In relation to the City Deal, Growth Deal and Combined Authority:
  - 4.1 To act as a strategic body; setting and reviewing objectives for strategic investment across the Black Country, including;
    - a. Providing a coherent single position on the major strategic City Deal, Growth Deal and Combined Authority issues;
    - b. Agreeing allocation of spending;
    - c. Agreeing major priorities;
    - d. Consider and agree recommendations made by any Sub Committee of the Joint Committee or Advisory Board of the Joint Committee;
    - e. Refer recommendations received back to any Sub Committee of the Joint Committee or Advisory Board of the Joint Committee for further consideration as and when minded in the first instance to not follow recommendations at all or to materially change the substance of the decision except in the case of genuine urgency requiring a decision to be made at that time;
  - 4.2 Agreeing Lead and or Accountable Body status for a body or organisation;
  - 4.3 Agree, review and amend options at any time for City Deal, Growth Deal and Combined Authority governance which is fit for purpose;
  - 4.4 influence and align government investment in order to boost economic growth;
  - 4.5 have regard to the duty to cooperate and Joint Committee's overall function as set out above;
  - 4.6 to ensure alignment between decision making on City Deal Growth Deal and Combined Authority and decisions on other areas of policy such as land use, transportation, economic development and wider regeneration;



- 4.7 Co-ordinate and align decision making on transport with the LEPs ensuring that business views are taken on board and that LEP growth plans are reflected in strategic priorities;
- 4.8 Deciding on capital expenditure programmes and ensuring policy and programmes are delivered effectively through partners.

## **Executive Functions - Onward Delegations to Officers**

### **Chief Executive, Deputy Chief Executive and Directors (as appropriate)**

- (1) The management, organisation and control of staff within the respective Directorates, including the discharge of all statutory and other functions allocated to those Directorates.
- (2) The approval of standing lists of contractors in consultation with the appropriate Cabinet Member.
- (3) The local settlement of complaints to the Ombudsman up to a maximum of £5,000.
- (4) Authority to take any decisions relating to contracts for the delivery of services within their area of responsibility in accordance with the approved budget and pursuant to the provisions of the Council's Contract Standing Orders.
- (5) Authority to seek planning permission in respect of any proposed development.
- (6) The giving of written notice to seek permission for any proposed development.
- (7) The submission of bids for external funding not exceeding £10,000.
- (8) In consultation with the appropriate Cabinet Member, the submission of bids for external funding in excess of £10,000 but not exceeding £250,000.
- (9) In cases of urgency, in consultation with the appropriate Cabinet Member, the Leader and the Director of Finance and Legal, the submission of bids for external funding exceeding £250,000.
- (10) Functions relating to partnership working with other agencies, bodies, organisations and stakeholders as appropriate.
- (11) The authorisation of the attendance of delegates at conferences, seminars and training events in consultation with Cabinet Members as appropriate.
- (12) The administration of any decisions relating to the Anti-Social Behaviour Act 2003 and the Anti-Social Behaviour, Crime and Policing Act 2014.
- (13) The approval of any amendments to existing fees and charges, following consultation with the relevant Cabinet Member.
- (14) To make arrangements for a person nominated by the Chief Executive to Chair the Youth Justice Board.
- (15) The instructing of appropriate professional advisors.
- (16) To approve staff restructurings in the relevant Council Directorates within the approved budget allocated to those Directorates.

### **Chief Executive**

- (1) In consultation with the appropriate Cabinet Member, to determine all applications for voluntary redundancy including those where there are pension implications.
- (2) In consultation with the appropriate Cabinet Member, to approve all compulsory redundancies including those where there are pension implications.
- (3) The completion of any authorised car loan.
- (4) The determination of applications for car loans.
- (5) The implementation of national pay awards.
- (6) In consultation with the appropriate Director and Cabinet Members to determine all matters relating to the grading of APT&C staff.
- (7) In consultation with the appropriate Director and Cabinet Members to determine all matters relating to temporary market supplements for identified posts.
- (8) All matters relating to the corporate implementation of the Council's human resources and learning and development policies.
- (9)
  - (i) to consider any matters relating to the Local Government Pension Scheme and its administration;
  - (ii) to determine applications for gratuities, under Section 19 of the Local Government Superannuation Act, 1953;
  - (iii) to determine applications for the payment of deferred benefits, in accordance with the criteria drawn up under the Local Government Pension Scheme Regulations 1995.

### **Chief Executive and Deputy Chief Executive**

- (1) In appropriate circumstances to exercise any functions delegated to Directors or other Officers within their areas of responsibility, including in their absence or inability to act.

## **Director of Adult Social Care**

- (1) Provision of services to make people safe when faced with critical situations and to provide information relevant to a Fair Access to Care Services (FACS) assessment.
- (2) Within the approved guidance, the provision of outcomes for people with assessed needs.
- (3) The provision of accommodation for the elderly, infirm and persons in other circumstances in need of care and attention, including arrangements for the assessment of charges to be made.
- (4) The burial or cremation of the body of any person in the Borough where no suitable alternative arrangements for the disposal of the body are being made.
- (5) The approval of interest free loans or grants under the Chronically Sick and Disabled Persons Act up to £10,000, including the provision of telephones, within the agreed policy.
- (6) The determination of requests from members of the public for access to their records held by the Directorate.
- (7) The approval of loans in connection with disabled facilities grants, up to a maximum of £15,000.
- (8) In consultation with the relevant Cabinet Member and “Shadow” Cabinet Member, to determine the allocation of grants to voluntary organisations.
- (9) The entering into of contracts, by negotiation, for the purchase of care packages.
- (10) The appointment of officers as proper officers for the purposes of Section 47 of the National Assistance Act 1948, as amended.
- (11) Functions under the following legislation in so far as these relate to the Directorate of Adult Social Care:

Fraud Act 2006

Theft Act 1968

Forgery and Counterfeiting Act 1981

Road Traffic Regulation Act 1984

Chronically Sick and Disabled Persons Act 1970

Proceeds of Crime Act 2002

Traffic Management Act 2004

Disabled Persons' Parking Badges Act 2013

## **Director of Children's Services**

- (1) Professional responsibility for the leadership, strategy and effectiveness of children's services as set out in the Children Act 2004, all other relevant legislative requirements and statutory guidance.
- (2) All functions relating to integrated education and children's social care services and associated responsibilities relating to leadership and partnership, safeguarding, vulnerable children and young people, fair access to services and the promotion of educational excellence.
- (3) The roles and responsibilities of the Local Authority as they relate to schools in light of Statutory Codes of Practice on Local Authority/School Relations.
- (4) The authorisation of the appropriate Officer to complete confidentiality agreements in relation to Information Technology in schools and to enter into agreements concerning the sale of the materials developed with the Education service, subject to compliance with Contract Standing Orders, Financial Regulations and to any costs falling within existing budgetary provisions.
- (5) The acceptance of regional recommendations for the level of vocational tuition fees in further education.
- (6) The discharge of licensing functions under the statutory provisions relating to children and young persons.
- (7) The exercise of the powers of the Council in relation to exclusion procedures.
- (8) Authorising the appropriate Officer to complete licences for educational software, subject to compliance with standing orders and the costs falling within existing budget provisions.
- (9) Authorising the appropriate Director to complete the tenancy agreements in respect of and licences to occupy school caretakers' accommodation, the terms of such agreements and licences to be set by the Director of Children's Services in consultation with the Director of Finance and Legal.
- (10) In consultation with the relevant Cabinet Members to negotiate contracts between the Council and the Secretary of State for Employment for the provision of training schemes for the purposes of Contract Standing Orders and to authorise the Director of Finance and Legal to complete the contracts.
- (11) In consultation with the Cabinet Member for Children and Young People, to enter into contracts where projects are funded by external agencies and where rapid response is required.
- (12) In consultation with the Cabinet Member for Children and Young People, to take decisions in relation to the replacement of vacancies.

- (13) To deal with all matters relating to security in premises used by the Directorate, in consultation with the Cabinet Member for Children and Young People.
- (14) To determine those items of equipment, loaned to students, which should be written off at the end of the loan period.
- (17) The service of notices under all relevant Acts relating to the functions of the Directorate.
- (18) In consultation with the Cabinet Member for Children and Young People, to determine applications for use of the Astley Burf Education Centre by other Dudley bodies and organisations outside the period when the Centre is normally used by Dudley children.
- (19) The service of notices requiring parents to satisfy the Authority that their child is receiving sufficient full-time education.
- (20) The service of school attendance orders.
- (21) The making of payments by way of recoupment where mandatory.
- (20) Subject to the rights of the Governors the appointment of teachers and other school staff.
- (21) The service of notices under the Education Act, 1980.
- (22) The allocation of places in schools.
- (23) The making of mandatory awards to students pursuing further and higher education.
- (24) The making of discretionary awards to students pursuing further and higher education having regard to the approved policy.
- (25) In relation to Special Education:-
  - (a) the service of notices requiring parents to satisfy the Authority that their child is receiving sufficient full-time education.
  - (b) the service of school attendance orders.
  - (c) the making of payments by way of recoupment where mandatory.
  - (d) the determination of all matters, including the service of notices, relating to the assessment and statementing of special educational needs under the Education Acts.

- (e) in consultation with the appropriate Cabinet Member and the Lead Opposition Spokesperson, to determine the allocation of grants to voluntary organisations.
- (26) The reception of children into the care of the Council including taking emergency action to safeguard their welfare where this is needed.
- (c) The provision of accommodation and other services for looked after children, including approval of foster parents and arrangements for maintenance of such children.
- (d) The determination of matters in relation to the adoption of children following the recommendations of the Adoption Panel including post adoption support.
- (e) The referral, in consultation with the Cabinet Member for Children and Young People, of applications for car loans from approved foster carers to the Director of Finance and Legal for approval.
- (f) The exercise of parental rights, on a day to day basis, in respect of looked after children and young people.
- (31) The functions of the Council contained in the Fostering Services Regulations 2002, and the Placement of Children with Parents, etc Regulations 1991.
- (32) Functions relating to the Apprenticeships, Skills, Children and Learning Act 2009.

### **Director of Digital, Customer and Commercial Services**

- (1) Authority to take any decisions relating to contracts for the delivery of services in accordance with the approved budget and pursuant to the provisions of the Council's Contract Standing Orders.
- (2) Authority to take any decisions relating to corporate contracts for use across Directorates and service areas in accordance with the approved budget and pursuant to the provisions of the Council's Contract Standing Orders.
- (3) Functions relating to Communications and Public Affairs and Customer Services.
- (4) Functions relating to Registration, Citizenship and the Coroners' service.
- (5) Implementation and co-ordination of the Council's Digital and ICT Strategy, associated digital and ICT Services and information systems.



## **Director of Finance and Legal**

### **General**

- (1) Co-ordination of functions relating to Data Protection and Information Governance.
- (2) Authority to take any decisions relating to corporate contracts for use across Directorates and service areas in accordance with the approved budget and pursuant to the provisions of the Council's Contract Standing Orders.

### **Borrowing and Lending**

- (3)
  - (i) the making of investments and loans to and from local and public authorities and other persons and, in consultation with the Cabinet Member for Finance and Legal, the determination of policies relating to these;
  - (ii) the management, on behalf of the West Midlands District Councils, of the loan debt of the former West Midlands County Council.
- (4) To determine variations in the rate of interest chargeable under the Council's Assisted Vehicle Purchase Scheme.
- (5) To undertake reviews in respect of the temporary overdraft facility to the Black Country Museum and Development Trust and report to the Cabinet Member for Finance and Legal should the situation change materially.
- (6) To effect such borrowings, repayments and investments as are appropriate and consistent with the approved Treasury Strategy and relevant guidance.

### **Insurances and Risk Management**

- (7) The effecting of insurances.
- (8) To approve financial contributions towards the cost of risk management projects from the earmarked balance in the Council's insurance provision and in accordance with the approved Risk Management Strategy.
- (9) To authorise ex-gratia payments in respect of insurance claims with a value of up to £500 per claim.

### **Other**

- (10) The making of contributions on a pro-rata basis according to population to the West Midlands Fire and Rescue Authority for its overall co-ordinating role in the provision of ancillary support services in planning for peace time emergencies.

- (11) The collection of debts and the determination of action to be taken in respect of debts.
- (12) In appropriate circumstances, following consultation with the Cabinet Member for Finance and Legal:
  - (i) the writing off of all debts;
  - (ii) the determination of applications for loans and guarantees to industry and policies relating to these;
  - (iii) the determination of applications for financial assistance from voluntary bodies and other organisations other than those applications which fall to be considered by other Cabinet Members or Officers;
  - (iv) the setting of the Council Tax Base;
  - (v) the agreement of Precept instalments.
- (13) The management of bank accounts.
- (14) The publication of information relating to Local Government finance applicable to the Borough.
- (15) The administration and creation of whatever funds and systems of financial management are considered appropriate to comply with Government legislation and Regulations.
- (16) The determination and implementation of mortgage interest rate variations.
- (17) To maintain an adequate and effective system of internal audit as the responsible officer for the proper administration of the Council's financial affairs under Section 151 of the Local Government Act, 1972, and Section 114 of the Local Government Finance Act, 1988.
- (18) The instructing of appropriate professional financial advisers, including bankers, auditors, brokers and registrars of securities.
- (19) To determine all future grant claim and Government Return signatories as considered appropriate.
- (20) All powers relating to the collection of the (residual) Community Charge, Council Tax and National Non-Domestic Rates including recovery and enforcement proceedings.
- (21)
  - (i) the administration of the Council's Housing Benefit and Council Tax Benefit Local Schemes and the Council Tax Reduction Scheme;
  - (ii) the administration of the Council's Benefit (Anti-Fraud) Prosecution Policy;

- (iii) the administration of the Council's responsibilities under the provisions of Social Security Legislation relating to Benefit Services.
- (22) In consultation with the Cabinet Member for Finance and Legal and the Shadow Cabinet Spokesperson, the determination of:
  - (i) any application for discretionary relief from NNDR; and
  - (ii) any applications for hardship relief from NNDR.
- (23) The administration and the collection of all revenues and disbursements of monies.
- (24) To approve the content of and terms for the inclusion of advertising material in Council payslips and Council Tax/NNDR/other correspondence.

## **Director of Public Health and Wellbeing**

- (1) Authorisation of the service of any notice under the Building Act 1984, and the taking of such default action as considered necessary in the event of such notice not being complied with by any person subject to its terms.
- (2) The appointment of authorised officers for the purposes of the Public Health Act, 1936, the Local Government (Miscellaneous Provisions) Act, 1976 and the Building Act, 1984.
- (3) The power to declare a building dangerous under Section 77 of the Building Act, 1984, and to declare immediate action to be necessary under Section 78 of the Building Act, 1984.
- (4) Powers conferred by Section 79 of the Building Act, 1984, to declare a building ruinous or a site seriously detrimental to visual amenity;
- (5) The carrying out in default of any action required by any order of the Magistrates' Court under Section 77 of the Building Act, 1984, or the carrying out of emergency works required in pursuance of Section 78 of the Building Act, 1984.
- (6) The appointment of the Public Analyst and Deputy Public Analyst;
- (7) The appointment and appropriate authorisation or empowerment of officers to exercise powers under the legislation detailed below.
- (8) The serving of any notices arising under any of the legislation detailed below.
- (9) The issuing of any licences, registrations or approvals arising under any of the legislation detailed below, together with the withdrawal of such licences, registrations or approvals as appropriate.
- (10) The determination of 'Decision to Institute Legal Proceedings' process to agree cases to be forwarded to the Lead for Law and Governance with a view to instigating legal proceedings.
- (11) The undertaking of works in default, following non-compliance of notice served or court order obtained under relevant legislation detailed below.
- (12) The exercise of the Council's powers and duties under the following Acts or any Orders or Regulations made thereunder:

'A'

### **Trading Standards**

Accessories and Abettors Act 1861

Accommodation Agencies Act 1953

Administration of Justice Acts 1970, 1973, 1977, 1982 and 1985

Agriculture Act 1970

Agricultural Produce (Grading and Marking) Act 1928 and 1931

Agriculture (Miscellaneous Provisions) Act 1968  
Anti-Social Behaviour Act 2003  
Anti-Social Behaviour, Crime and Policing Act 2014  
Business Names Act 1985  
Cancer Act 1939  
Children and Young Persons Act 1933  
Children and Young Persons (Protection from Tobacco) Act 1991  
Christmas Day (Trading) Act 2004  
Clean Air Act 1993  
Clean Neighbourhood and Environment Act 2005  
Climate Change Act 2008  
Companies Act 1985 and 2006  
Consumer Credit Acts 1974 and 2006  
Consumer Protection Act 1987  
Consumer Rights Act 2015  
Control of Pollution Act 1974  
Copyright, Designs & Patents Act 1988  
Coronavirus Act 2020  
Criminal Attempts Act 1981  
Criminal Damages Act 1971  
Criminal Justices Act 1988 and 2003  
Criminal Justice and Courts Act 2015  
Criminal Justice and Immigration Act 2008  
Criminal Law Act 1977  
Crossbows Act 1987  
Customs and Excise Management Act 1979  
Development of Tourism Act 1969  
Education Reform Act 1988  
Energy Act 1976, 1983, 2004, 2008, 2010, 2011 and 2013  
Energy Conservation Act 1981 and 1996  
Enterprise Act, 2002  
Enterprise and Regulatory Reform Act 2013  
Environment Act 1995  
Environmental Protection Act 1990  
Estate Agents Act 1979  
European Union (Withdrawal) Act 2018 (as amended)  
European Union (Withdrawal Agreement) Act 2020  
Explosives Acts 1875 and 1923  
Fair Trading Act 1973  
Farm & Garden Chemicals Act 1967  
Financial Services Act 2012  
Financial Services and Markets Act 2000  
Firearms Act 1968  
Firework Act 2003  
Food and Environment Act 1985  
Food Safety Act 1990  
Forgery and Counterfeiting Act 1981  
Fraud Act 2006  
Hallmarking Act 1973  
Health Act 2009

Health and Safety at Work Act 1974  
Housing Act 2004  
Knives Act 1997  
Intoxicating Substances (Supply) Act 1985  
Legal Services Act 2007  
Licensing Act 2003  
Local Government (Miscellaneous Provisions) Act 1982  
Medicines Act 1968  
Motor Cycle Noise Act 1987  
Motor Vehicles (Safety Equipment for Children) Act 1991  
National Lottery etc Act 1993  
Offensive Weapons Act 1996  
Olympic Symbols etc (Protection) Act 1995  
Osteopaths Act 1993  
Pesticides Fees and Enforcement Act, 1989  
Poisons Act 1972  
Police and Criminal Evidence Act 1984  
Prices Acts 1974 & 1975  
Proceeds of Crime Act 2002  
Protection of Children (Tobacco) Act 1986  
Psychoactive Substances Act 2016  
Public Health Acts 1936 and 1961  
Public Health (Control of Disease) Act 1984  
Registered Designs Act 1949  
Regulatory Enforcement and Sanctions Act 2008  
Regulatory of Investigatory Powers Act 2000  
Road Traffic Act 1988 and 1991  
Road Traffic (Foreign Vehicles) Act 1972  
Scotch Whisky Act 1988  
Serious Crime Act 2015  
Sunday Trading Act 1994  
Telecommunications Act 1984  
Telecommunications (Fraud) Act 1997  
Theft Acts 1968 and 1978  
Timeshare Act 1992  
Tobacco Advertising and Promotion Act 2002  
Tobacco Advertising Act, 2002  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Unsolicited Goods and Services Act 1971 and 1975  
Vehicles (Crime) Act 2001  
Video Recordings Act 1984, 1993 and 2010  
Violent Crime Reduction Act 2006  
Weights and Measures Act 1985

together with any regulations or orders made thereunder in respect of the above legislation.

‘B’  
Environmental Health

Agriculture (Miscellaneous Provisions) Act 1968  
Agriculture Act 1970  
Animal Boarding Establishment Act 1963  
Animal Health Act 1981  
Animal Health Act 2002  
Animal Health and Welfare Act 1984  
Animal Welfare Act 2006  
Animals Act 1971  
Anti-Social Behaviour Act 2003  
Anti-Social Behaviour, Crime and Policing Act 2014  
Breeding and Sale of Dogs (Welfare) Act 1999  
Breeding of Dogs Act 1973  
Breeding of Dogs Act 1991  
Building Act 1984  
Caravan Sites and Control of Development Act 1960  
Caravan Sites Act 1968  
Cinemas Act 1985  
Civil Contingencies Act 2004  
Clean Air Act 1993  
Clean Neighbourhoods and Environment Act 2005  
Control of Horses Act 2015  
Control of Pollution Act 1974  
Coronavirus Act 2020  
Criminal Damages Act 1971  
Dangerous Dogs Acts 1989 and 1991  
Dangerous Dogs (Amendment) Act 1997  
Dangerous Wild Animals Act 1976  
Dogs Act 1871  
Environmental Protection Act 1990  
Environment Act 1995  
European Union (Withdrawal) Act 2018 (as amended)  
European Union (Withdrawal Agreement) Act 2020  
Factories Act 1961  
Fire Safety and Safety at Places of Sport Act 1987  
Food Act 1984  
Food and Environmental Protection Act, 1985  
Food Safety Act 1990  
Fraud Act 2006  
Game Act 1831  
Game Licences Act 1860  
Health Act 2006  
Health and Safety at Work etc. Act 1974  
Licensing Act 2003  
Local Government Act 1972  
Local Government (Miscellaneous Provisions) Acts 1976, 1982  
Local Government and Housing Act 1989  
Mines and Quarries Act 1954  
Noise Act 1996  
Noise and Statutory Nuisance Act 1993  
Offices Shops and Railway Premises Act 1963

Pet Animals Act 1951  
 Police and Criminal Evidence Act 1984  
 Protection of Animals (Amendment) Acts, 1954, 1988 and 2000  
 Performing Animals (Regulations) Act 1925  
 Pesticides Fees and Enforcement Act, 1989  
 Planning (Hazardous Substances) Act 1990  
 Pollution Prevention and Control Act 1999  
 Prevention of Damage by Pests Act 1949  
 Proceeds of Crime Act 2002  
 Regulatory Enforcement and Sanctions Act 2008  
 Regulation of Investigatory Powers Act 2000  
 Regulatory Reform Act 2001  
 Riding Establishments Acts 1964 and 1970  
 Road Traffic Acts 1988 and 1991  
 Safety at Sports Grounds Act 1975  
 Scrap Metal Dealers Act 1964 and 2013  
 Slaughterhouses Act 1974  
 Slaughter of Poultry Act 1967  
 Sunbeds (Regulation) Act 2010  
 The Guard Dogs Act 1975  
 Trade Descriptions Act 1968  
 Water Act 1945, 1973, 1989  
 Water Industry Act 1991  
 Welfare of Animals at Slaughter Act 1991  
 West Midlands County Council Act 1980  
 Zoo Licensing Act 1981

together with any regulations or orders made thereunder in respect of the above legislation.

- (13) The appointment of veterinary surgeons, veterinary practitioners or other competent persons as authorised officers for the purposes of the legislation covering animals.
- (14) The determination of fees, in consultation with the Director of Finance and Legal, to accompany applications for licences to keep wild animals.
- (15) In consultation with the Lead for Law and Governance, the power to issue, cancel, amend or transfer a Safety Certificate and a Stand Safety Certificate plus the power to serve notices and make or revoke determinations under Sections 23, 26, 28 and 29 of the Fire Safety and Safety of Places of Sport Act 1987.
- (16) In consultation with the Lead for Law and Governance, to carry out the powers under Section 14 of the Consumer Protection Act 1987 with regard to the issue of Suspension Notices.
- (17) The making of test purchases under Regulation 16 and, in consultation with the Lead for Law and Governance, the service of suspension notices under Regulation 10, of the Construction Products Regulations 1991.



- (18) Duties under Schedule 2 of the European Communities Act 1992 and Environmental Information Regulations 1992 made thereunder by the Secretary of State; the service of compliance notices where Directives issued under Article 100A of the Treaty of Rome are in force with respect to prescribed products.
- (19) Determination of applications for hazardous substances consent; and related powers.
- (20) The determination of applications for approval of heights of chimneys and to the incurring of expenditure under the provisions of Section 95 of the Housing Act, 1964.
- (21) The management of Libraries and Archives Services.
- (22) To undertake the statutory role of the Director of Public Health under the provisions of the National Health Service Act 2006, the Health and Social Care Act 2012, Corona Virus Act 2020, any other relevant legislation, statutory provisions, regulations or guidance issued by the Secretary of State.
- (23) The power to appoint officers for particular purposes including the Proper Officer under the Public Health (Control of Disease) Act 1984, as amended, and regulations made under the Act, and the Public Health Acts 1936 and 1961.
- (24) All matters relating to the administration of funding allocated to Community Forums on the basis of recommendations made by Community Forums.
- (25) Authority to determine any urgent funding applications, following consultation with the Chair and Vice-Chair and Members of the appropriate Community Forums, which cannot reasonably be deferred until the next scheduled meetings of the Community Forums.
- (26) To make amendments to the Community Forum funding criteria following consultation with Community Forum Chairs.

## **Director of Housing and Community Services**

- (1) The general management, regulation and control of the authority's Housing Revenue Account (HRA) dwellings, garages and land held in connection with those dwellings and garages, including: repairs and improvements and new development; the determination of rechargeable repairs; determination of rents and service charges; allocation of properties in accordance with agreed policy and the exclusion from the Council's waiting/transfer list; determination of access over housing land; disposal or demolition of miscellaneous properties and land not declared surplus to requirements and agreement to site communication equipment on housing properties or land.
- (2) Enforcement of the rights of secure tenants, including: succession; assignment; lodgers and sub-letting; right to repair; right to improve; consent to tenant's improvements and claims for compensation arising therefrom up to the value of £3,000 and the reimbursement of tenants' costs for work which is subsequently the subject of capital works schemes.
- (3) To be the Proper Officer for the signing, service and enforcement of the following Notices and/or certificates:
  - Notice to Quit in respect of Garages
  - Notice of Seeking Possession in respect of Secure Tenants (subject to the approval of the Lead for Law and Governance in respect of non-arrears cases)
  - Notices to Quit in respect of non-secure tenants
  - Notices of Proceedings for Possession in respect of introductory tenants
  - Notices under the Landlord and Tenant Acts 1985 and 1987 (as amended)
  - Notices under the Party Wall etc Act, 1996
  - Notices to the Health and Safety Executive under the Construction (Design and Maintenance) Regulations 2007 and 2015
  - Contract Notices relative to the appropriate form of contract for building and property related matters
  - Notices arising from statutory inspections (eg: Gas CP12, Lift Certificates etc)
  - Display Energy Certificates and Energy Performance Certificates
  - Repairs Notices
  - Fire Safety Orders (Risk assessments)
  - Notices under the Environmental Protection Act, 1990 (Statutory Nuisance) and the determination of cases involving injunctions and arrest for anti-social behaviour and annoyance to neighbours
  - Notices under the Energy Act 2013 and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
  - Notices under Sections 11 and 12 of the Housing Act 2004 (hazards in residential premises).
- (4) The administration of, and all decisions relating to, the sale of council houses and flats under Part (V) of the Housing Act, 1985, including the variation of service charges and the release of restrictive covenants placed on sold

council dwellings and the amendment of the discount repayment period following unreasonable delay in the processing of a Right to Buy application.

- (5) Determination of claims for payments, if not already dealt with under the Council's own insurance policies or falling under the powers and duties of the Director of Finance and Legal, including: home loss payments; disturbance payments; well-maintained payments; expenses and claims for damage to personal property and compensation including enhanced compensation, due to a reduced level of deterioration, under the provisions of the Leasehold Reform, Housing and Urban Development Act, 1993; incentive payments and payments from the homelessness prevention fund.
- (6) The establishment, direct provision and/or commissioning of services to vulnerable homeowners, tenants, leaseholders and others including where appropriate partnership working with both internal and external agencies in accordance with Council procedures.
- (7) The exercise of the Council's functions in relation to the Regulatory Reform (Housing Assistance) Order 2002 to provide assistance to: Acquire living accommodation; Adapt or improve living accommodation; Repair living accommodation; Demolish buildings and Construct buildings to include living accommodation.
- (8) The determination and revision of applications for grant assistance for the repair, improvement or adaptation of privately owned dwellings and the exercise of the Council's functions in relation to grants including the determination of such applications outside the existing criteria or cases of contravention of grant conditions involving the reclamation of the grant.
- (9) The addition to or suspension from, and removal as deemed appropriate, of builders, draughtsmen and other technical specialists from any approved list for building contractors, draughtsmen or other technical specialists carrying out building work both in the public or private sectors.
- (10) The making of arrangements for the hearing of appeals from builders, draughtsmen and other technical specialists removed from any approved list for building contractors, draughtsmen and other technical specialists carrying out works both in the public or private sectors.
- (11) The exercise of the Council's functions in relation to: unfit housing, including the making of Demolition and Closing Orders, Prohibition Orders, Emergency Prohibition Orders, Abatement of Overcrowding in Houses in Multiple Occupation and Enforcement of Notices, the carrying out of the works in default of such notices and under Part III of the Building Act, 1984.
- (12) The determination of 'Decision to Institute Legal Proceedings' process to agree cases to be forwarded on to the Lead for Law and Governance with a view to instigating legal proceedings.

- (13) The undertaking of works in default following non-compliance of notices served or court orders obtained under the following legislation:

Building Act 1984  
Housing Act 2004  
Regulatory Reform Act 2002  
Environmental protection Act 1990  
Local Government (Miscellaneous Provisions) Act 1976 and 1982  
Caravan Sites Act 1968  
Caravan Sites and Control of Development Act 1960  
Local Government and Housing Act 1989  
Public Health Acts 1875, 1936 and 1961

- (14) The establishment, periodic review and amendment of:

Deposit Guarantee Scheme to assist tenants to access the private rented sector;  
Private Landlord/Agent Accreditation Scheme to improve property and management standards in the private rented sector;  
Private Rented Property Accreditation Scheme;  
Advisory Property and Rental Property lists to assist tenants to find properties in the private rented sector.

- (15) With the exception of appeals, all other aspects of requests for information under the Access to Personal Files (Housing) Regulations, 1989.
- (16) The determination and grant of licences to occupy pitches on caravan and/or traveller sites and the granting of permission to incoming licensees to pay their deposits by instalments.
- (17) The determination of licence applications where the allocation requested does not fall within the established policy.
- (18) The termination of licences to occupy pitches when the licence conditions are not complied with and/or rent/water rate arrears apply in relation to the occupation of the pitch.
- (19) The making of initial and subsequent donations, as appropriate, up to a maximum sum of £200 per annum, to appropriate bodies, eg: the National Gypsy Council (Romani Kris).
- (20) In consultation with the appropriate Director, the allocation of further suitable properties for the purpose of meeting statutory duties.
- (21) The determination of applications for tenancies of properties where the allocation requested does not fall within the established policy.
- (22) The administration of, and all decisions relating to, the following parts of the Housing Act, 1996, (as amended by the Homelessness Act 2002 and

Localism Act 2011) namely: Conduct of Tenants (Part V); Allocation of Housing Accommodation (Part VI) and Homelessness (Part VII).

- (23) The administration of, and all decisions relating to, the following sections of the Local Government (Miscellaneous Provisions) Act, 1982; namely: Section 29 – Securing of Building and Section 41 (in so far as it relates to housing land or premises) – Lost and Uncollected Property.
- (24) Formal investigations of complaints under the Protection from Eviction Act, 1977.
- (25) Signing, service and enforcement of notices under Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976.
- (26) Issuing and signing Houses in Multiple Occupation Licences pursuant to the Housing Act 2004.
- (27) Administration of functions under the following legislation, any subsequent legislation or Regulations, Orders or statutory guidance:

Accessories and Abettors Act 1861  
Anti-social Behaviour, Crime and Policing Act 2014  
Anti-social Behaviour Act 2003  
Environmental Protection Act 1990  
Counter Terrorism and Security Act 2015  
Crime and Disorder Act 1998  
Cleaner Neighbourhoods and Environment Act 2005  
Equality Act 2010  
Forgery and Counterfeiting Act 1981  
Fraud Act 2006  
Housing Acts 1985, 1988, 1996 and 2004  
Local Government Acts 1972 and 2000  
Noise Act 1996  
Noise and Statutory Nuisance Act 1993  
Police and Criminal Evidence Act 1984  
Police and Justice Act 2006  
Prevention of Social Housing Fraud Act 2013  
Proceeds of Crime Act 2002  
Regulation of Investigatory Powers Act 2000  
Serious Crime Act 2007 and 2015  
Theft Act 1968

## **Director of Public Realm**

- (1) The appointment and appropriate authorisation or empowerment of officers to exercise powers under the legislation detailed below.
- (2) The serving of any notices arising under any of the legislation detailed below.
- (3) The issuing of any licences, registrations or approvals arising under any of the legislation detailed below, together with the withdrawal of such licences, registrations or approvals as appropriate.
- (4) The determination of 'Decision to Institute Legal Proceedings' process to agree cases to be forwarded to the Lead for Law and Governance with a view to instigating legal proceedings.
- (5) The undertaking of works in default, following non-compliance of notice served or court order obtained under relevant legislation detailed below.
- (6) The exercise of the Council's powers and duties under the following Acts or any Orders or Regulations made thereunder.

Allotments Act 1922, 1925 and 1950  
Anti-Social Behaviour, Crime and Policing Act 2014  
Building Act 1984  
Clean Neighbourhoods and Environment Act 2005  
Control of Horses Act 2015  
Countryside Act 1968  
Countryside and Rights of Way Act 2000  
Criminal Damages Act 1971  
Dogs (Fouling of Land) Act 1996  
Education Act 1966  
Environmental Protection Act 1990  
Environment Act 1995  
Health and Safety at Work Act 1974  
Highways Act 1980  
Land Drainage Act 1991  
Litter Act 1983  
Local Government Act 1972  
Local Government (Miscellaneous Provisions) Acts 1976, 1982  
Local Transport Act 2000  
Mines and Quarries Act 1954  
National Parks and Access to the Countryside Act 1949  
New Roads and Street Works Act 1991  
Planning (Hazardous Substances) Act 1990  
Occupiers Liability Acts 1957 and 1984  
Open Spaces Act 1906  
Pollution Prevention and Control Act 1999  
Prevention of Damage by Pests Act 1949  
Public Health Acts 1875, 1925, 1936, 1961  
Refuse Disposal (Amenity) Act 1978

Reservoirs Act 1975  
 Road Safety Act 2006  
 Road Traffic Act 1988 and 1991  
 Road Traffic Reduction Act 1997  
 Road Traffic Regulation Act 1984  
 School Crossing Patrols Act 1953  
 Town and Country Planning Act 1990  
 Town Police Clauses Act 1847  
 Traffic Calming Act 1992  
 Traffic Management Act 2004  
 Transport Acts 1968 and 2000  
 Waste Minimisation Act 1998  
 Water Act 1945, 1973, 1989  
 Water Industry Act 1991  
 West Midlands County Council Act 1980  
 Wildlife and Countryside Act 1981

- (7) The power of appointment of authorised officers for the purposes of entry on to land for inspection of trees under Section 24 of the Local Government (Miscellaneous Provisions) Act, 1976.
- (8) The allocation of allotments.
- (9) The determination of requests by the Wordsley Carnival Committee to use the King George V Park for its annual carnival.
- (10) The determination of requests for the holding of carnivals at Mary Stevens Park.
- (11) The approval, in consultation with the appropriate Cabinet Member, of golf charges submitted by the proprietors of Himley and Sedgley Golf Courses.
- (12) Action under the Control of Horses Act 2015 that enables the Council to protect the public and the environment from the nuisance caused by the practice of abandoned, stray horses and fly grazing on Council owned land or any public place without lawful authority.
- (13) Attachment of street lighting as required to buildings as defined by the Public Health Act 1961.
- (14) Powers and functions under the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010 as Lead Local Flood Authority (LLFA) in relation to local flood risk management.
- (15) Licensing provisions under the Scrap Metal Dealers Act 2013.
- (16) Determine the officer responsible for undertaking the duties and functions of Traffic Manager under the Traffic Manager under the Traffic Management Act 2004.

- (17) The management of the highway network.
- (18) The procurement, maintenance and management of the Council's fleet.
- (19) Civil parking enforcement.
- (20) The management of the Council's car parks.
- (21) The power to declare a building dangerous under Section 77 of the Building Act 1984, and to declare immediate action to be necessary under Section 78 of the Building Act 1984.



## **Director of Regeneration and Enterprise**

- (1) The determination of requests to use, exchange or acquire Council property including common land.
- (2) The determination of requests for a new lease or renewal for operational property in service use.
- (3) The determination of requests for grazing agreements.
- (4) The determination of requests for the use of land for builders' compounds.
- (5) The determination of requests for the use of land for electricity sub-stations.
- (6) The determination of applications for consents required in leases held by the Council.
- (7) The acceptance of valuations in respect of rent review clauses in leases.
- (8) The termination and renewal of leases, licences, tenancies, easements, wayleaves and rights of way.
- (9) The acquisition of properties included in compulsory purchase orders and the payment of compensation in relation thereto.
- (10) The acquisition of properties contained within clearance programmes offered to the Council in advance of the making of a Compulsory Purchase Order.
- (11) All necessary action to recover the possession of Council-owned land which has been occupied without consent or is occupied and used after an interest has terminated.
- (12) Powers relating to the registration of commons.
- (13) The acceptance of valuations, tenders and offers in respect of sales of properties contained within the approved Land Disposals Programme.
- (14) Decisions for the acquisition and disposal of land and property in accordance with the approved Corporate Estate Strategy and any related delegations in the Constitution.
- (15) The instructing of the District Valuer to negotiate for the purchase of properties contained within clearance programmes offered to the Council in advance of the making of a compulsory purchase order.
- (16) The refusal of requests for the erection of security fencing along the boundary of land, subject to the provision that where existing boundary fencing has, in the surveyor's opinion, become dilapidated and beyond economic repair, suitable replacement fencing may be provided in such situations.

- (17) The determination of applications in respect of land and property matters, as set out below:-
- (i) the sale, purchase or exchange of land and property up to a value of £250,000 or where the sale would release the Council from ongoing liabilities or the sale is to an adjacent landowner where a development site exists and there is an opportunity to maximise the overall development.
  - (ii) the exchange of land where the transactional value is neutral and otherwise where the exchange is deemed to be in the best interests of the Council.
  - (iii) domestic and commercial vehicular access agreements.
  - (iv) temporary use and/or licences to occupy land.
  - (v) drainage, gas/electric, etc. easements.
  - (vi) former utility company licences.
  - (vii) the amendment, variation or release of covenants in leases and conveyances.
  - (viii) granting extinguishment or variations of rights, easements, wayleaves or rights of way.
  - (ix) new leases, licences, tenancies, easements, wayleaves and rights of way.
  - (x) requests to site builders compounds and temporary use of Council owned land.
- (18) In consultation with the Cabinet Member for Children and Young People and the Headteacher of the school concerned, the approval/refusal of applications by statutory undertakers for wayleave agreements over land held for Education purposes.
- (19) All matters relating to applications to use the designated entertainment areas in Dudley, Halesowen and Stourbridge Town Centres.
- (20) The instruction of appropriate professional advisors as necessary.
- (21) Responsibility for functions relating to the management of markets and, in consultation with the Cabinet Member for Regeneration and Enterprise, the determination of fees and charges for the markets.
- (22) The determination of requests for the use of reproductions of the watercolour of Dudley Market Place by Louise Rayner.

- (23) The determination, in consultation with the Cabinet Member for Regeneration, and Enterprise, of applications for temporary markets and car boot sales and the fee to be charged.
- (24) The management of Post 16 Skills and Adult Lifelong Learning Services.
- (25) The grant of rights to erect or lease memorials and columbaria in cemeteries and crematoria; the making of agreements for the maintenance by the Council of graves, vaults, tombstones or other memorials; the grant of exclusive rights of burial, and the re-requisition of the same at a suitable re-acquisition price.
- (26) The authorisation of the grant of licences and leases of residential premises located in the Council's cemeteries or crematoria grounds; the waiving of the Council's Rules and Regulations for the management of their cemeteries and crematoria where it is deemed expedient to do so.
- (27) The grant of licences or leases of residential premises located in the Council's cemeteries or crematoria grounds.
- (28) The management and letting of all commercial, retail, industrial and residential (non-Housing Revenue Account) properties.
- (29) Power to authorise any officer to act for the purposes of Part II of the Local Government (Miscellaneous Provisions) Act, 1976;
- (30) In consultation with the appropriate Cabinet Members to:
- prepare proposals and submit funding applications to Black Country Growth Deal/ West Midlands Investment Fund (Combined Authority).
  - accept any offers of grant funding arising from successful submissions of applications and enter into funding agreements as required.
  - enter into partnership and/or back to back legal agreements with external organisations for the delivery of externally funded projects.
- (31) To procure and enter into all contracts necessary for the development, delivery and sale of the new starter homes and market sale homes.
- (32) To undertake reviews of the Community Infrastructure Levy (CIL) Regulation 123 List.
- (33) To approve the revision of the CIL Regulation 123 list following a public consultation exercise and in consultation with the Cabinet Member for Regeneration and Enterprise.

**Director of Housing and Community Services/Director of Regeneration and Enterprise and the Lead for Law and Governance (as appropriate)**

- (1) The acquisition of properties included in Compulsory Purchase Orders and the payment of compensation relating thereto and in respect of unfit houses which are not compulsorily purchased.
- (2) The consideration of claims for home loss or disturbance payments arising under the Land Compensation Act 1973, deciding upon the entitlement to such claims and authorising payment in appropriate cases.
- (3) The disposal of land and interests in land and/or not surplus to requirements and not in excess of 200 square metres in area.
- (4) All necessary action to recover the possession of Council-owned land which has been occupied without consent or which is occupied or used after an interest has been terminated.
- (5) The termination and renewal of leases, licences, easements, wayleaves and rights of way.
- (6) Prosecution for contravention of Notices served under the Housing Act 2004 and any other relevant housing legislation.
- (7) The institution of proceedings under the Protection from Eviction Act 1977.
- (8) The institution of proceedings under the Landlord and Tenant Act 1985.
- (9) The completion of the necessary legal formalities relating to the sale of Council houses and flats under Part V of the Housing Act 1985.
- (10) In consultation with the appropriate Director:
  - (a) the determination of all applications for the waiver of restrictive covenants under the Right to Buy provisions and to give all necessary consents including retrospective consents; and
  - (b) the determination of an appropriate administration fee to be charged for the grant of such consents.
- (11) In consultation with the appropriate Director, dealing with applications for a certificate under Schedule 15 to the Rent Act, 1977.
- (12) Making arrangements for the assignment of shop leases.
- (13) Requests from tenants to buy the freehold of shops.
- (14) Requests from shop tenants to vary the terms of their leases.
- (15) Requests from tenants to undertake alterations to shops.

- (16) The sub-letting of the living accommodation of shops.
- (17) Negotiation and review of rents of shops.
- (18) In consultation with the Cabinet Member for Housing and Community Services, the determination of applications to vary the user clauses in shop leases, following the receipt of the views of ward members and other Officers, as appropriate.
- (19) Requests for wayleaves received from the Midlands Electricity Board or successor companies.
- (20) The release of restrictive covenants in respect of property, other than Council houses, formerly owned by the Council as Local Housing Authority, in consultation with the Director of Finance and Legal and the appropriate Director.
- (21) In consultation with the Director and the appropriate ward members, the institution of legal proceedings in cases where a tenant has signed to accept a tenancy which included the condition not to keep a dog during the period of the tenancy and is in breach of that condition.
- (22) In consultation with the Director, to consider and determine requests to either purchase or rent corner plots of land.
- (23) In consultation with the Director, to consider and determine requests to acquire parts of gardens or outbuildings that are within the boundary of Council dwellings.
- (24) Subject to consultation with ward members and in consultation with the Director, the disposal of shops where the tenant wishes to surrender the lease and the shop will become vacant and shops which are currently vacant and have been vacant for 3 months or longer.
- (25) The authorisation and service of Notices of Seeking Possession, Notices to Quit and recovery of possession, whether arising from rent arrears, breach of tenancy condition or any other reason.
- (26) The institution of proceedings in respect of the breach of the conditions of Houses in Multiple Occupation licences issued pursuant to the Housing Acts.
- (27) To enter into any necessary agreements to facilitate the use of Unmanned Aerial Vehicles/Drones for the purposes of preventing crime and disorder and maintaining public safety and/or for any other purposes that are conducive to or incidental to the discharge of any of the Council's functions.

## **Lead for Law and Governance**

- (1) In consultation with the appropriate Director, the prosecution of persons for the non-compliance of Acts and Regulations.
- (2) All matters relating to Education Appeal and Review Panels, including the appointment of Appeal Panel members and the selection of members to serve on individual admission appeal and exclusion review panels constituted in accordance with the Education Acts.
- (3) The service of notices under the relevant Education Acts.
- (4) The institution of proceedings against parents who fail to secure regular attendance of registered pupils.
- (5) The institution of care proceedings for non-school attendance.
- (6) The institution of proceedings under byelaws.
- (7) In consultation with the Director of Children's Services to bring children before the Court in care proceedings and wardship proceedings.
- (8) In consultation with the Director of Children's Services, the instigation of proceedings before the Court with regard to the adoption of children.
- (9) To take all necessary action relating to the recovery of the charges for provision of services and any other monies owing to the Council, including the enforcement of maintenance orders in respect of looked after children.
- (10) The making of applications to the Magistrates' Court on the recommendation of the relevant Director for orders under Section 77 of the Building Act, 1984.
- (11) The making of applications to the Magistrates' Court for nuisance or prohibition orders where there is non-compliance with abatement notices.
- (12) The institution of any Magistrates' Court proceedings where there is any failure to comply with abatement notices served or with notices served under Section 15(2) of the West Midlands County Council Act 1980 or with court orders obtained.
- (13) The service of requisitions for information under Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976 and any other relevant legislation and the power to commence Magistrates' Court proceedings to ensure compliance with the Act.
- (14) The service of notices under Section 81 of the Building Act, 1984, after consultation with the relevant Director in relation to demolitions.

- (15) The institution of proceedings under the Anti-Social Behaviour Act, 2003 and the Anti-Social Behaviour, Crime and Policing Act 2014 insofar as such proceedings relate to the Council's statutory functions.
- (16) The service of notices under Section 23 of the Local Government (Miscellaneous Provisions) Act, 1976, to take action in respect of dangerous trees and to commence Magistrates' Court proceedings for non-compliance with any such action.
- (17) The institution of Magistrates' Court proceedings after consultation with the appropriate Director where evidence is obtained of a breach of any Act of Parliament or the common law or byelaws.
- (18) The giving of authority on behalf of the Council for persons to represent the Council in Court.
- (19) The provision of all legal and governance services to the Council, the Cabinet, committees and officers, and any action necessary in connection therewith, including the determination of fees rechargeable for the work of the Directorate and the instruction of agents, solicitors, and counsel in appropriate cases.
- (20) Matters relating to the Local Land Charges service, including the revision of fees.
- (21) To consider and, if appropriate, take prosecutions under the provisions of the Social Security Administration (Fraud) Act, 1997.
- (22) The making of applications to the Magistrates' Court for Emergency Prohibition Orders under Section 12 of the Food Safety Act 1990 or under the current Food Hygiene (England) Regulations, and for food condemnation orders under Section 9 of the Food Safety Act 1990.
- (23) The institution of Magistrates' Court proceedings after consultation with the appropriate Director where there is evidence obtained of breach of any Act of Parliament or the common law or byelaws relating to Public Protection.
- (24) The declaration of dog control orders under the Clean Neighbourhoods and Environment Act 2005 after consultation with the appropriate Director.
- (25) In consultation with the appropriate Director to carry out the powers under Section 16 of the Consumer Protection Act, 1987, relating to orders for the forfeiture of goods.
- (26) The prosecution of proceedings in the Magistrates Court for offences under the Health and Safety at Work Act, 1974 that have been instituted by an appointed inspector.

- (27) In consultation with the appropriate Director to carry out the powers under Regulation 12 of the Construction Products Regulations 1991, relating to orders for the forfeiture of construction products.
- (28) The institution of proceedings under the Health Act 2006.
- (29) The making of applications to a Justice of the Peace under Section 45G, 45H, 45I and 45J of the Public Health (Control of Disease) Act 1984 for a Part 2A order concerning health measures in relation to persons, things, premises and groups.
- (30) The termination and the renewal of leases, licences, tenancies, easements, wayleaves and rights of way.
- (31) All necessary action to recover the possession of Council owned land which has been occupied without consent or which is occupied or used after an interest has been terminated.
- (32) To make any necessary and consequential amendments to the Constitution to reflect any ongoing Council restructuring activity, changes in legislative requirements, statutory provisions or associated regulations or guidance.



## **PART 4**

# **RULES OF PROCEDURE**

# **COUNCIL PROCEDURE RULES**

## COUNCIL PROCEDURE RULES

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## 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 the Mayor;
- (iii) elect the Deputy Mayor;
- (iv) receive apologies for absence;
- (v) approve the minutes of the last meeting(s);
- (vi) receive any announcements from the Mayor;
- (vii) elect the Leader (as and when necessary);
- (viii) receive a report from the Leader on the appointment of the Deputy Leader and Cabinet Members;
- (ix) appoint at least one Scrutiny 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;
- (x) agree the scheme of delegation (as set out in [Part 3](#) of this Constitution);
- (xi) approve a programme of meetings for the year;
- (xii) consider any other business set out in the notice convening the meeting;
- (xiii) consider any business not on the agenda which by reason of special circumstances the Mayor is of the opinion should be considered at the meeting as a matter of urgency under the provisions of Section 100B(4) of the Local Government Act, 1972.

### 1.2 Appointment of Committees

The Council will:

- (i) decide the size and terms of reference for Committees;
- (ii) appoint Chairs and Vice-Chairs for Committees;

- (iii) decide the allocation of seats and substitutes to political groups in accordance with the political balance rules; and
- (iv) receive names of Councillors appointed by Political Groups to serve on each Committee.

## 2. ORDINARY MEETINGS

### 2.1 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) receive any apologies for absence.
- (iii) receive any declarations of interest;
- (iv) confirm the minutes of the last meeting as a correct record;
- (v) receive announcements from the Mayor;
- (vi) deal with any business expressly required by statute;
- (vii) receive reports from the Cabinet, Committees and Officers and receive questions and answers on any of those reports;
- (viii) consider any other business specified in the summons to the meeting;
- (ix) consider notices of motion under [Council Procedure Rule 12](#);
- (x) answer questions under [Council Procedure Rule 11](#); and
- (xi) consider any business not on the agenda which by reason of special circumstances the Mayor is of the opinion should be considered at the meeting as a matter of urgency under the provisions of Section 100B(4) of the Local Government Act, 1972.

### 2.2 Ordinary meetings of Committees will:

- (i) choose a person to preside if the Chair and Vice-Chair are absent;
- (ii) receive apologies for absence;
- (iii) receive declarations of interests from members in accordance with the Members' Code of Conduct;
- (iv) confirm the minutes of the last meeting as a correct record;

- (v) receive and consider reports and recommendations and take any action in connection with them;
- (vi) answer questions under [Council Procedure Rule 11.8](#).

### 3. EXTRAORDINARY MEETINGS

#### 3.1 Those listed below may request that Council meetings are called in addition to ordinary meetings:

- (i) the Council by resolution;
- (ii) the Mayor;
- (iii) the Chief Executive or Monitoring Officer; and
- (iv) any five members of the Council if they have signed a requisition presented to the Mayor 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 The Chair of a Committee, the Chief Executive or the Monitoring Officer may call a special meeting of a Committee at any time. A special meeting of a Committee may also be called on the requisition of the required number of members of the committee delivered in writing to the Monitoring Officer. For this purpose, the 'required number' of members shall be equal to the total number of opposition members appointed to the committee concerned. The summons for the special meeting shall set out the business to be considered and no business other than that set out in the summons shall be considered at that meeting.

#### 3.3 The programmed dates and times of meetings, as approved by the Council, will only be changed if the Monitoring Officer is satisfied that exceptional circumstances apply following consultation with the relevant Chair and Vice-Chair (for example due to inclement weather, significant national events or lack of business).

### 4. PETITIONS

#### 4.1 Petitions and memorials shall be submitted to the appropriate Directorate. Petitions will be dealt with in accordance with the Council's Petition Scheme.

#### 4.2 Any petition or memorial relating to a planning application shall be submitted to the Director of Regeneration and Enterprise.

### 5. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES

#### 5.1 Allocation

As well as allocating seats on committees, the Council will allocate seats in the same manner for substitute members.

- 5.2 All Members of each political group are able to serve as substitutes for the Members who are appointed to a Committee in line with the overall political balance. A substitute member shall only be appointed if he/she is otherwise eligible to serve on the body concerned. Any substitute nominated to serve should be notified to the Monitoring Officer prior to the commencement of the meeting in question.

A substitute member shall serve only for the duration of the meeting to which they are appointed as a substitute except in the case of a quasi-judicial body:-

- (a) where a member is required to withdraw for, or cannot attend to hear a particular case, where substitution will be permitted for that particular case.
- (b) where an adjourned meeting is reconvened and it is essential for the substitute member to consider a case to comply with the rules of natural justice. In these circumstances, the substantive member may not attend that part of the meeting other than as an observer.

- 5.3 Substitute members will have all the powers and duties of any ordinary member of the Committee.

- 5.4 Non-elected, non-voting co-opted members shall be entitled to appoint a substitute to represent them at a meeting provided that:

- (a) any substitute should be a representative of the same body that appoints the Co-opted Member;
- (b) the substitute is notified to the Monitoring Officer prior to the commencement of the meeting; and
- (c) the substitute is otherwise eligible to serve at the meeting concerned.

Substitution shall not be permitted for any Co-opted Members who have voting rights.

## 6. TIME AND PLACE OF MEETINGS

### 6.1 Meetings of the Council

Ordinary meetings of the Council will be held at the Council House, Dudley, and will commence at 6.00 p.m.

### 6.2 Meetings of Committees

- (a) Meetings of Committees will be held at the Council House, Dudley, except that:-
  - (i) Community Forums will meet at a venue within their area; and

- (ii) the Monitoring Officer may authorise a meeting to be held at a venue other than the Council House, Dudley.
- (b) Meetings will be held at 6.00 p.m. and will be adjourned by the Chair if the business of the meeting has not been completed by 9.30 p.m., except that:-
  - (i) meetings of Community Forums will commence at 6.30 p.m; and
  - (ii) the Monitoring Officer may authorise meetings to commence at times other than 6.00 p.m.

## 7. NOTICE OF AND SUMMONS TO MEETINGS

### 7.1 Meetings of the Council

Public Notice of meetings will be given in accordance with the [Access to Information Procedure Rules](#). At least five clear working days before a meeting a summons signed by the Chief Executive will be sent to every Member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

### 7.2 Meetings of Committees

The provisions set out in Rule 7.1 above apply to meetings of Committees except that the summons for such meetings must be sent to the Members appointed to the Committee.

## 8. CHAIR OF MEETING

A person presiding at a meeting may exercise any lawful powers or duties of the Chair.

## 9. QUORUM

The quorum of a meeting of the Council will be one quarter of the whole number of members; and for a Committee the quorum will be one quarter of the whole number of members or three, whichever is the larger. During any meeting if the Chair counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.



## 10. DURATION OF MEETING OF THE COUNCIL

### 10.1 Interruption of the meeting

If the business of the meeting has not been concluded by 9.30 p.m. the Mayor will interrupt the meeting and call for the vote immediately on the item under discussion. The vote will then be taken in the usual way without any further discussion.

### 10.2 Reports, recommendations and questions not dealt with

- (a) If there are reports or recommendations on the agenda that have not been dealt with by 9.30 p.m. they are deemed formally moved and seconded. No speeches will be allowed on these items and the vote will be taken in the usual way.
- (b) Any questions under [Rule 11](#) that have not been dealt with in the time period allowed or by 9.30pm shall be either addressed in writing to the relevant portfolio holder or raised at the next ordinary meeting of the Council.

### 10.3 Recorded or named vote

If a recorded or named vote is called for during this process it will be taken immediately.

### 10.4 Motions which may be moved

During the process set out in Rules 10.1 – 10.3 above, the only other motions which may be moved are that a matter be withdrawn.

### 10.5 Close of the meeting

When all reports and recommendations have been dealt with, the Mayor will declare the meeting closed.

## 11. QUESTIONS BY MEMBERS

### Questions at Full Council Meetings

- 11.1 At ordinary Council meetings, Members will be invited by the Mayor to address questions to the Leader, Cabinet Members and Chairs as appropriate. The total time period allowed for questions shall be one hour. Council Procedure Rules may be suspended in appropriate circumstances.
- 11.2 Questions must relate to a matter for which the Council has powers or duties or which affect the Borough. Questions should not relate to subjects that are covered by other agenda items or which relate to individual items of casework. Questions will be dealt with individually, however, Members may be invited to ask more than one question during the meeting.

- 11.3 Members may submit written questions in advance by giving at least two clear working days' notice to the Monitoring Officer before the date of the ordinary meeting of the Council. Written questions may also be submitted to a Member who is appointed by the Council to a Joint Authority or a Joint Committee. The same notice period applies. Written questions will be dealt with first, in the order of receipt, followed by any verbal questions raised at the meeting. All questions, and the answers to them, shall be stated verbally at the Council meeting.
- 11.4 The time limit on all individual contributions by Members when asking questions and/or providing responses shall be two minutes.
- 11.5 If the Member to whom a question is addressed is absent, the Leader, Deputy Leader, Vice-Chair or another Member will be asked to reply as appropriate.
- 11.6 Before calling on the appropriate Chair to reply, the Mayor may invite the Leader or relevant Cabinet Member to comment on the question.
- 11.7 Immediately after a reply is given to a question, the Member who asked the original question will be invited to ask one supplementary question if they wish. The supplementary question must relate to the original question or the answer to it. Any written replies to questions will be made available to all Members of the Council.

#### Questions at Committees

- 11.8 If two clear days' notice in writing has been given to the Monitoring Officer, a Member appointed to serve on a specific Committee may ask the Chair any question on any matter falling within the functions of that Committee.

## 12 NOTICES OF MOTION

### 12.1 Notice

Except for motions which can be moved without notice under [Rule 13](#), written notice of every motion, signed by a Member of the Council, must be delivered to the Monitoring Officer at least seven clear working days before the date of the meeting of the Council.

### 12.2 Motion set out in agenda

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

### 12.3 Less than seven clear working days' notice

Where the notice of motion has been given less than seven clear working days before the next Council meeting, the Monitoring Officer shall, subject to Rules 12.2

and 12.7, insert the Notice in the summons for the next but one ordinary meeting of the Council.

#### 12.4 Motions treated as withdrawn

If the Member who gave the notice of motion or some other Member does not move it at the Council meeting at which it is set out in the agenda it shall be treated as withdrawn.

#### 12.5 Moving of notice of motion and time limits

A notice of motion shall be moved and seconded before being discussed by the Council. The time allowed by the Mayor to deal with all notices of motion on the agenda shall not exceed 30 minutes and any notice of motion not disposed of shall stand referred to the next ordinary meeting of the Council to be included in the summons for that meeting in accordance with Rule 12.2.

#### 12.6 Scope

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

#### 12.7 Invalid notices of motion

In the event of any notice of motion:-

- (a) being out of order;
- (b) containing reflections or imputations upon the conduct of any Member or officer of the Council or otherwise being of a personal or objectionable nature;
- (c) appertaining to any item of business included in a recommendation of the Cabinet, a Cabinet Member, a Committee or an Officer to the meeting at which it was intended that the motion would be dealt with; or
- (d) appertaining to the same matter as an earlier notice of motion which will be included in the same summons;

the Monitoring Officer will immediately bring it to the attention of the Mayor and the Mayor may instruct the Monitoring Officer to exclude it from the summons or, with the advice of the Monitoring Officer, alter it to bring it into due form.

The Monitoring Officer will inform the Member of the Council giving notice of the Mayor's decision.

### 13. MOTIONS WITHOUT NOTICE

The following motions may be moved without notice:

- (a) to appoint a Chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to receive reports or adopt recommendations of the Cabinet, member of the Cabinet, Committee or officers and any resolutions following from them;
- (e) to establish Committees and appoint members, Chairs and Vice-Chairs to them at the Annual Meeting of the Council and any consequent resolutions;
- (f) to determine the dates for ordinary meetings of the Council and of Committees at the Annual Meeting of the Council and any consequent resolutions;
- (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 meeting;
- (l) to suspend a particular Council Procedure Rule;
- (m) to exclude the public and press in accordance with the Access to Information Procedure Rules;
- (n) to not hear further a member named under Rule 20.3 or to exclude them from the meeting under Rule 20.4; and
- (o) to give the consent of the Council where its consent is required by this Constitution.

## 14. RULES OF DEBATE

### 14.1 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.

### 14.2 Right to require motion in writing

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

### 14.3 Secunder's speech

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

### 14.4 Content and length of speeches

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech, including a right of reply under [Rule 14.9](#), may exceed 5 minutes.

### 14.5 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) to speak once on an amendment moved by another member;
- (b) to move a further amendment if the motion has been amended since he/she last spoke;
- (c) if his/her first speech was on an amendment, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (d) in exercise of a right of reply; and
- (e) on a point of order.

### 14.6 Amendments to motions

- (a) 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.

- (b) 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; provided that the Chair may permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of business and

may direct the order in which such amendments are to be put to the meeting.

- (c) If a motion or an amendment is not carried, other motions or amendments to the original motion may be moved on the original subject matter under discussion or motion.
- (d) 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.

#### 14.7 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.

#### 14.8 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.

#### 14.9 Right of reply

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- (b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- (c) The mover of the amendment has no right of reply to the debate on his or her amendment.

#### 14.10 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) that the question be now put;
- (d) to adjourn a debate;
- (e) to adjourn a meeting;
- (f) to exclude the public and press in accordance with the [Access to Information Procedure Rules](#); and
- (g) to not hear further a member named under [Rule 20.3](#) or to exclude them from the meeting under [Rule 20.4](#).

#### 14.11 Closure motions

- (a) A member may move, without comment, the following motions at the end of a speech of another member:
  - (i) that the question be now put;
  - (ii) to adjourn a debate; or
  - (iii) to adjourn a meeting.
- (b) If a motion that the question be now put is seconded and the Chair 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 or any amendment to the vote.
- (c) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chair 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.

#### 14.12 Point of order

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

### 15. PREVIOUS DECISIONS AND MOTIONS

#### 15.1 Motion to rescind a previous decision

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least ten members from at least two political groups.

#### 15.2 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 ten members from at least two political groups. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

### 16. VOTING

#### 16.1 Majority

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

#### 16.2 Chair's casting vote

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

#### 16.3 Method of Voting

Unless a named vote is demanded under Rule 16.4 the Chair will take the vote by show of hands, use of electronic voting or if there is no dissent, by the affirmation of the meeting.

#### 16.4 Named vote

If six members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be entered into the minutes. A named vote will also be taken if this is required by any statutory provision (eg: on a vote concerning the setting of the Council Tax).

#### 16.5 Right to require individual vote to be recorded in the minutes

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

#### 16.6 Voting on appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person



with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

## 17. MINUTES

### 17.1 Signing the minutes

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

### 17.2 No requirement to sign minutes of previous meeting at extraordinary meeting

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

## 18. RECORD OF ATTENDANCE

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

## 19. EXCLUSION OF PUBLIC

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure 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 full Council they must stand and address the Mayor. If more than one member stands, the Mayor 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. Members shall speak of each other in Council during transaction of business by the respective titles of "Mayor" or "Councillor".

### 20.2 Mayor standing

When the Mayor 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 Chair by behaving irregularly, improperly or offensively or deliberately obstructs business, the Chair may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

#### 20.4 Member to leave the meeting

If the member continues to behave improperly after such a motion is carried, the Chair 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 Chair 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 Chair will warn the person concerned. If they continue to interrupt, the Chair 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 Chair 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 16.5](#) and [17.2](#) may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

#### 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

All of the Council Rules of Procedure apply to meetings of full Council. None of the rules apply to meetings of the Cabinet. Only Rules 2.2, 3.2, 5-9, 11-22, 24.3, 24.4 and 25 (but not Rules 20.1 and 20.2) apply to meetings of committees.

## 24. GENERAL

### 24.1 Declaration of Interests by Members

- 24.1.1 Members shall be required to declare interests in accordance with the Members' Code of Conduct. The Code also makes provisions for dispensations in appropriate circumstances.
- 24.1.2 Members must disclose and withdraw from participating in respect of any matter in which they have a disclosable pecuniary interest. Members must make a verbal declaration of the existence and nature of any disclosable pecuniary interest at any meeting where an item of business which affects or relates to the subject matter of that interest is under consideration. The interest must be disclosed at or before the consideration of the item or as soon as the interest becomes apparent.
- 24.1.3 In addition, if Members attend a meeting at which any item of business is to be considered and they have a non-disclosable pecuniary interest or a non-pecuniary interest in the item, they must make a verbal declaration of the existence and nature of the interest at or before the consideration of the item or as soon as the interest becomes apparent. Members should then withdraw from the meeting if necessary taking account of the provisions set out in paragraph 24.1.4 below.
- 24.1.4 Members must declare interests and withdraw from business in appropriate circumstances where:
- A decision on a matter might reasonably be regarded as affecting the wellbeing or financial standing of the Member or a member of his/her family or a person with whom the Member has a close association to a greater extent than it would affect the majority of the Council Tax Payers or inhabitants of the ward or the Council's area; or
  - It relates to or is likely to affect any of the disclosable pecuniary interests but in respect of a member of the Member's family (other than a relevant person defined in the Appendix to the Members' Code of Conduct) or a person with whom he/she has a close association.

## 24.2 Declarations of interests by officers

- 24.2.1 The Monitoring Officer shall record the particulars of any notice given by an officer of the Council under Section 117 of the Local Government Act, 1972, of a pecuniary interest in a contract and records shall be open during office hours to the inspection of any member of the Council.

## 24.3 Responsibilities of officers

- 24.3.1 Where a matter falls to be determined by the Chief Executive, the Deputy Chief Executive or by a Director, then that matter may be determined by the Chief Executive, the Deputy Chief Executive, a Director or by any other senior officer who is duly authorised in writing to determine such a matter.

## 24.4 Motions affecting persons employed by the Council

If at a meeting of the Council matters relating to the appointment, promotion, dismissal, salary, superannuation or conditions of service, or the conduct of any person employed by the Council, are or are likely to be under discussion the Mayor shall forthwith call upon the Council to decide whether or not the power of exclusion of the public under Section 100A of the Local Government Act, 1972 shall be exercised.

## 24.5 Declarations of Relationship

Every member and employee of the Council shall disclose to the Monitoring Officer any relationship known to them to exist between them and any person whom they know is a candidate for an appointment under the Council. A candidate shall be deemed to be related to a member or employee of the Council if they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of the member or employee of the Council; or of the partner of such persons.

## 24.6 Other Matters

No person shall smoke in the room where any meeting is taking place. This includes the use of electronic cigarettes or similar.

The public proceedings of full Council meetings shall be recorded and broadcast on the Council's internet site. This is, however, subject to the Mayor (or the person presiding) having the discretion to terminate or suspend the web cast if he/she is of the opinion that continuing to web cast would, in any way, prejudice the conduct of the Council's business. Recordings of the full Council meeting will be made by using the fixed audio/visual equipment in the Council Chamber as authorised by the Council.

The Council has no objection to recording, filming, photography, use of social media, blogging or any similar electronic facilities during any meetings to which the public have access provided that the use of any equipment does not disrupt the meeting or the lawful transaction of business.

25. INTERPRETATION OF COUNCIL PROCEDURE RULES

The ruling of the Mayor or Chair of a Committee as to the construction or application of any of these Council Procedure Rules, or as to any proceedings of the Council or Committee, shall not be challenged at any meeting of the Council or Committee.

# **ACCESS TO INFORMATION PROCEDURE** **RULES**

## ACCESS TO INFORMATION PROCEDURE RULES

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## **Access to Information Procedure Rules**

### **1. Scope**

These rules apply to all meetings of the Council, Scrutiny Committees, the Audit and Standards Committee, regulatory committees and meetings of the Cabinet (together called meetings).

### **2. Additional Rights to Information**

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

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

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

### **4. Notice of Meeting**

The Council will give at least five clear working days notice of any meetings by publishing the agenda and any reports to be considered at the meeting concerned. The agenda and public reports will be published on the Council's website.

### **5. Access to Agenda and Public Reports Before the Meeting**

The Council will make the agenda and public reports available for inspection at the Council House during normal office hours and on the website at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be made available from the time the item was added to the agenda.

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

The Council will supply copies of:

- (a) the agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Monitoring Officer thinks fit, 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 Documents After the Meeting**

The Council will make the following available for a minimum of six years after a meeting:

- (a) the agenda for the meeting;
- (b) all reports relating to items when the meeting was open to the public;
- (c) the minutes of the meeting excluding any part of the minutes which might disclose exempt or confidential information.

## **8. Background Papers**

### **8.1 List of Background Papers**

The Monitoring Officer will ensure that every report sets out 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 and in respect of Cabinet reports, the advice of a political advisor.

### **8.2 Public Inspection of Background Papers**

The Council will make background documents available for public inspection for a minimum of four years after the date of the meeting.

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

### **9.1 Confidential Information - Requirement to Exclude the Public**

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

## 9.2 Exempt Information - Discretion to Exclude the Public

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

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

## 9.3 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.

## 9.4 Meaning of Exempt Information

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

**(NB: Paragraph numbers of the categories mirror those contained in Schedule 12A to the Local Government Act 1972)**

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

Category	Qualifications/Definitions
1. Information relating to any individual.	
2. Information which is likely to reveal the identity of an individual.	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Information is not exempt information if it is required to be registered under –  (a) the Companies Act 1985; (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992; (d) the Industrial and Provident Societies Acts 1965 to 1978; (e) the Building Societies Act 1986; or (f) the Charities Act 1993.

	<p>‘financial or business affairs’ includes contemplated, as well as past or current activities.</p> <p>‘registered’ in relation to information required to be registered under the Building Societies Act 1986 means recorded in the public file of any building society (within the meaning of that Act)</p>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	<p>‘employee’ means a person employed under a contract of service</p> <p>‘labour relations matter’ means –</p> <p>(a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</p> <p>(b) any dispute about a matter falling within paragraph (a) above;</p> <p>and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>‘office-holder’, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority.</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	

<p>6. Information which reveals that the authority proposes -</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p>	
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	

Information falling within any of the above categories is not exempt if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

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

- 10.1 If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which the meeting is likely not to be open to the public. Such reports will be marked "Not for Publication" together with the category of information likely to be disclosed.
- 10.2 The Council will give 28 clear days notice of the intention to take an executive decision in private session. If the 28 clear days notice cannot be complied with (eg: in cases of urgency), then an executive decision may only be taken in private session with the approval of the Chair of the appropriate Scrutiny Committee (or the Mayor/Deputy Mayor in his/her absence). Notice will be given as to why the matter is urgent and cannot reasonably be delayed.

## 11. **Definition of a Key Decision**

A Key Decision means an executive decision which is likely –

- To result in the Council incurring expenditure or the making of savings of £250,000 or more (revenue or capital); or
- To be significant in terms of its effects on communities living or working in two or more wards in the Borough.

## **12. The Forward Plan**

### **12.1 Period of Forward Plan**

The Forward Plan will be prepared to comply with the ongoing requirement to give at least 28 clear days notice of the making of Key Decisions.

### **12.2 Contents of Forward Plan**

The Forward Plan will contain matters which will be the subject of a Key Decision to be taken by the Cabinet, individual Cabinet Members, Officers, or under joint arrangements in the course of the discharge of an executive function. It will also include any executive decisions that are to be considered in private session.

The Forward Plan 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 Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

## **13. General Exception – Key Decisions Not Included in the Forward Plan**

If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 14 (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;
- (b) the Monitoring Officer has informed the Chair of the relevant Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter on which the decision is to be made;

- (c) the Monitoring Officer has given notice to the public at the offices of the Council and on the Council's Website; and
- (d) at least 5 clear working days have elapsed following the day on which the Monitoring Officer gave notice as referred to above.

#### **14. Special Urgency – Key Decisions Not Included in the Forward Plan**

14.1 Where it is impracticable to comply with Rule 13, a Key Decision can only be taken if the decision maker obtains the agreement of the Chair of the relevant Scrutiny Committee that the taking of the Key Decision cannot be reasonably deferred. If there is no Chair of a relevant Scrutiny Committee or if the Chair of the relevant Scrutiny Committee is unable to act, then the agreement of the Mayor or in his/her absence the Deputy Mayor will suffice.

14.2 As soon as reasonably practicable after the decision taker has obtained agreement that the decision is urgent and cannot reasonably be deferred, the decision taker must give notice at the offices of the Council and on the Council's website setting out the reasons why the Key Decision is urgent and cannot reasonably be deferred.

#### **15. Report to Full Council – Non-Compliance with these Rules**

15.1 When a Scrutiny Committee can require a report

If a Scrutiny Committee thinks that any decision has been taken which was not in accordance with these Procedure Rules, the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The Monitoring Officer may also require a report to be submitted to the Council on behalf of the Committee in appropriate circumstances.

15.2 Cabinet's Report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. The report to the Council will set out particulars of the decision, the individual or body making the decision and the reasons for compliance or non-compliance with these Procedure Rules.

15.3 Reports to the Council on Special Urgency Decisions

Details of all executive decisions taken under the special urgency provisions will be reported to the Council. This report will include the particulars and a summary of the matters in respect of which those decisions were taken.

## **16. Decisions by Individual Members of the Cabinet and Key Decisions Taken by Officers**

### **16.1 Decision Sheets**

Where a decision is to be made by an individual Cabinet Member, or a Key Decision is to be made by an Officer, a draft decision sheet outlining the proposals will be published at least five clear working days before the date on which the decision is to be taken. The draft Decision Sheet will be published on the Internet subject to the restrictions on the publication of any confidential or exempt information.

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a Key Decision has been taken by an officer, the final Decision Sheet will be published on the Internet. This will include a statement of the reasons for the decision and any alternative options considered and rejected. The decision shall then be subject to the Call-In process as set out in the [Scrutiny Committee Procedure Rules](#).

## **17. Scrutiny Committee's Access to Documents**

### **17.1 Rights to Copies**

A Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet, or
- (b) any decision taken by an individual member of the Cabinet.

### **17.2 Limit on Rights**

A 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.

Where a decision is made that a member of a Scrutiny Committee is not entitled access to a document, or part of it, a written statement will be given to the member setting out the reasons for such a decision.

The rights for Scrutiny Committees conferred by this Rule are in addition to any other rights that any member of the Council may have to access information or to inspect documents.

## **18. Additional Rights of Access For Members**

### **18.1 Material relating to previous business**

All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet and contains material relating to any business previously transacted unless either (a) or (b) below applies:-

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

### **18.2 Material Relating to Decisions**

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



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

## BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

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#### Rule

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2. [Process for developing the framework.](#)
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5. [In-year changes to policy framework.](#)
6. [Call-in of decisions outside the budget or policy framework.](#)

## BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

### 1. The framework for Cabinet decisions

The Council will be responsible for the adoption of its budget and policy framework as set out in [Article 4](#). Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

### 2. Process for developing the framework

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

- (a) The Cabinet will publicise by including in the forward plan a timetable for making proposals to the Council for the adoption of any plan, strategy or budget that forms part of the budget and policy framework, and its arrangements for consultation after publication of those initial proposals. The Chairs of Scrutiny Committees will also be notified. Each Scrutiny Committee will be formally consulted on budget proposals and the appropriate Scrutiny Committee will be formally consulted on plans and strategies that are relevant to their terms of reference. The consultation period shall in each instance be not less than 6 weeks.
- (b) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses to that consultation. If a relevant Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. As the Scrutiny Committees have responsibility for fixing their own work programme, it is open to the Scrutiny Committee to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Cabinet will take any response from a Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- (c) Once the Cabinet has approved the firm proposals, the Director of Finance and Legal will refer them at the earliest opportunity to the Council for decision.

#### Policy Framework

- (d) In reaching a decision on the policy framework, the Council may adopt the Cabinet's proposals, amend them, refer them back to the Cabinet for further consideration, or in principle, substitute its own proposals in their place.

- (e) If it accepts the recommendation of the Cabinet without amendment on the policy framework, the Council may make a decision which has immediate effect. Otherwise, it may only make an in-principle decision. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.
- (f) The decision on the policy framework will be publicly available and a copy shall be given to the Leader.
- (g) An in-principle decision on the policy framework will automatically become effective 5 working days from the date of the Council's decision, unless the Leader informs the Monitoring Officer in writing within 5 working days that he/she objects to the decision becoming effective and provides reasons why.
- (h) In that case, the Monitoring Officer will call a Council meeting within a further 5 working days. The Council will be required to re-consider its decision on the policy framework and the Leader's written submission within 10 working days of receipt of the Leader's written objection. The Council may
  - (i) approve the Cabinet's recommendation by a simple majority of votes cast at the meeting; or
  - (ii) approve a different decision which does not accord with the recommendation of the Cabinet by a simple majority.
- (i) The decision shall then be made public and shall be implemented immediately.

### The Budget

- (j) Subject to paragraph 2(n), where, before the 8th February in any financial year, the Cabinet submits to the Council for its consideration in relation to the following financial year –
  - (i) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of Sections 32 – 37 or 43 – 49 of the Local Government Finance Act 1992;
  - (ii) estimates of other amounts to be used for the purposes of such a calculation;
  - (iii) estimates of such a calculation; or

- (iv) amounts required to be stated in a precept under Chapter 4 of Part I of the Local Government Finance Act 1992,

and following consideration of those estimates or amounts, the Council has any objections to them, it must take the action set out in paragraph 2(k).

- (k) Before the Council makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph 2(j)(i), or issues a precept under Chapter 4 of Part I of the Local Government Finance Act 1992, it must inform the Leader of any objections which it has to the Cabinet's estimates or amounts, and must give him instructions requiring the Cabinet to reconsider, in light of those objections, those estimates and amounts in accordance with the Council's requirements.
- (l) Where the Council gives instructions in accordance with paragraph 2(k), it must specify a period of at least five working days beginning on the day after the date on which the Leader received the instructions on behalf of the Cabinet, within which the Leader may
  - (i) submit a revision of the estimates or amounts as amended by the Cabinet which have been reconsidered in accordance with the Council's requirements, with the Cabinet's reasons for any amendments made to the estimates or amounts, to the Council for its consideration; or
  - (ii) inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.
- (m) When the period specified in paragraph 2(l) has expired, the Council must, when making calculations (whether originally or by way of substitute) in accordance with the Sections referred to in paragraph 2(j)(i), or issuing a precept under Chapter 4 of Part I of the Local Government Finance Act 1992, take into account –
  - (i) any amendments to the estimates or amounts that are included in any revised estimates or amounts;
  - (ii) the Cabinet's reasons for those amendments;
  - (iii) any disagreement that the Cabinet has with any of the Council's objections; and
  - (iv) the Cabinet's reasons for that disagreement:

which the Leader submitted to the Council, or informed the Council of, within the period specified.

- (n) Paragraphs 2(j) –(m) shall not apply in relation to –
  - (i) calculations or substitute calculations which the Council is required to make in accordance with Section 52(I), 52(J), 52(T) or 52(U) of the Local Government Finance Act 1992; and
  - (ii) amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with Section 52(J) or 52(U) of that Act.

### **3. Decisions outside the budget or policy framework**

- (a) The Cabinet, Committees of the Cabinet, individual Cabinet Members and any officers, or joint arrangements discharging executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to paragraph 4 below.
- (b) If the Cabinet, Committees of the Cabinet, individual Cabinet Members and any officers, or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the Chief Executive, Monitoring Officer and 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 any 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**

- (a) The Cabinet, a Committee of the Cabinet, an individual Cabinet Member 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 full Council if the decision is a matter of urgency. However, the decision may only be taken:

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

The reasons why it is not practical to convene a quorate meeting of full Council and the Chair of the relevant Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chair of a relevant Scrutiny Committee the consent of the Mayor, and in the absence of both, the Deputy Mayor, will be sufficient.

- (b) 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 policy framework lies with the Council, and decisions by the Cabinet, a Committee of the Cabinet, an individual Cabinet Member 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 those changes:

- (a) which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;
- (c) in relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration;
- (d) which relate to policy in relation to schools, where the majority of school governing bodies agree with the proposed change.

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

- (a) Where a 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 Chief Executive, Monitoring Officer and Chief Finance Officer.

- (b) In respect of functions which are the responsibility of the Cabinet, the Monitoring Officer's report and/or Chief Finance Officer's report shall be to the Cabinet with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take in respect of the Monitoring Officer's report 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 Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
- (c) 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 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 meet within 10 working days of the request by the Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the 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 Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer or Chief Finance Officer.



# **CABINET PROCEDURE RULES**

## CABINET PROCEDURE RULES

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# **CABINET PROCEDURE RULES**

## **1. HOW DOES THE CABINET OPERATE?**

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

The arrangements for the discharge of Cabinet functions are set out in the Constitution adopted by the Council. If they are not set out in the Constitution, then the Leader may decide how they are to be exercised. In either case, the Leader may provide for executive functions to be discharged by:

- i) the Cabinet as a whole;
- ii) an individual Cabinet Member;
- iii) an officer;
- iv) joint arrangements; or
- v) another local authority.

### **1.2 Scheme of Delegation**

- (a) At the annual meeting of the Council, the Leader will present a report on the Council's Constitution, including the scheme of delegation set out at [Part 3](#) to this Constitution.
- (b) Subject to (c) below the Council's scheme of delegation will be adopted by the Council.
- (c) The Leader may amend the scheme of delegation relating to executive functions at any time during the year. The Leader must give written notice to the Monitoring Officer. 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 Cabinet as a whole. A decision sheet will be prepared on proposed amendments to the scheme of delegation. The Leader of the main opposition group will be notified of any proposed changes before a decision is made by the Leader.

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

- (a) Where the Cabinet or a Cabinet Member is responsible for a function, they may delegate this further to an officer or under joint arrangements.

- (b) Unless the Council directs otherwise, if functions are delegated to the Cabinet, then the Cabinet may delegate further to a Cabinet Member, an officer or under joint arrangements.
- (c) Even where Cabinet functions have been delegated, that fact does not prevent the discharge of the delegated functions by the person or body who delegated them.

#### 1.4 **Conflicts of Interest**

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in [Part 6](#) of this Constitution.
- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in [Part 6](#) of this Constitution.
- (c) If a Cabinet function has been delegated to an individual Cabinet 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 6](#) of this Constitution.

#### 1.5 **Cabinet meetings – when and where?**

The Cabinet will meet in accordance with a calendar of meetings agreed by the Council. Additional meetings may be called by the Leader, the Chief Executive or Monitoring Officer as required. The Cabinet shall meet at Dudley Council House or another location to be agreed by the Leader.

The programmed dates and times of meetings, as approved by the Council, will only be changed if the Monitoring Officer is satisfied that exceptional circumstances apply following consultation with the Leader and Deputy Leader (for example due to inclement weather, significant national events or lack of business).

#### 1.6 **Public or private meetings of the Cabinet?**

- (a) Meetings of the Cabinet will be held in public except where the Cabinet is considering confidential or exempt items as defined in the [Access to Information Procedure Rules](#) in [Part 4](#) of this Constitution.
- (b) Each of the other political groups on the Council may nominate members from their group to attend meetings of the Cabinet. Such members may speak at the meeting, but may not vote.

## 1.7 **Quorum**

The quorum for a meeting of the Cabinet shall be one quarter of the total number of members of the Cabinet (including the Leader) or 3 including the Leader, whichever is the larger.

## 1.8 **How are decisions to be taken by the Cabinet?**

Decisions which have been delegated to the Cabinet will be taken at a meeting convened in accordance with the [Access to Information Procedure Rules](#) in [Part 4](#) of the Constitution.

## 2. **HOW ARE CABINET MEETINGS CONDUCTED?**

### 2.1 **Who presides?**

If the Leader is present he/she will preside. In his/her absence, the Deputy Leader will preside. In the absence of the Leader and Deputy Leader, then another Cabinet Member shall be appointed to preside for the duration of that meeting only.

### 2.2 **What business?**

At each meeting of the Cabinet 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 Cabinet (whether by a Scrutiny Committee or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the [Scrutiny Committee Procedure Rules](#) or the [Budget and Policy Framework Procedure Rules](#) set out in [Part 4](#) of this Constitution;
- iv) consideration of reports from Scrutiny Committees; and
- v) matters set out in the agenda for the meeting published in accordance with the [Access to Information Procedure Rules](#) set out in [Part 4](#) of this Constitution.

### 2.3 Consultation

All reports to the Cabinet from any Cabinet Member 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 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.

### 2.4 Who can put items on the Cabinet agenda?

- (a) The Leader may put any item on the agenda for any Cabinet meeting.
- (b) Any Cabinet Member may require the Monitoring Officer to make sure that an item is placed on the agenda of the next available meeting of the Cabinet for consideration.
- (c) The Monitoring Officer will make sure that an item is placed on the agenda of the next available meeting of the Cabinet where a relevant Scrutiny Committee or the full Council have resolved that an item be considered by the Cabinet.
- (d) The Chief Executive, the Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting. The Monitoring Officer shall require a meeting to be called in pursuance of his/her statutory duties. In other circumstances, where the Chief Executive, Chief Finance Officer or Monitoring Officer is of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision, they may include an item on the agenda of a Cabinet meeting. If there is no meeting of the Cabinet 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.

### 2.5 Questions

- (a) If two clear days notice in writing has been given to the Monitoring Officer, a Member of the Cabinet, or an opposition Spokesperson appointed to attend meetings of the Cabinet may ask the Chair any question on any matter falling within the functions of the Cabinet.
- (b) Every question of which notice has been given under Rule 2.5 shall be put and answered without discussion.

# **SCRUTINY COMMITTEE PROCEDURE RULES**

## **Scrutiny Committee Procedure Rules**

### **1. Appointment and Terms of Reference**

The Council will appoint the following Scrutiny Committees with the terms of reference set out in Table 1 attached to these Rules:

- Future Council Scrutiny Committee
- Children and Young People Scrutiny Committee
- Health and Adult Social Care Scrutiny Committee
- Housing and Public Realm Scrutiny Committee

### **2. Members of Scrutiny Committees**

All Councillors (except Cabinet Members) may be members of Scrutiny Committees. The Council may also decide to appoint non-elected co-opted Members.

Scrutiny Committees have the discretion to invite specialist/key contacts to advise the Committee, attend or speak at meetings depending on the specific topics under discussion.

### **3. Education representatives**

The membership of the Children and Young People Scrutiny Committee will include the following voting co-opted representatives:

- 1 Church of England diocese representative
- 1 Roman Catholic diocese representative
- 3 parent governor representatives.

These representatives are entitled to speak on all agenda items. They are however, only entitled to vote or exercise the right of call-in on items concerning education functions of the Council.

### **4. Meetings of Scrutiny Committees**

Ordinary meetings of Scrutiny Committees will be held on the dates and times in the calendar approved by the Council. The dates and times of Ordinary meetings will not be changed unless the Monitoring Officer, following consultation with the Chair and Vice-Chair of the relevant Committee, is satisfied that exceptional circumstances apply (for example due to inclement weather, significant national events or lack of business).

Additional Scrutiny Committee meetings may be called by the Chair of the relevant Scrutiny Committee, the Monitoring Officer or the 'required number' of Councillors appointed to the Committee. The 'required number'



of Councillors shall be equal to the total number of opposition group Councillors appointed to the Scrutiny Committee concerned.

5. **Quorum**

The quorum for a Scrutiny Committee is one quarter of the total number of Councillors appointed to the Committee or three Councillors, whichever is the larger.

6. **Chairs and Vice-Chairs of Scrutiny Committees**

Chairs and Vice-Chairs will be appointed by the full Council.

The Chairs and Vice-Chairs of Scrutiny Committees will meet together on a programmed basis. The purpose of these meetings is:

- To co-ordinate the Council's Overview and Scrutiny functions under the Local Government Act 2000, any subsequent legislation, regulations or statutory guidance.
- To co-ordinate the Council's involvement in scrutiny arrangements at local and regional levels.
- To monitor the activities of Scrutiny Committees to avoid duplication and ensure liaison on cross-cutting issues.
- To achieve continuous improvement and discuss ways to strengthen scrutiny across the Council, including any training and development requirements for Members.
- To encourage effective partnership working and community involvement in the Overview and Scrutiny functions of the Council.

Scrutiny Chairs and Vice-Chairs will meet in a working group format. The agenda and reports will be circulated at least five clear working days before each meeting. Meetings will be chaired by each of the Scrutiny Chairs on a rota basis. No additional Special Responsibility Allowances shall be paid. A record of attendance will be maintained and included in the minutes of the meetings.

7. **Attendance of Members and Officers at Scrutiny Committees**

All decision takers must be accountable and be prepared to attend Scrutiny Committees to explain and justify their decisions.

Cabinet Members shall have a standing invitation to attend the relevant Scrutiny Committee(s). Relevant Officers will attend Scrutiny Committee meetings to give advice depending on the items under consideration.

A Scrutiny Committee may require any Cabinet Member, the Chief Executive, the Deputy Chief Executive and/or any Director to attend. The Chief Executive, Deputy Chief Executive or Director may invite other Officers to attend.

Where a Cabinet Member or Officer is specifically required to attend a Scrutiny Committee, they will be given at least 10 working days' notice of the meeting.

In unavoidable circumstances, where a Cabinet Member or Officer is unable to attend on the required date, the Scrutiny Committee shall either arrange an alternative date for their attendance or require another Cabinet Member or Officer to attend on their behalf.

#### **8. Attendance by Others**

A Scrutiny Committee may invite local residents, partner organisations, stakeholders and Members and Officers in other parts of the public sector to attend the Committee, discuss issues of local concern and/or answer questions. All attendees and participants should be treated with respect and courtesy.

#### **9. Public Forum**

The agenda for all Scrutiny Committees will include a standard item entitled 'Public Forum'. This will allow members of the public to ask questions on any matter falling within the terms of reference of the Scrutiny Committee. The way in which the Public Forum session is conducted is at the discretion of the Chair of the meeting.

#### **10. Policy Review and Development**

Scrutiny Committees will approve and monitor an Annual Scrutiny Programme setting out items of business to be considered by Scrutiny Committees.

Any Member of a Scrutiny Committee is entitled to give notice that he/she wishes an item relevant to the functions of the Committee to be included in the Annual Scrutiny Programme.

Any amendments to the Annual Scrutiny Programme will be made by the Monitoring Officer following consultation with the Chair and Vice-Chair of the relevant Scrutiny Committee.

Scrutiny Committees may make recommendations to the relevant decision maker(s) in respect of any items in the Annual Scrutiny Programme. The

Monitoring Officer shall make arrangements for any recommendations from the Scrutiny Committees to be reported to the relevant decision taker(s).

**11. Scrutiny of Revenue Budget and Medium Term Financial Strategy**

The role of Scrutiny Committees is set out in the Budget and Policy Framework Procedure Rules.

The Future Council Scrutiny Committee will take a lead role in scrutinising the Council's overall financial position and budget process in parallel with informal Cabinet Summit meetings. The Future Council Scrutiny Committee may undertake its budget scrutiny role through dedicated informal workshop sessions.

Each Scrutiny Committee will consider the draft revenue budget proposals and Medium Term Financial Strategy, in relation to their specific terms of reference, usually in November each year. Scrutiny Committees have the discretion to focus on specific issues of concern and to convene Working Groups if appropriate.

**12. Scrutiny Inquiries and Reviews**

Scrutiny Committees may hold detailed inquiries and reviews in respect of any items of business that are allocated or referred to them. This may involve site visits and any other means that the Committee considers are reasonably necessary to inform their discussions.

The way in which scrutiny inquiries/reviews are conducted shall be at the discretion of each Scrutiny Committee depending on the item under consideration.

A Scrutiny Committee may invite people to provide information or give submissions. Written information or submissions can be invited in advance and where possible, these should be circulated with the agenda for the meeting.

Following a scrutiny inquiry or review, a report and recommendations will be submitted to the relevant decision taker(s).

**13. Call-In**

Call-in applies to executive decisions made by the Cabinet, a Cabinet Member or a key decision made by an Officer under delegated powers. Table 2 attached to these Rules summarises the Call-in procedure.

Notice of executive decisions will normally be published within 2 working days of the decisions being made. The Chairs of all Scrutiny Committees will be notified of decisions within the same timescale.

Decisions will come into force, and may be implemented, on the expiry of 5 working days after the publication of the decision, unless a Scrutiny Committee objects and calls it in.

During that period, a decision will be called in for scrutiny if a written request is made to the Monitoring Officer by the Chair of any Scrutiny Committee or the required number of voting Members of a Scrutiny Committee. The required number shall be equal to the total number of opposition group Councillors appointed to the Scrutiny Committee concerned.

The decision-taker will be notified of the call-in. Within 5 working days of receiving notice of the call-in, a meeting of the relevant Scrutiny Committee will be arranged following consultation with the Chair and Vice-Chair.

Members of the Scrutiny Committee will be invited to submit written questions in advance of the meeting. This will not prevent Members from asking questions at the meeting itself. Written questions should be submitted to the Monitoring Officer at least seven working days before the meeting.

Where possible the written responses to those questions should be provided at least two working days before the meeting but in any event the written responses should be circulated at the meeting.

The procedure at a Scrutiny Committee meeting dealing with a 'call-in' is as follows:

- The Chair will deal with preliminary items, set the context and outline the procedure for the meeting.
- The relevant Cabinet Member and/or the relevant Officer, shall be invited to make representations concerning the decision.
- The Committee will deal with any written questions that have been submitted in advance.
- Members of the Committee will have the opportunity to ask questions.
- Contributions will be invited from any other persons present along with any further questions from the Committee.

- Following all questions and contributions, the relevant Cabinet Member and/or the relevant Officer will be invited to make a final statement.
- The Committee will review all the facts, opinions and comments and consider making any recommendations or observations to the relevant decision-taker and/or the Council.

If the Scrutiny Committee considers the decision, and is still concerned about it, the decision may be referred back to the relevant decision-taker or referred to full Council. The decision-taker will be advised of the Scrutiny Committee's concerns.

If the matter is referred back to the decision-taker, arrangements will be made within 5 working days for the original decision to be reconsidered. The decision-taker will then make a final decision.

If a Scrutiny Committee does not refer the matter back to the decision-taker, or to full Council, the decision shall take immediate effect.

If a decision is referred to full Council and the Council raises no objections, the decision will take immediate effect.

If the Council objects to the decision, it will be referred back to the decision-taker along with the Council's views. Arrangements shall be made within 5 working days for the original decision to be reconsidered. The decision-taker will then make a final decision.

#### **14. Call-In and Urgency**

The call-in procedure will not apply if any delays in making a decision would seriously prejudice the Council's or the public interest. The notice and record of the decision will state the reason why the decision is urgent and not subject to call-in.

Before an urgent decision is taken, the Mayor must agree that the decision can be treated as a matter of urgency and is reasonable in all the circumstances.

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 will be included in the summary of decisions made available for ordinary meetings of the Council.

15. **Minority Reports**

If a Scrutiny Committee is unable to reach a consensus view on the recommendations to the relevant decision taker, then a minority report may also be submitted for consideration alongside the recommendations agreed by the majority of the Committee.

16. **Scrutiny Committee reports and recommendations that are considered by the Cabinet and/or Council**

The agenda for Cabinet meetings shall include an item entitled 'Issues arising from Scrutiny Committees'. Reports and recommendations from Scrutiny Committees shall be included at this point in the agenda (unless they have been considered by the Cabinet under another agenda item).

If the Scrutiny Committee's recommendations have implications for the Council's budget and policy framework, the Monitoring Officer will refer the matter to the next available meetings of the Cabinet and the Council.

Members have access to the Cabinet's Forward Plan of Key Decisions. This is available on the Council's website. This includes information about consultation undertaken on key decisions. Individual Councillors may respond to consultations in their own right.

17. **Rights of Scrutiny Committee Members to documents**

Scrutiny Committees have the right to documents as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

Nothing in these Rules prevents more detailed liaison between the Cabinet and Scrutiny Committees depending on the matters under consideration.

18. **Councillor Call for Action**

Any resident of the Borough can ask a Councillor to refer a matter to a Scrutiny Committee. The procedure for dealing with this is set out in Table 3 attached to these Rules. This procedure should only be used where there is an ongoing dispute about a community issue, which cannot be dealt with through any of the Council's established procedures. The Call for Action procedure will only be used when all other avenues for resolution have been considered and exhausted.

19. **Party whip**

Members of Scrutiny Committees must declare the existence of any party whipping arrangements before the Committee considers individual items of business. Any such declarations shall be recorded in the minutes of the meeting.

20. **Matters within the remit of more than one Scrutiny Committee**

The Chairs and Vice-Chairs of Scrutiny Committees will oversee and co-ordinate the activities of Scrutiny Committees to avoid duplication and ensure liaison on cross-cutting issues as necessary.

## **TABLE 1:**

### **TERMS OF REFERENCE FOR OVERVIEW AND SCRUTINY COMMITTEES**

#### **FUTURE COUNCIL SCRUTINY COMMITTEE**

##### **Membership**

13 Councillors

##### **Terms of Reference**

In accordance with the Annual Scrutiny Programme and any statutory requirements:-

- (a) To undertake overview and scrutiny and contribute to policy development relating to the functions of the following Directorates and the appropriate Cabinet Member(s):
- Chief Executive's
  - Digital, Customer and Commercial
  - Finance and Legal
  - Regeneration and Enterprise
- (b) To undertake scrutiny investigations/inquiries as required.

To consider and determine any items that are called in for scrutiny in accordance with the Scrutiny Committee Procedure Rules.

To submit reports and recommendations to the relevant decision taker(s).

#### **CHILDREN AND YOUNG PEOPLE SCRUTINY COMMITTEE**

##### **Membership**

13 Councillors, 5 voting Church and Parent Governor Co-opted representatives.

##### **Terms of Reference**

In accordance with the Annual Scrutiny Programme and any statutory requirements:-

- (a) To undertake overview and scrutiny and contribute to policy development relating to the functions of the Directorate of Children's Services and the appropriate Cabinet Member(s):
- (b) To undertake scrutiny investigations/inquiries as required.

To consider and determine any items that are called in for scrutiny in accordance with the Scrutiny Committee Procedure Rules.

To submit reports and recommendations to the relevant decision taker(s).



## **HEALTH AND ADULT SOCIAL CARE SCRUTINY COMMITTEE**

### **Membership**

13 Councillors, 1 non-voting Co-opted Member

### **Terms of Reference**

To fulfil the overview and scrutiny functions of a Scrutiny Committee as they relate to the improvement of local health and associated services, as a contribution to the Council's community leadership role, in accordance with relevant legislation, regulations and associated guidance.

To make reports and recommendations to local National Health Service (NHS) bodies and to the Council on any matter reviewed or scrutinised which will explain the matter reviewed, summarise the evidence considered, provide a list of participants in the scrutiny exercise, and make any recommendations on the matter reviewed as appropriate.

To proactively receive information within given timescales, with some exceptions as per Government Guidance, requested from local NHS bodies.

To be consulted by and respond to (as appropriate) NHS bodies in connection with the rationale behind any proposal and options for change to local health services made by the NHS.

To ensure the involvement of local stakeholders in the work of the Committee.

To take referrals from local Patients' Forums.

To act in accordance with Government Guidance relating to Health and Scrutiny functions.

In accordance with the Annual Scrutiny Programme and any statutory requirements:-

(a) To undertake overview and scrutiny and contribute to policy development relating to the functions of the following Directorates and the appropriate Cabinet Member(s):

- Adult Social Care
- Public Health and Wellbeing

(b) To undertake scrutiny investigations/inquiries as required.

To consider and determine items that are called in for scrutiny in accordance with the Scrutiny Committee Procedure Rules.

To submit reports and recommendations to the relevant decision taker(s).

## **HOUSING AND PUBLIC REALM SCRUTINY COMMITTEE**

### **Membership**

13 Councillors

### **Terms of Reference**

In accordance with the Annual Scrutiny Programme and any statutory requirements:-

- (a) To undertake overview and scrutiny and contribute to policy development relating to the functions of the following Directorates and the appropriate Cabinet Member(s):
  - Housing and Community Services
  - Public Realm
- (b) To undertake scrutiny investigations/inquiries as required.

To undertake overview and scrutiny functions associated with the strategic Crime and Disorder Reduction Partnership (Safe and Sound).

To consider and determine any items that are called in for scrutiny in accordance with the Scrutiny Committee Procedure Rules.

To submit reports and recommendations to the relevant decision taker(s).

TABLE 2:

### PROCEDURE FOR DEALING WITH A CALL IN

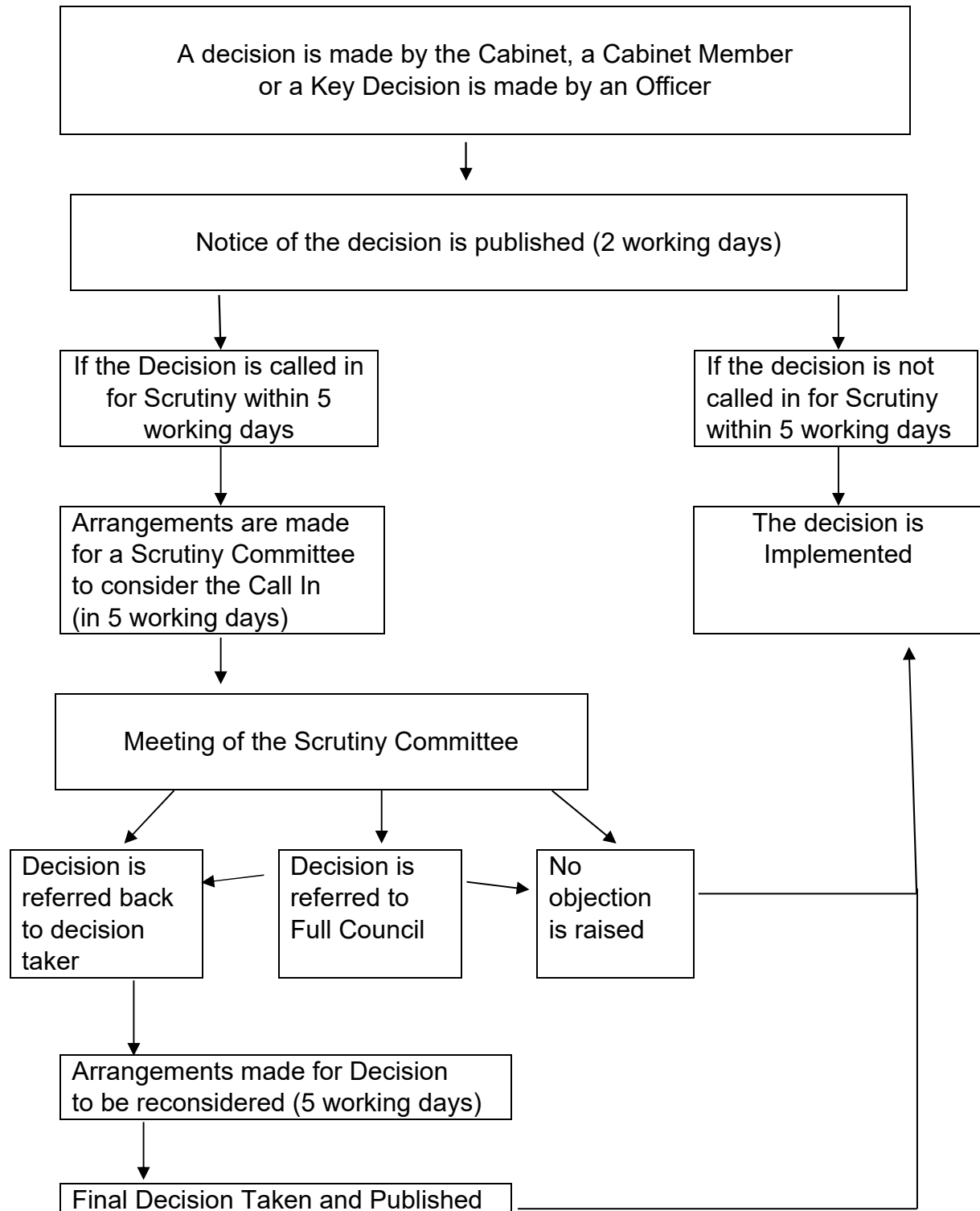
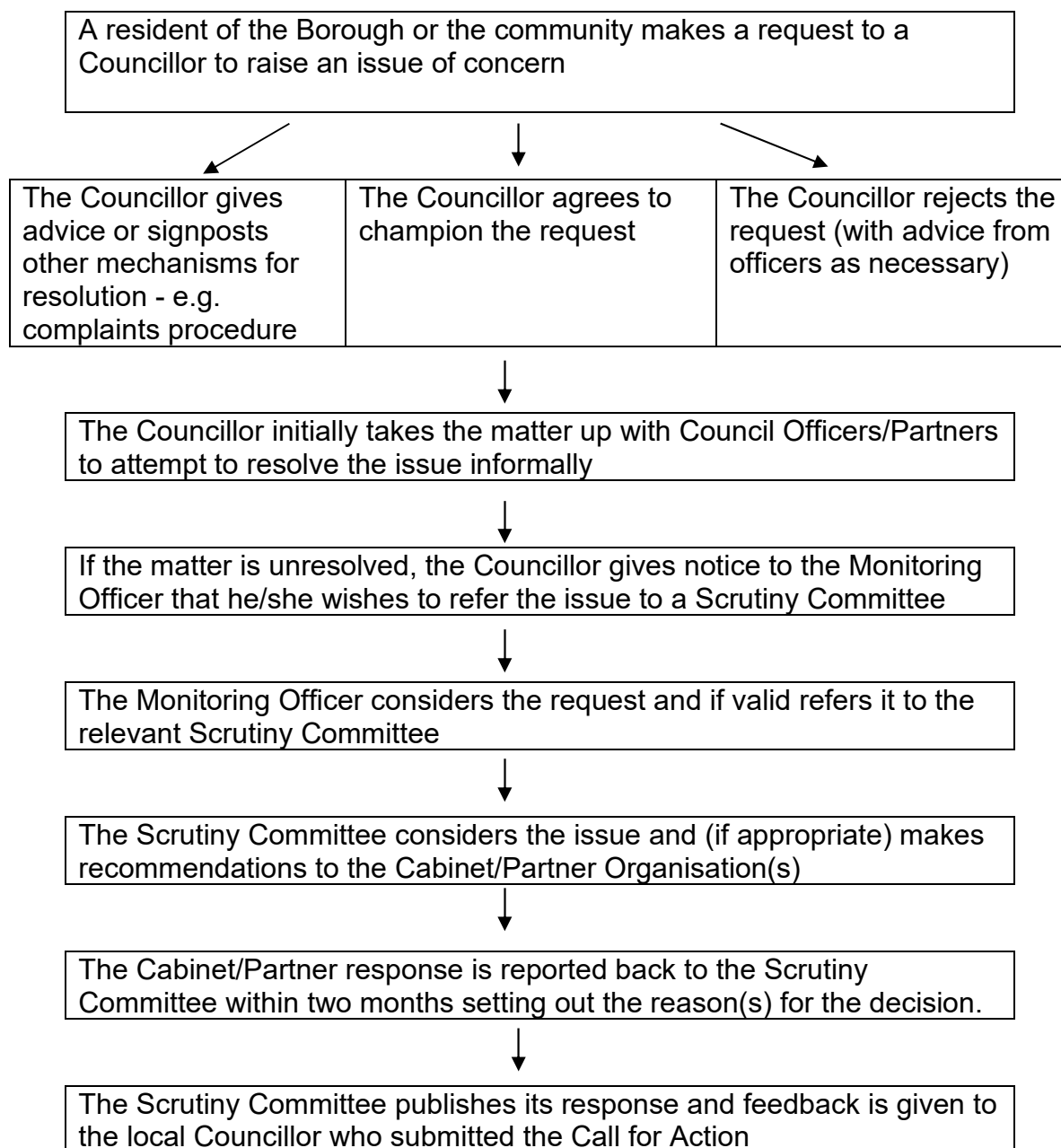


TABLE 3:

**PROCEDURE FOR DEALING WITH A COUNCILLOR CALL FOR ACTION**



# **OFFICER EMPLOYMENT PROCEDURE RULES**

## **Officer Employment Procedure Rules**

### **1. Recruitment and appointment**

#### **1.1 Declarations**

- (a) 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.
- (b) No candidate so related to a Councillor or an officer will be appointed without the authority of the Monitoring Officer or an officer nominated by him/her.

#### **1.2 Seeking support for appointment**

- (a) 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.
- (b) No Councillor will seek to support any person for any appointment with the Council.

### **2. Recruitment of Chief Executive, Deputy Chief Executive, Directors and Designated Statutory Officers**

- 2.1 Where the Council proposes to appoint the Chief Executive, the Deputy Chief Executive, a Director or any posts which are proposed to be designated as the Monitoring Officer or the Section 151 Officer, and it is not proposed that the appointment will be made exclusively from amongst their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (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 above to be sent to any person on request.

### 3. **Appointment of Chief Executive (Head of Paid Service)**

- 3.1 The full Council will appoint the Chief Executive (Head of Paid Service) following a recommendation by the Appointments Committee. The Appointments Committee must include at least one Cabinet Member.
- 3.2 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 Cabinet in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001.

### 4. **Appointment of Deputy Chief Executive, Directors and Designated Statutory Officers (Monitoring Officer and Section 151 Officer)**

- 4.1 The Appointments Committee will appoint the Deputy Chief Executive and Directors, including any posts that are to be given the statutory designation of Monitoring Officer or Section 151 Officer. The designation of statutory officers is subject to the approval of full Council. The Appointments Committee must include at least one Cabinet Member.
- 4.2 An offer of employment as the Deputy Chief Executive, a Director or Designated Statutory Officer shall only be made where no well-founded objection from any Member of the Cabinet has been received in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001.
- 4.3 Any new appointments or severance packages of £100,000 or above (excluding pension) will be the subject of a recommendation from the Appointments Committee to full Council.

### 5. **Other Appointments**

- (a) **Officers below Director** - Appointments of officers below Director are the responsibility of the Chief Executive, Deputy Chief Executive, Directors or their nominee(s), 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) **Appointment of Director of Public Health** - Where the Council proposes to appoint a Director of Public Health, the Council will follow any necessary statutory requirements that apply to that post and comply with any specific guidance issued by the Secretary of State.

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

- 6.1 Suspension** - The Head of Paid Service, the Monitoring Officer and the Section 151 Officer may be suspended by the Appointments Committee whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. The suspension periods may only be extended beyond two months following a decision by the Appointments Committee.
- 6.2 Independent Panel** - No disciplinary action may be taken in respect of any of the officers referred to in rule 6.1 above except in accordance with a recommendation in a report made by a Panel established under the provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations, 2015 containing at least two independent persons appointed under Section 28(7) of the Localism Act 2011.
- 6.3 Decision making** – Any proposed disciplinary action of the said officers that is a lesser sanction than dismissal shall be determined by the Appointments Committee. Where a recommendation is made that dismissal of those officers is the appropriate action, that final decision shall only be undertaken by full Council.

## **7. Involvement of Councillors**

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

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

The officer undertaking the statutory role of Director of Public Health may be suspended by the Appointments Committee whilst an investigation takes place into alleged misconduct. However, the Director of Public Health may not be dismissed, except following consultation with the Secretary of State.



## **PART 5**

### **FINANCIAL MANAGEMENT REGIME:** **CONTRACT STANDING ORDERS,** **FINANCIAL REGULATIONS**

## **STANDING ORDERS RELATING TO CONTRACTS**

## **CONTRACT STANDING ORDERS**

### **1 INTRODUCTION**

- 1.1 These Contract Standing Orders shall be applied to all procurement and commissioning of all goods, works and services for the Council in the interests of openness, integrity and accountability in the spending of public monies.

### **2 COMPLIANCE**

- 2.1 All employees of the Council, any agents, consultants and contractual partners acting on behalf of the Council, the Governing Body of a Local Authority Maintained School and organisations for which the Council is the accountable body shall comply with these Contract Standing Orders, the Financial Regulations and the Corporate Procurement Strategy and all Directors shall ensure compliance within their area of responsibility. A failure to comply with these Contract Standing Orders, the Financial Regulations or the Corporate Procurement Strategy may result in disciplinary action. Cases of legal non-compliance can result in substantial losses to the Council and may involve reputational risk and will therefore be treated seriously.
- 2.2 Where reference is made within these Contract Standing Orders to the Responsible Director, it refers to the individual who is accountable for the relevant service area. Within the Council this will ordinarily be the Director and within Local Authority Maintained Schools the Head teacher. Responsible Directors will be required to comply with all guidance, procedures, strategies and governance arrangements put in place by the Director of Digital, Customer and Commercial Services.
- 2.3 The decision of the Lead for Law and Governance will be final in any matter concerning the interpretation of these Contract Standing Orders.
- 2.4 Officers undertaking procurement activity shall ensure that:
  - 2.4.1 Any contract made by or on behalf of the Council for works, goods or services complies with these Contract Standing Orders, the Council's Financial Regulations and the Corporate Procurement Strategy.
  - 2.4.2 All contracts should be tendered using such electronic tender system and process as may be approved by the Director of Digital, Customer and Commercial Services.
  - 2.4.3 The procurement by the Council of any works, goods or services complies with applicable European Union public procurement legislation and where any conflict with these Contract Standing Orders arises, the legislation shall take precedence over these Contract Standing Orders. In estimating any relevant value for the purposes of the legislation, contracts shall not be disaggregated in order to avoid the application of the legislation or these Contract Standing Orders.
  - 2.4.4 In applying these Contract Standing Orders officers must have regard to the duty to secure Best Value under the Local Government Act 1999 and guidance issued thereunder. Current guidance indicates that "authorities should consider overall value, including economic, environmental and social value, when reviewing

service provision. Social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves". (Social Value Act 2012)

- 2.4.5 In the case of large-scale procurement there may be a need to undertake consultation in accordance with s3 of the Local Government Act 1999. Officers should seek advice from the Director of Digital, Customer and Commercial Services if the procurement is high value (more than £5 million) or will make a significant difference to the way in which the authority carries out its functions.
- 2.4.6 In applying these Contract Standing Orders any Officer undertaking a Procurement must consider the potential to make contracts accessible to small and medium contractors, in accordance with the Corporate Procurement Policy.

### **3 RESPONSIBILITIES OF RESPONSIBLE DIRECTORS**

- 3.1 In procuring works, goods and/or services Responsible Directors shall:-
  - 3.1.1 Maintain an up-to-date schedule of authorised officers for procurement activity
  - 3.1.2 achieve Best Value for public money spent;
  - 3.1.3 show no undue favour to any Contractor, nor discriminate against any Contractor;
  - 3.1.4 conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
  - 3.1.5 do nothing that contravenes the law;
  - 3.1.6 ensure that before entering into any Contract:-
    - (a) there is adequate approved budgetary provision;
    - (b) an authority from the Cabinet or a Committee or officer exercising delegated powers is in place in a form specified by the Director of Digital, Customer and Commercial Services.
  - 3.1.7 ensure that a purchase order on approved standard terms, or such other terms as may be approved by the Lead for Law and Governance, is issued by the Budget Manager for any contract with a value below EU Thresholds
  - 3.1.8 ensure that there are in place effective mechanisms for the submission of invoices in relation to contracts which they are responsible for letting;
  - 3.1.9 ensure that all contracts are procured in accordance with procedures set by the Director of Digital, Customer and Commercial Services and stored in accordance with the approved contract storage policies and retained in an electronic form and location approved by the Director of Digital, Customer and Commercial Services.
- 3.2 Responsible Directors will ensure that prior to procuring goods or services their staff complete documentation in a form specified by the Director of Digital, Customer and Commercial Services which will:
  - 3.2.1 take into account the requirements of Best Value including the potential for the contract to deliver social value

- 3.2.2 ascertain whether the subject matter of the contract falls within the scope of an in-house service or contractual arrangement that is already in place;
- 3.2.3 define the objectives of the procurement;
- 3.2.4 estimate the contract value and record how the estimate was arrived at;
- 3.2.5 consider the human resources implications of the procurement, in particular the implications of the Transfer of Undertakings (Protection of Employment) Regulations;
- 3.2.6 ensure that any Waiver from compliance with these Contract Standing Orders is properly approved in accordance with the Scheme of Delegation and that this is recorded on CMIS and the Corporate Contract Register;
- 3.2.7 assess the risks associated with the procurement and determine how they will be managed;
- 3.2.8 seek advice from the Director of Digital, Customer and Commercial Services, according to the value/risk assessment, upon the procurement process and what procurement method is most likely to achieve the purchasing objectives;
- 3.2.9 prepare a draft specification taking into account any European or British Standards that may need to be referred to
- 3.2.10 identify and obtain any approvals that may be required
- 3.3 For the purposes of these Contract Standing Orders, the estimated value of a contract shall include all possible extensions and be net of VAT.
- 3.4 Contracts must not be artificially divided to keep them below any threshold which may apply.
- 3.5 The estimated value of a Contract shall not be disaggregated on the basis that the expenditure is to be incurred in more than one financial year.

#### **4 RESPONSIBILITIES**

- 4.1 **The Cabinet** is responsible for ensuring that procurement activity and contracts follow the requirements set out within these Contract Standing Orders.
- 4.2 The **Audit and Standards Committee** is responsible for overseeing the effective management of these Contract Standing Orders and such procedures and guidance as may be introduced to support these Contract Standing Orders from time to time.
- 4.3 The **Director of Digital, Customer and Commercial Services in conjunction with the Lead for Law and Governance** are responsible for ensuring that there are in place effective procedures for the management, storage and retention of contractual documentation.
- 4.4 **Budget Managers** are responsible for ensuring that the requirements set out in paragraph 3.2 of these Contract Standing Orders are or have been met in relation to contracts funded from within their budget and there is in place an appropriate authority for such procurement activity as they initiate.
- 4.5 The **Director of Digital, Customer and Commercial Services** is responsible for:

- 4.5.1 Ensuring that the procurement of all contracts for public works, goods and services comply with these Contract Standing Orders, the Council's Financial Regulations, the Officer Code of Conduct and with all UK and EU binding legal requirements relating to procurement.
- 4.5.2 Ensuring the publication of a Forward Plan of procurement activity with a value in excess of £5,000.
- 4.5.3 Ensuring that there is adequate and appropriate governance and guidance available upon the process of procurement.
- 4.5.4 Ensuring that on such electronic procurement or contract systems as may be operated to comply with these Contract Standing Orders from time to time, an electronic Contract File is retained in respect of each procurement exercise for a contract with a value exceeding £5,000 which includes:
  - 4.5.4.1 The identity of the Procurement Officer managing the procurement process
  - 4.5.4.2 The rationale for the procurement route taken
  - 4.5.4.3 A copy of the specification
  - 4.5.4.4 Where required, the risk register relating to the Procurement
  - 4.5.4.5 A record in written form of any Exemption from these Contract Standing Orders and the reason for it.
  - 4.5.4.6 Copies of all tenders or quotations
  - 4.5.4.7 A copy of the evaluation process and reasons for the decisions as to acceptance or rejection of every tender or quotation
  - 4.5.4.8 A copy of any debrief request and the response thereto
  - 4.5.4.9 The award letter
  - 4.5.4.10 The copy of the final contract - (This may be electronic as long as stored in pdf format in the contract register.)
  - 4.5.4.11 The monitoring arrangements for management of the contract including the details of the Contract Manager responsible for on-going contract management
  - 4.5.4.12 A copy of any extension or variation to the contract granted in accordance with these Contract Standing Orders.
- 4.6 **The Director of Digital, Customer and Commercial Services** is responsible for:
  - 4.6.1 Planning the procurement activity for all categories of supply/spend and producing a forward plan of procurement activity for each category;
- 4.7 The relevant Officer undertaking the procurement (the Procurement Officer) is responsible in respect of any procurement for managing the procurement process and complying with any statutory time limits in relation to each procurement process and complying with all guidance set by the Director of Digital, Customer and Commercial Services.

## **5 CORPORATE PURCHASING ARRANGEMENTS**

- 5.1 Where a recurring pattern of purchases for like works, supplies or services is identified, Procurement Officers are expected to consider:
- 5.1.1 If there is an existing Corporate Contract
  - 5.1.2 Whether a nationally or regionally negotiated framework/ contract exists which is appropriate to use for the procurement activity, and offers best value;
  - 5.1.3 Whether letting one or more Corporate Framework Contracts or arrangements will provide Best Value taking into account among other things invoicing and other administration costs.
  - 5.1.4 Whether letting such a contract through a consortium of which the Council is a member (or could become a member) will achieve procurement efficiencies.
  - 5.1.5 Whether to request the Director of Digital, Customer and Commercial Services to establish an Approved List for a category of work.
  - 5.1.6 Where aggregate annual spend in a given category of supply or service exceeds EU Procurement levels, the approved form of contract and term shall be selected. If a Framework Contract is appropriate it must usually be for a maximum duration of four years. Variances must be approved by the Director of Digital, Customer and Commercial Services who will liaise with the Lead for Law and Governance as required.
- 5.2 Approval to not use a corporate contract should be sought from the Director of Digital, Customer and Commercial Services.

## **6 DECLARATIONS OF INTEREST**

- 6.1 Directors shall ensure that officers involved in the procurement process are familiar with the Code of Conduct for officers.
- 6.2 Any officer involved in the procurement process who has any financial or non-financial interests which could conflict with the Council's interests in relation to a procurement process or contract shall complete an annual declaration of interests, and provide a copy to his/her Director annually in compliance with the Code of Conduct Procedure which will be retained on the individual's personnel file. The Lead for Law and Governance shall approve arrangements for a central register of completed staff declarations of interest which will be available for inspection.
- 6.3 In any procurement process where a potential conflict of interests exists, an officer with a potential conflict, shall bring that conflict to the attention of the responsible Director who shall either certify the interest as acceptable or take any necessary action.

## **7 REPRESENTATIVES OF THE COMMUNITY**

- 7.1 In compliance with Best Value Guidance before initiating a procurement process and drawing up a specification for a procurement process, the Budget Manager and Procurement Officer must consider the need to consult those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest

in any area within which the authority carries out functions, including local voluntary and community organisations and small businesses.

- 7.2 Service users may offer advice to the Commissioner and/or Procurement Officer where appropriate, however, they will have no decision making role. All decisions shall be taken strictly within the scheme of delegation.
- 7.3 Where confidential information is shared with a service user, the Procurement Officer shall ensure that a written undertaking is given by the service user to treat such information as confidential.

## **8 COUNCIL APPROVED LIST**

- 8.1 The Director of Digital, Customer and Commercial Services may maintain an Approved List of suppliers. The List may be used for selection as an alternative to advertisement where the Total Value is less than the European Union threshold. The Director of Digital, Customer and Commercial Services will ensure that the List:
  - 8.1.1 Relates to categories of work where there is an expected future demand.
  - 8.1.2 Contains the names and addresses of all contractors who meet the List criteria.
  - 8.1.3 Is reviewed annually through the Council's electronic tendering system in respect of all matters recorded to ensure approval criteria standards are met.

## **9 PRE-TENDER / QUOTATION ENQUIRIES / MARKET ENGAGEMENT**

- 9.1 Enquiries of potential contractors in advance of the initiation of a procurement exercise may be undertaken to prepare the marketplace for a tender, and/or to assist the Council to better understand what the market is able to provide to meet the outcome that the Council is trying to achieve.
- 9.2 However, when making enquiries of contractors before tender or quotation:
  - 9.2.1 No information shall be disclosed to one contractor which is not then disclosed to all those of which enquiries are made or which are subsequently invited to tender or submit a quotation.
  - 9.2.2 No contractor shall be led to believe that the information they offer will necessarily lead to them being invited to tender or submit a quotation, or be awarded the contract.
  - 9.2.3 Taking detailed technical advice on the preparation of the Specification, Invitation to Tender or Quotation from a potential supplier, must be avoided as this may prejudice the equal treatment of all potential Bidders or distort competition.
  - 9.2.4 A written record, including notes of any substantive telephone conversations and/or meetings held, and the responses and the names of all individuals spoken to or present shall be kept on the Contract File.

## **10 PRE-TENDER AND QUOTATION**

- 10.1 The Procurement Officer, prior to submitting a notice to the official journal of the European Union, inviting expressions of interest or any other form of bid, shall:



- 10.1.1 Ensure there is a formal approval for the acquisition or purchase of goods, services or works and for the evaluation criteria.
- 10.1.2 Ensure that there is an estimate of the whole life cost of the Contract, including maintenance and on-going costs;
- 10.1.3 Liaise with the Budget Manager to ensure that there is finance in the budget to cover the likely expenditure on the Contract.
- 10.1.4 Ensure that there is clarity upon the desired outcomes or outputs from the Contract and ensure that an appropriate specification for the Contract has been prepared.
- 10.1.5 Assess the risks associated with the Contract and how to manage them.
- 10.1.6 Consult with Director of Digital, Customer and Commercial Services, who will consult Legal Services as required, on the appropriate form of agreement for the Contract.
- 10.2 The Procurement Officer shall liaise with the Director of Digital, Customer and Commercial Services if appropriate to:
  - 10.2.1 Ensure that the market position has been established and prior information notices, where required and if appropriate for the European Union procurement procedures, have been published
  - 10.2.2 Consider what procurement method is most likely to achieve the contracting objectives.
  - 10.2.3 Clarify the Award Criteria, including social value and a price/quality split as appropriate, taking into account such policies (including policies for achieving social value) as the Council may adopt from time to time.
  - 10.2.4 Check whether there is an appropriate framework contract for the goods, services or works, or if an approved list has been established and check that these provide Best Value.
  - 10.2.5 Prepare tender documentation, and contracts.

## **11 EXEMPTIONS FROM THE REQUIREMENT FOR A COMPETITIVE PROCUREMENT PROCESS**

- 11.1 No Exemptions may be granted:
  - 11.1.1 Where it would be in breach of any legal requirement and/or provision;
  - 11.1.2 From any requirement to declare an interest under rule 6 or the provisions concerning representatives of the community under rule 7 of these Contract Standing Orders.
- 11.2 If an Exemption is required to relax the requirements in relation to seeking Quotations or tendering, the Procurement Officer shall seek the approval of the Director of Digital, Customer and Commercial Services. For each Exemption the Procurement Officer shall submit a file record in a form specified by the Director of Digital, Customer and Commercial Services. This will include market testing and any declined Quotations (which will be stored within the electronic tendering system).

- 11.3 If approval is not granted the Procurement Officer must not issue any formal order or contract. The Director of Digital, Customer and Commercial Services, in consultation with the Lead for Law and Governance shall be consulted as to the most appropriate procurement process.
- 11.4 Subject to the grant of an Exemption being in compliance with all applicable legal requirements, Exemptions from the need for a competitive procurement process may be granted where:
- 11.4.1 Only one contractor is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights or that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance provided that continued use represents Best Value for the Council.
  - 11.4.2 The time limits required for tendering cannot be met for reasons of extreme urgency and the reasons were unforeseen and unattributable to the Council, subject to the method adopted for the letting of the contract, representing Best Value for the Council. In the case of contracts above the EU threshold advice should be sought from the Director of Digital, Customer and Commercial Services, who will consult with legal services as required, before this ground is used.
  - 11.4.3 Additional works or services are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately and where the original contract was not let in accordance with the procurement Contract Standing Orders the revised value of the contract does not exceed the relevant thresholds. Where the original contract was let in compliance with European Procurement Regulations, such additional works or services must not exceed 50 per cent of the value of the original contract.
  - 11.4.4 New works or services are required which are an exact repetition of works or services carried out under the original contract provided they are required within 3 years of the conclusion of the original contract and the contract notice stated that a new contract might be awarded by negotiation.
  - 11.4.5 Goods are required as a partial replacement for or an addition to existing goods or installations and obtaining them from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance provided that continued use represents Best Value for the Council;
- 11.5 The following forms of contract are not required to be let in accordance with the formal procurement procedures set out within these Contract Standing Orders but remain subject to the requirement to deliver Best Value:
- 11.5.1 Contracts for the engagement of counsel.
  - 11.5.2 Contracts for the employment of staff, but excluding agency or consultancy staff.
  - 11.5.3 Money market transactions.
  - 11.5.4 Contracts for theatrical productions.

- 11.5.5 Contracts for the commissioning and acquisition of artefacts, paintings, photographs or sculptures.
  - 11.5.6 Contracts for the sale or other disposal of land or the acquisition of land and buildings unless such transaction involves the engagement of a person to procure by any means the carrying out for the contracting authority of a Public Works Contract or to deliver output requirements of the Council by way of services.
  - 11.5.7 Contracts entered into by the Council to form a “Teckal” company i.e. one which the Council controls within the meaning of regulation 12 of the Public Contracts Regulations 2015.
- 11.6 Exemptions must not be automatically extended or renewed without undertaking an Options Appraisal or Business Case and seeking approval from the Director of Digital, Customer and Commercial Services..
  - 11.7 If a contract is to be extended under an exemption this must be undertaken prior to the expiry of the contract term and must not be for longer than 3 years unless approved by the Director of Digital, Customer and Commercial Services.
  - 11.8 If a contract is to be extended under an exemption and the additional value will exceed EU thresholds then approval must be sought from the Director of Digital, Customer and Commercial Services.

## **12 GROUNDS FOR EXCLUSION**

- 12.1 A tenderer will be excluded from inclusion in a tender process where one of the mandatory grounds for exclusion of a tenderers applies (terrorism, financing of terrorism, people trafficking, and non-payment of tax or social security following a final and binding decision of a court or tribunal).
- 12.2 A tenderer may be excluded from inclusion in a tender process following consultation with the Director of Digital, Customer and Commercial Services who will consult with the Lead for Law and Governance if necessary, if one of the discretionary grounds for exclusion apply (violation of environmental, social or labour law, unresolvable conflict of interest, unresolvable distortion of competition due to suppliers prior involvement in preparation of procurement process, sufficiently plausible indications of collusion, non-payment of tax or social security, significant or persistent deficiencies in performance of a prior public contract or seeking undue influence or confidential information or negligently providing misleading information).
- 12.3 Tenderers to which one of the mandatory or discretionary grounds for exclusion apply have the right to provide evidence to show that they are reliable in spite of the existence of a relevant ground for exclusion. Any such evidence shall be provided to the Lead for Law and Governance who shall decide on behalf of the Council whether the evidence is sufficient. If it is, the tenderer shall not be excluded from the tender process.

## **13 CONTRACTS VALUED AT LESS THAN EU PROCUREMENT THRESHOLDS**

- 13.1 For a contract or purchase made where the estimated value is less than EU procurement thresholds, the Budget Manager or Procurement Officer must comply with guidance set by the Director of Digital, Customer and Commercial Services in respect of:

- 13.1.1 The procurement route and governance.
- 13.1.2 Advertising.
- 13.1.3 Award criteria.
- 13.1.4 Number of tenders, quotations or bids.
- 13.1.5 Use of the appropriate standard Terms and Conditions.
- 13.1.6 Measurement and delivery of social value.
- 13.1.7 Entry to the corporate contract register.
- 13.1.8 Sealing of contract.

13.2 The Budget Manager shall be satisfied that the tender or quotation accepted represents value for money. In the event that it is not possible to invite the requisite number of Quotations, then the Budget Manager may seek approval from the Director of Digital, Customer and Commercial Services to dispense with the requirement to obtain a number of Quotations. Approval should be sought from the Director of Digital, Customer and Commercial Services in a form specified by the Director of Digital, Customer and Commercial Services.

13.3 In all cases the Procurement Officer shall record, in a form specified by the Director of Digital, Customer and Commercial Services.:

- 13.3.1 Contractors approached.
- 13.3.2 Contractor responses (including a willingness to quote).
- 13.3.3 Details of any Quotations provided.
- 13.3.4 The subject matter of the Quotation.
- 13.3.5 The name of the contractor.
- 13.3.6 The date and time of the quote.
- 13.3.7 The price offered and other relevant trading items.
- 13.3.8 The name of the Budget Manager.
- 13.3.9 The contractor offering the most favourable Quotation and the reasons why that Quotation was accepted.
- 13.3.10 The risks associated with taking or omitting to take a particular course of action.

13.4 Contracts must not be artificially divided to reduce their value below the relevant thresholds.

## **14 CONTRACTS VALUED AT MORE THAN EU PROCUREMENT THRESHOLDS**

14.1 Details of the procedures which may be followed and guidance on these is set out in Appendix 1.

## **15 SELECTION OF COMPANIES TO TENDER**

15.1 The selection of which companies will be invited to tender will be subject to the value and risk of the contract:

- 15.1.1 Where the value of the contract is below the PCR threshold, the Procurement Officer will invite a number of technically competent companies to provide Quotations (the number of Quotations being in accordance with guidance produced by the Director of Digital, Customer and Commercial Services).
- 15.1.2 Where the value of the contract is below the PCR threshold, an Approved list maintained by the Director of Digital, Customer and Commercial Services may be used for the procurement process.
- 15.1.3 Where the tender value will exceed the PCR threshold – selection of tenders must be in accordance with the Public Contract Regulations in force at the time.

## **16 CONCESSION CONTRACTS**

- 16.1 The contract must involve the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both. The part of the risk transferred to the concessionaire must involve real exposure to the vagaries of the market such that any estimated potential loss incurred by the concessionaire must not be merely nominal or negligible.
- 16.2 A Concession Contract above EU Thresholds must be advertised by way of a concession notice published in the Official Journal of the European Union. The Director of Digital, Customer and Commercial Services shall be consulted about any proposal to let a Concession Contract.
- 16.3 The principles of EU procurement law, namely transparency, non-discrimination and equal treatment must be followed in the letting of any Concession Contract.

## **17 QUOTATION / TENDER INVITATION – GENERAL PRINCIPLES**

- 17.1 The invitation to tender or submit a Quotation must include a specification and where appropriate a bill of quantities or schedule of rates. In preparing specifications the Procurement Officer must have regard to any guidance from the Director of Digital, Customer and Commercial Services.
- 17.2 The invitation to tender or submit a Quotation must state that the Council is not bound to accept any quote or tender and can discontinue the process at any time.
- 17.3 All Bidders invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 17.4 The invitation to tender or quote must specify the evaluation criteria.
- 17.5 The invitation to tender or quote must be submitted electronically through the eprocurement portal (unless there are special circumstances which will be decided by the Director of Director of Digital, Customer and Commercial Services).
- 17.6 The invitation to tender or quote must include instructions to tenderers.
- 17.7 The invitation to tender or quote must include the appropriate Contract terms and conditions which have the approval of the Lead for Law and Governance.

## 18 PUBLIC CONTRACT REGULATION THRESHOLDS

18.1 The Public Contracts Regulations threshold values are derived from the EU Procurement Contract Standing Orders and are reviewed on a regular basis, normally every two years. Table 1 identifies the current thresholds:

**Table 1: EU Procurement Thresholds**

Valid from 1 January 2018 until 31 December 2019

	Supplies	Services	Works
Public Sector contracting authorities (excluding Central Government)	£181,302 €221,000	£181,302 €221,000	£4,551,413 €5,548,000
Light Touch Regime Services		£615,278 €750,000	
Concession Contracts		£4,551,413 €5,548,000	£4,551,413 €5,548,000

18.2 Thresholds are net of Value Added Tax.

### 18.3 Standards

If the European Committee for Standardisation (ECS) has issued a relevant standard, all the goods and materials used or supplied, and all the work done under the contract, must be in line with that standard.

### 18.4 Common Currency

A provision should be included in any contractual documentation requiring the contractor to quote prices in GB sterling.

### 18.5 Number of Tenderers

If the contract is expected to exceed the thresholds in the PCR, a minimum of five Bidders or suppliers must be invited to tender save where the adopted procedure provides otherwise. (In cases where fewer than five Bidders apply and are shortlisted, all Bidders must be invited to tender.)

18.6 If during the course of a competitive tendering exercise, an officer becomes aware that the value of bids received exceeds the Thresholds, but bid invitations have not been invited through the OJEU notice procedure advice must be sought from the Director of Digital, Customer and Commercial Services who will, if necessary, consult with the Lead for Law and Governance upon how to proceed.

### 18.7 PCR Procedures

18.7.1 All contracts with a value in excess of the thresholds in the PCR shall be let in accordance with a procurement method which is acceptable within the legislation. An explanation of the procedures is set out at Appendix 1A and these should be applied under the guidance of the Director of Digital, Customer and Commercial Services and the Lead for Law and Governance. An existing contract which has

terminated cannot be extended where the effect of such extension would be to take its value above the relevant threshold.

- 18.7.2 Consideration shall be given to breaking down a contract into lots in any tender for a contract with a value in excess of the thresholds to ensure accessibility to SMEs and shall be let broken down into lots unless there is a justification for not so doing. Where a contract is not let in lots the OJEU notice shall include the reasons for not so doing.

## **18.8 Accelerated Procedure**

- 18.8.1 Where urgency makes the normal timescales for procurement using the Restricted Procedure or Negotiated Procedure impractical, subject to:

- 18.8.1.1 the agreement of the Director of Digital, Customer and Commercial Services (who will liaise with the Lead for Law and Governance as required; and
- 18.8.1.2 publication of the reasons for use of the procedure in the OJEU notice;
- 18.8.1.3 the accelerated procedure may be used and the timescales for the required PCR processes reduced as set out in Table 2 below.

## **19 PUBLIC ADVERTISEMENT OF TENDERS**

- 19.1 Where the value of the contract is below the PCR threshold, the method of advertising shall be in accordance with guidance produced by the Director of Digital, Customer and Commercial Services.
- 19.2 In the case of contracts which require tendering in accordance with the PCR, the Council is required to place a Contract Notice in the Official Journal of the European Union and the timescale for expressions of interest in response to such notices is prescribed.

Advertisement is subject to the following constraints:

- 19.2.1 Legal advice may be required upon the applicable timescales
- 19.2.2 Unrestricted full direct access, free of charge to all procurement documents must be provided from the date of publication of the OJEU notice on the electronic procurement system
- 19.2.3 the accelerated procedure may only be used with the consent of the Director of Digital, Customer and Commercial Services who will consult with the Lead for Law and Governance if appropriate.

Table 2 sets out the ordinary timescales.

Table 2: Notice of contract compiled and submitted electronically and unrestricted electronic access to all contract documentation provided at tender receipt stage

<b>Minimum no. of calendar days after sending the Contract Notice to OJEU</b>	<b>Open Procedure</b>	<b>Restricted Procedure</b>	<b>Competitive Procedure with Negotiation</b>	<b>Accelerated Procedure</b>	<b>Innovation Partnership &amp; Competitive Dialogue Procedure</b>
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days (or 15 days in case of urgency)	30 days	10 days	30 days
(ii) to the closing date for receipt of tenders	30 days	25 days	25 days, (initial tenders) Final tender submission date agreed with tenderers	10 days	Agreed with tenderers
as (ii) above, but where a PIN is published between 35 and 365 days prior to the Contract Notice	15 days	15 days	10 days	N/A	
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	30 days	30 days	30 days	30 days	30 days



## **20 SUBMISSION, RECEIPT AND OPENING OF TENDERS**

- 20.1 All tenders should be administered through the Council's electronic tendering system. All tender submissions should be made electronically through the electronic system unless, for technical reasons, hard copies are required. In that case, hard copies should be returned to a location specified by the Director of Digital, Customer and Commercial Services, who is responsible for their safekeeping. Procurement Officers will ensure that all tenders are opened at the same time when the period of submission has ended and will record receipt of the tenders.
- 20.2 If there appears to be an error in a bid or supporting information, the Bidder must be invited to clarify the supporting information and/or confirm or withdraw the bid.

## **21 CLARIFICATION AND NEGOTIATION**

- 21.1 Post-tender clarification may take place subject to the approval of the Director of Digital, Customer and Commercial Services who will consult with the Lead for Law and Governance as necessary if applicable where:-
- 21.1.1 the tenders received are in excess of the budget provision; or
  - 21.1.2 the appropriate Responsible Director, after consultation with the Director of Digital, Customer and Commercial Services together with the Lead for Law and Governance if appropriate, considers, from an analysis of the tenders received, that it is necessary to further clarify the tender through post-tender negotiation.
- 21.2 Negotiations must not distort competition.
- 21.3 Officers undertaking negotiations must be approved by the relevant Director in the Schedule of Authorised Officers and must have received appropriate training.
- 21.4 Prior to negotiation taking place a negotiation plan must be developed.
- 21.5 Where negotiations take place a written record shall be kept of all negotiations, including notes of all meetings and the names of the individuals present, and placed on the Contract File and authorised in accordance with the schedule of authorised officers.

## **22 CONTRACT AWARD**

- 22.1 The Budget Manager shall ensure that sufficient budget is available to fund the winning bid and that all necessary approvals have been obtained to authorise the expenditure on the contract. The Budget Manager or the Procurement Officer shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the Contract File.
- 22.2 Contracts must be evaluated and awarded in accordance with the Award Criteria set out in the original tender or Quotation documents and advertisement.
- 22.3 Every contract shall be in writing and bear the signature or other mark of all the parties and will be subject to an official order number.
- 22.4 In relation to any contract requiring compliance with the PCR, a notification of intent to award a contract shall be issued to each supplier who has participated in the award procedure unless that supplier has already been lawfully excluded from the procedure. No contract shall be concluded with the successful supplier prior to expiry of the mandatory standstill period. In the event of a challenge being made by an unsuccessful

supplier within the mandatory standstill period, advice from Legal Services must be taken prior to the contract being awarded.

<b>Form of communication:</b>	<b>Mandatory Standstill Period</b>
Where notification is by facsimile or electronic means:	10 calendar days from the date following the date on which the notification was sent.
Where the notification is by other means:	15 calendar days with effect from the date following the date on which the notification was sent or of a period of 10 calendar days with effect from the date following the date on which the notification was received.

- 22.5 Contracts shall be awarded by the Responsible Director. For contracts with a value of more than £1m or where the contract exposes the Council to significant risk, a contract manager will be nominated to monitor the contract performance.
- 22.6 The Form of Contract shall be selected based on value and risk in accordance with guidance set out by the Director of Digital, Customer and Commercial Services.
- 22.7 Each Responsible Director shall ensure that an electronic copy of every contract entered into by them shall be entered onto the Council's Contract Register.

## **23 DEBRIEFING/PROCUREMENT REPORT**

- 23.1 The Procurement Officer shall inform all bidders of the characteristics and relative advantages of the successful tender. This should normally include:
- 23.1.1 How the Award Criteria were applied.
  - 23.1.2 The prices or range of prices submitted, without disclosing the individual Bidder names or identities
  - 23.1.3 The scores awarded, without disclosing the individual Bidder names or identities.
  - 23.1.4 The name of the successful Bidder.
- 23.2 During the debriefing process the confidentiality of Quotations, tenders and the identity of bidders must be protected at all times.
- 23.3 An offer of a debriefing must be given to unsuccessful Bidders if a request is received. A debrief shall be provided in writing within 15 clear working days of receipt of a request. An aim of the debrief shall be to assist Bidders to understand the reasons that their bid was unsuccessful to inform future tender submissions.
- 23.4 At the conclusion of every procurement the Procurement Officer shall record the outcome in a form specified by the Director of Digital, Customer and Commercial Services and submit this to the Director of Digital, Customer and Commercial Services with a copy to the Responsible Director.

## **24 CONTRACT CONDITIONS**

- 24.1 The form of contract used will depend on the subject matter of the contract. For contracts for works it will be necessary to use one of the standard forms of construction contract, normally either Joint Contracts Tribunal (JCT) or New Engineering Contract (NEC). The Lead for Law and Governance can advise on the appropriate form of contract.
- 24.2 Subject to 24.1 above, procurement Officers shall unless instructed otherwise by the Lead for Law and Governance use the Council's Standard Terms and Conditions and shall ensure that each contract contains the following details:
- 24.2.1 The works or services (including Concessions) to be performed and/or the goods to be supplied.
  - 24.2.2 The parties to the contract, including any guarantor.
  - 24.2.3 The price and any discounts, or the method by which prices and discounts are to be calculated, and the method and timing of payments.
  - 24.2.4 The start and end dates together with any possible extensions.
  - 24.2.5 That the contractor shall not assign the contract without written consent of the Council.
  - 24.2.6 That the contractor may pay liquidated damages (where these can be assessed and ascertained) as a pre-estimate of the potential loss sustained by the Council or other damages to the Council should the terms of the contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable.
  - 24.2.7 The performance of every contract over £100,000 (except a supply contract) may be required to be adequately secured by either a guarantee or a Bond or a deposit of money if the Responsible Director so decides.
  - 24.2.8 Any requirements of the Council in regard to equalities and diversities.
  - 24.2.9 That the contractor shall adopt safe methods of work and comply with all other requirements of the Health and Safety at Work etc. Act 1974 in order to protect the health and safety of its personnel, the personnel of the Council and all other persons.
  - 24.2.10 That appropriate procedures must be in place to ensure that children and vulnerable clients are safeguarded.
  - 24.2.11 That the contractor shall comply with data protection and freedom of information requirements if appropriate.
  - 24.2.12 That the Council may cancel the contract and recover any loss if the contractor, its employees, agents and sub-contractors offer any reward relating to the contract, commit any offence under the Prevention from Corruption Acts 1889 to 1916, the Bribery Act 2010, the Employment Relations Act 1999 (Blacklists) Regulations 2010 or improperly influence or make any attempt so to influence the award or administration of the contract.
  - 24.2.13 That all requirements relating to social value are included
  - 24.2.14 Any other terms and conditions specified by the Lead for Law and Governance who has a general authority to set standard and particular contract conditions.

## **25 CONTRACT SPECIFICATIONS**

- 25.1 The Procurement Officer shall ensure the contract specifies as necessary:
- 25.1.1 Whether it is input, output or outcome focussed, or a combination
  - 25.1.2 the inputs or outputs required, their volume and frequency and/or the outcomes to be delivered, their volume and frequency
  - 25.1.3 the quality required, testing and inspection methods, standards of performance expected and performance monitoring arrangements and the identification and allocation of roles and responsibilities
  - 25.1.4 the facilities on-site, health and safety and access arrangements, if applicable
  - 25.1.5 any other details not included elsewhere
  - 25.1.6 the quality of materials
  - 25.1.7 reference to relevant Council policies
- 25.2 Technical specifications shall be defined by reference to relevant European specifications or, where they do not exist, in the following order; to British technical specifications, British standards implementing international standards, other British standards and technical approvals or any other standards. Where an appropriate standard is current at the date of tender, all works, services and supplies shall be at least of equal quality.
- 25.3 Specifications shall not refer to supplies of a particular make or source unless:
- 25.3.1 This is justified by the contract requirements.
  - 25.3.2 The contract requirements cannot otherwise be described precisely and intelligibly, provided references are accompanied by the words "or equivalent".

## **26 POST CONTRACT MONITORING AND EVALUATION**

- 26.1 During the life of qualifying contracts the Procurement Officer must, in accordance with any Council approved guidance, ensure that there are in place, arrangements that will ensure :
- 26.1.1 Monitoring of contract performance and risk management.
  - 26.1.2 Compliance with specification and contract, including any key performance indicators.
  - 26.1.3 Costs are controlled.
  - 26.1.4 Any Best Value requirements are delivered.
  - 26.1.5 User satisfaction, if appropriate
- 26.2 The Budget Manager in consultation with the Procurement Officer shall maintain under review the extent to which the purchasing need and the contract objectives are being met by a tendered contract. Where the contract is to be re-let, a report on contract performance should be prepared to inform the approach to re-letting the subsequent contract.

## **27 CONTRACT VARIATION**

- 27.1 Contract variation of the original terms and conditions or contract sum (if more than 10 % for goods and services and 15% for works) shall be reported to the Director of Digital, Customer and Commercial Services who will consult with the Lead for Law and Governance if appropriate.
- 27.2 No variation may be made unless allowed for in the contract documentation unless approved by the Director of Digital, Customer and Commercial Services who will consult with the Lead for Law and Governance if appropriate.
- 27.3 In the event that a request is made to vary a contract which increases the cost to the Council the Budget Manager shall not agree such variation unless finance is available and within the budget to cover the cost of the variation. Such increases must be reported to the Director of Digital, Customer and Commercial Services for approval and reporting.
- 27.4 No variation, notwithstanding the application of clauses in conditions of contract, shall be made until the Responsible Director has identified and approved any additional funding required to the Director of Digital, Customer and Commercial Services.
- 27.5 Any negotiations about contract variations or extensions shall be undertaken in a timely manner to allow sufficient time to retender (if necessary) and should always seek to manage costs.

## **28 NOMINATING PRODUCTS, CONTRACTORS OR SUPPLIERS**

- 28.1 These Contract Standing Orders apply where the Council nominates a sub-contractor or supplier for carrying out works or services or supplying goods or materials that form part of a tender. Sub-contractors or suppliers shall send with the tender an undertaking to work for the main contractor and indemnify them for the subcontracted works or materials.
- 28.2 Lead Contractors must agree to delegate the same payment terms to their subcontractors and supply chain.

## **29 TECHNICAL AMENDMENT**

- 29.1 The Lead for Law and Governance has authority to make technical amendments from time to time to make these Contract Standing Orders consistent with legal requirements, changes in Council structures and personnel and best practice.

## **30 DEFINITIONS**

- 30.1 The following terms in these Contract Standing Orders have the meaning indicated and shall be interpreted accordingly:

**‘Approved List’** is a list drawn up in accordance with rule 8.

**‘Award Criteria’** are the criteria by which the successful Quotation or tender is selected.

**‘Best Value’** means the duty placed on local authorities to secure continuous improvement in the way in which services are provided, having regard to a combination of economy, efficiency and effectiveness and as implemented by the Council.

**‘Bidder’** means a person or company participating or applying to participate in a procurement undertaken by the Council

**‘Bond’** has a similar effect to an insurance policy where a contractor does not do what it has promised under a contract, the Council can claim the sum of money specified in the bond, often 10 per cent of the contract value. A bond is intended to protect the Council against a level of cost arising from a contractor’s failure.

**“Budget Manager”** means the officer with delegated responsibility for management of the budget from which it is anticipated that the costs arising from a contract will be funded.

**‘Director of Digital, Customer and Commercial Services’** means the officer with overall responsibility for procurement within the Council or a relevant officer to whom they have delegated the relevant authority

**“CMIS”** means the Council’s committee management information system

**‘Concession’** means a contract whereby a payment is received to permit a service to be provided to the public for a charge.

**‘Contract’** or ‘sub-contract’ means any agreement for the supply of goods, materials or services, the execution of works and the awarding of concessions. This list is not exhaustive and this section refers to the supply of anything to the Council.

**‘Contract Manager’** means the officer responsible for management of the performance/delivery of a Contract.

**‘Contractor’** is a supplier to the Council.

**‘Contract File’** comprises a record of all matters relating to a contract whether in paper or electronic form.

**‘Contract Register’** means the register of the Contracts entered into by the Council maintained by the Director of Digital, Customer and Commercial Services.

**‘Crown Commercial Services or CCS’** is the Government Agency responsible for leading and providing guidance upon Central Government Procurement activity.

**“Exemption”** means an exemption from a process of competitive tendering in accordance with rule 11.

**‘Lead for Law and Governance’** means the officer with responsibility for the Council’s legal function.

**‘PCR’** means the Public Contracts Regulations 2015

**‘Procurement Officer’** means the officer responsible for the procurement of a Contract

**‘Quotation’** means any written response to an invitation to quote which includes the price of goods or services to be supplied other than a tender

**‘Responsible Director’** in these Contract Standing Orders means the Chief Executive, Deputy Chief Executive or Directors with delegated responsibility for the contract in question and within Local Authority Maintained Schools the Head teacher.

**‘Total Value’** is the whole of the value or estimated value (in money or equivalent value) of the whole life of the contract including all possible extensions whether or not it comprises several lots or stages to be paid or received by the Council and calculated as follows:

- (a) 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.
- (b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.
- (c) Where the contract is for an uncertain duration by multiplying the monthly payment by 48.

- (d) In the case of feasibility studies it is the value of the scheme or contracts which may be awarded as a result.
- (e) In the case of nominated suppliers and sub-contractors it is the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

**“Waiver”** means a waiver from compliance with Standing Orders

## **APPENDIX 1A**

### **1. Light Touch Regime (Schedule 3 Services)**

- 1.2 Where goods or services are proposed for procurement which fall within Schedule 3 of the Public Contracts Regulations 2015 and have an estimated contract value below £615,278 the obligation to procure such contract in compliance with EU Procurement Rules does not apply.
  - 1.2.1 Where goods or services are proposed for procurement which fall within Schedule 3 of the Public Contracts Regulations 2015 (as amended from time to time) and have an estimated total contract value above £615,278 the Procurement Officer shall ensure that procurement is undertaken in accord with a procurement process which complies with the obligations of transparency and equal treatment.
  - 1.2.2 Schedule 3 of the Public Contracts Regulations 2015 includes, Health, social and related services, administrative social, educational, healthcare and cultural services, compulsory social security services, Benefit Services, other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services, religious services, hotel and restaurant services, legal services (save where excluded by regulation 10) (i.e. legal representation in proceedings and advice given in connection with or preparatory to such proceedings or where there is a high probability that the subject matter of the advice will be the subject of proceedings), , government services, provision of services to the community, prison related services, investigation and security services and postal services.
  - 1.2.3 In undertaking a procurement process through the Light Touch Regime, consideration should be given to taking into account:
    - 1.2.3.1 the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
    - 1.2.3.2 the specific needs of different categories of users, including disadvantaged and vulnerable groups; and the outcomes they may require
    - 1.2.3.3 the involvement and empowerment of users;
    - 1.2.3.4 Innovation.
    - 1.2.3.5 Demand management
    - 1.2.3.6 If PCR procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite PCR timescales.

### **2 Restricted Procedure**

- 2.1 The restricted procedure may be used where the proposed Contract does not fall within one of the specified categories for the approved list procedure.



- 2.2 Where this procedure applies, the invitation to tender is to be issued to Bidders selected from those submitting a compliant response to a Standard Qualification Questionnaire prepared in accordance with the prescribed model issued by Crown Commercial Services.
- 2.3 Public notice shall be published through the Council's Electronic tendering system. The advertisement must include the following information:
- 2.3.1 what the contract involves
  - 2.3.2 an invitation to interested suppliers to register their interest
  - 2.3.3 that when they register they can obtain a Standard Qualification Questionnaire which will require them to provide evidence of:
    - (i) their technical ability
    - (ii) their financial position
    - (iii) their equalities policy
    - (iv) their health and safety policy
    - (v) their environmental policy, and
    - (vi) any other information that is identified as necessary
  - 2.3.4 that a shortlist will be drawn up and only Bidders on the shortlist will be invited to tender: and
  - 2.3.5 the timescales involved and the procedure to be used to register their interest and return the information.
  - 2.3.6 any document produced or referred to determine elements of the procurement
  - 2.3.7 the technical specification/s
  - 2.3.8 the proposed conditions of contract;
  - 2.3.9 formats for the presentation of responses by Bidders;
  - 2.3.10 generally applicable obligations.
- 2.4 After the expiration of the period specified in the public notice and shortlisting, the contractors who are proposed to be Invited to Tender shall be reported to the appropriate Responsible Director for approval.
- 2.5 Invitations To Tender including the Award Criteria for the Contract sent to not less than three Contractors (save that all Contractors who have provided the information required under rule 2.3.3 will be invited to tender where fewer than four respond). If only one Bidder qualifies the issue shall be referred to the Director of Digital, Customer and Commercial Services.
- 2.6 The Bidder which submitted the most economically advantageous tender must be identified
- 2.7 If the PCR apply, any advertisements, timescales and procedures must be in accordance with the requisite timescales and the number of Contractors invited to tender in accordance with rule 2.5 is increased to five.

### **3 Open Procedure Without Pre-Qualification**

- 3.1 The open tender procedure allows all contractors who are interested in tendering for a contract to submit a tender. The procedure may be used where a Responsible Director in consultation with the Procurement Officer has decided that other forms of tendering for the Contract are unlikely to give rise to adequate competition.
- 3.2 Where this procedure applies an advertisement must be published through the Council's electronic tendering system including the following information:
  - 3.2.1 what the contract involves
  - 3.2.2 an invitation to providers to request tender documents any document produced or referred to determine elements of the procurement
  - 3.2.3 that an Invitation to Tender is available when they register which they should complete in full and return to the Council to consider the technical specifications
  - 3.2.4 the descriptive document;
  - 3.2.5 the proposed conditions of contract;
  - 3.2.6 formats for the presentation of documents by Bidders;
  - 3.2.7 generally applicable obligations.
  - 3.2.8 the latest date and time by which tenderers must return
  - 3.2.9 their completed tender, questionnaire and other documents
  - 3.2.10 the procedure to be used to register their interest and obtain the tender
- 3.3 An invitation to Tender must be sent to everyone who registers interest.
- 3.4 The Bidder which submitted the most economically advantageous tender must be identified
- 3.5 If the PCR apply, any advertisements, timescales and procedures must be in accordance with the requisite timescales.

### **4 Competitive Procedure With Negotiation**

- 4.1 The Competitive Procedure with Negotiation may be used to undertake procurement where it is considered that the inclusion of the opportunity for negotiation in the procurement process will assist in ensuring the achievement of Best Value;
- 4.2 Where this procedure applies, the invitation to tender is to be issued to Bidders selected from those submitting a compliant response to a Standard Qualification Questionnaire prepared in accordance with the prescribed model issued by Crown Commercial Services.
- 4.3 Public notice shall be published through the Council's Electronic tendering system in the form identified for the Restricted Procedure.
- 4.4 After the expiration of the period specified in the public notice and qualification, the Bidders who are proposed to be invited to tender shall be reported to the appropriate Responsible Director for approval.

- 4.5 Invitations to submit an Initial Tender including the Award Criteria for the Contract will be sent to not less than three Bidders (though if only two Bidders the Initial Tender shall be sent to two Bidders) If only one Bidder qualifies the issue shall be referred to the Director of Digital, Customer and Commercial Services.
- 4.6 Initial Tenders will be reviewed by the evaluation team to ensure that they meet the minimum requirements and those which do not are excluded from further evaluation;
- 4.7 Subsequently, negotiations with participating tenderers may take place and further interim proposals be requested subject to the stipulation that:
  - 4.7.1 all Bidders within the competition must be treated equally with, and be provided with the same information and required to submit tenders within the same timescales as any other Bidder;
  - 4.7.2 information provided by Bidders within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the Bidder concerned
- 4.8 At the final tender stage best and final offers on the proposed contract must be invited from those Bidders who have submitted an Initial Tender and have not formally withdrawn from the process;
- 4.9 The Bidder which submitted the most economically advantageous tender must be identified

## **5 Competitive Dialogue**

Competitive Dialogue may be used to undertake procurement where the Council is not able to define the technical means capable of satisfying its needs or objectives, or the legal or financial makeup of the project, and consequently it is not possible to determine the final specification and form of contract in advance of initiating the procurement process, consequently the Council needs to discuss all or any aspect of these and the proposed solutions to its requirements with Bidders to design a feasible fit-for-purpose solution. The authority may use the Competitive Dialogue procedure to advertise its needs, requirements and Award Criteria rather than a specific contract, to enable the development of solutions for a final contract through dialogue. The use of the Competitive Dialogue procedure is subject to the agreement of the Director of Digital, Customer and Commercial Services in consultation with the Lead for Law and Governance.

### **Stage 1 (The pre-tender stage):**

- 5.1 The contract notice is published setting out the needs and requirements of the Council, which can be defined in a descriptive document
- 5.2 Bidders for the tender are selected on the basis of capability and capacity;
- 5.3 a Bidder submitting a bid within the competition must be treated equally with, and be provided with the same information as, any other Bidder;
- 5.4 information provided by Bidders within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the Bidder concerned;

### **Stage 2 (Outline Solution/Participation in Dialogue):**

- 5.5 a minimum of three Bidders must be selected to participate in dialogue at Stage 2 unless less than three Bidders meet the selection criteria, in which case all qualifying Bidders must be invited to participate; If only one Bidder qualifies the issue shall be referred to the Director of Digital, Customer and Commercial Services.
- 5.6 the evaluation team may enter into structured dialogue with those invited to participate with reference to Bidders' Solutions to the Council's needs and requirements to:
  - 5.6.1 establish the principal terms for the proposed contract;
  - 5.6.2 ensure that those who are retained within the dialogue have identified one or more solutions capable of meeting the authority's requirements;
- 5.7 the evaluation team must evaluate the Outline Solutions against the pre-determined Award Criteria to establish that the criteria are met and that Bidders can be invited to proceed, failing which they may be de-selected from further participation,
- 5.8 There may be a further stage of dialogue (Detailed Solutions) in which case the requirements set out in 5.5 to 5.7 above shall also apply to this further stage.

### **Stage 3 (The final tender stage):**

- 5.9 at the final tender stage best and final offers on the proposed contract must be invited from those tenderers who have submitted an Outline Solution and have not formally withdrawn or been excluded from the dialogue,
- 5.10 Tenders may be clarified provided that this does not involve changes to the basic features of the tender, distort competition or have a discriminatory effect;
- 5.11 the participant identified as having submitted the most economically advantageous tender is identified (the preferred bidder);
- 5.12 subsequent negotiation with the preferred bidder will only be permissible if it does not impose any substantial new requirement, or have the effect of modifying substantial aspects of the tender.

## **6 Negotiated Procedure**

- 6.1 The Negotiated Procedure must never be used without specific written advice from the Director of Digital, Customer and Commercial Services who will consult with the Lead for Law and Governance if necessary, confirming that the procedure applies. Advice upon the potential application of the Negotiated Procedure should be sought where:
  - 6.1.1 the open or restricted procedure has produced no tenders
  - 6.1.2 the contract follows a design contest and the Contract Standing Orders require it to be awarded to the successful contestant
  - 6.1.3 there is extreme urgency and:
    - (a) the events that have led to extreme urgency were not foreseeable and were not attributable to the contracting authority,

- (b) the time limits required for open and restricted procedures cannot be met, and
  - (c) the scope of proposed contract is necessary to respond to the immediate emergency.
- 6.1.4 an open or restricted procedure was discontinued because of irregular tenders.

## **7 Innovation Partnership Procedure**

- 7.1 The Innovation Partnership Procedure may be used for the purpose of commissioning research, development or the purchase of an innovative product, works or service, the need for which cannot be met by buying something already available on the market;
- 7.2 Where this procedure applies, the invitation to tender is to be issued to Bidders selected from those submitting a compliant response to a Standard Qualification Questionnaire prepared in accordance with the prescribed model issued by Crown Commercial Services.
- 7.3 Public notice shall be published through the Council's Electronic tendering system in the form identified for the Restricted Procedure.
- 7.4 After the expiration of the period specified in the public notice and qualification, the Bidders who are proposed to be invited to tender shall be reported to the appropriate Responsible Director for approval.
- 7.5 Invitations to submit an Initial Tender including the Award Criteria for the Contract will be sent to not less than three Bidders. unless less than three Bidders meet the selection criteria, in which case all qualifying Bidders must be invited to participate; If only one Bidder qualifies the issue shall be referred to the Director of Digital, Customer and Commercial Services.
- 7.6 Initial Tenders will be reviewed by the evaluation team to ensure that they meet the minimum requirements; and those which do not are excluded from further evaluation;
- 7.7 Subsequently, negotiations with participating tenderers may take place upon initial tenders as the basis for development of innovative supplies, services, works and their subsequent purchase, subject to the stipulation that:
  - 7.7.1 a Bidder submitting a bid within the competition must be treated equally with, and be provided with the same information and required to submit tenders within the same timescales as any other Bidder;
  - 7.7.2 information provided by Bidders within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the Bidder concerned;

### **Expressions of Interest**

- 1. The EoI List will be managed and maintained using InTend. Companies are responsible for registering and maintaining their own records. procedure shall be

used where the Director of Digital, Customer and Commercial Services has determined that a list shall be kept of persons to be invited to tender for Contracts for the supply of goods and/or services of specified categories.

2. The list shall:-
  - 2.1 contain the names of all Contractors who are approved for inclusion in Invitations to Tender under the Approved List Procedure; and
  - 2.2 indicate whether the Contractors whose names are included in it are approved for Contracts for all or only some of the specified values, amounts or categories in that list.

# **Financial Regulations**

Approved by Audit and Standards  
Committee on 6<sup>th</sup> December 2021

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## **1. Status of Financial Regulations**

- 1.1. Financial Regulations provide the framework for managing the Council's financial affairs and contribute to good corporate governance, internal control and the management of risks. In addition, they assist sound administration, reduce the risk of irregularities and support delivery of effective, efficient and economical services and minimise the risk of legal challenge to the Council.
- 1.2. Financial Regulations apply to all employees and members of the Council and anyone acting on behalf of the Council. They also apply to any partnerships for which the Council is the accountable body, unless the Section 151 Officer is satisfied that Financial Regulations of an equivalent standard are in place. Where the Council is not the accountable body then the appropriate Director is responsible for ensuring proper processes are followed so that the Council's reputation is protected. These Regulations also apply to Local Authority Maintained Schools and, in that case, references to the Director should be taken to mean the Head Teacher.
- 1.3. Directors are responsible for ensuring that all staff in their Directorates are aware of and comply with the Financial Regulations. All Directors should ensure that any financial procedures/guidelines produced by their Directorate are fully compliant with these Financial Regulations.
- 1.4. All members and officers have a general responsibility for taking reasonable action to provide for the security of the resources/assets under their control, and for ensuring that the use of these resources/assets is legal, is properly authorised and provides value for money. Failure to comply with Financial Regulations (or procedures/policies issued under them) may lead to disciplinary action for officers (or for members an investigation by the Monitoring Officer).
- 1.5. All decisions with financial implications must have regard to proper financial control. Any doubt as to the appropriateness of a financial proposal or correctness of a financial action must be clarified in advance of the decision or action with the Section 151 Officer.
- 1.6. These Financial Regulations should be read in conjunction with Standing Orders relating to Contracts, the Members' Code of Conduct, the Code of Conduct for Employees, the Anti-Fraud and Corruption Strategy and the Council's Constitution of which they form part.
- 1.7. Policies, procedures or other documents that are referred to in this document should be seen as an integral part of Financial Regulations and must be complied with. Documents that support Financial Regulations are listed at the end.
- 1.8. The Section 151 Officer in consultation with the Cabinet Member with responsibility for Finance has authority to allow specific exceptions to these

Financial Regulations where in their opinion it is in the Council's interest. The Section 151 Officer must keep a written record of such exceptions.

## **2. Financial Management**

### **2.1. Roles and Responsibilities**

#### General

- 2.1.1. All employees and members have a duty to abide by the highest standards of probity in financial matters. They must use the resources and assets entrusted to them in a responsible and lawful manner. Everyone should be clear about the standards to which they are working and the controls that are in place to ensure that these standards are met.
- 2.1.2. All officers must report to their manager or other responsible senior officer any actual or suspected illegality, fraud, impropriety, breach of procedure or serious deficiency in the provision of service. Officers are able to do this without fear of recrimination providing they act in good faith. Compliance with the Council's Anti-Fraud and Corruption Strategy and the Code of Conduct for Employees is mandatory for all officers.
- 2.1.3. Nothing in these Regulations absolves, or is intended to absolve, any person of any statutory responsibilities.

#### Full Council

- 2.1.4. Section 151 of the Local Government Act 1972 places a duty on the Council to make arrangements for the proper administration of its financial affairs, and to nominate an officer to have responsibility for the administration of those matters (see Section 151 Officer below). The Full Council has the responsibility for the Budget and Policy Procedure Rules. This includes the allocation of financial resources to corporate priorities via the Medium Term Financial Strategy, setting the revenue budget and council tax and housing rents, approving the Capital Strategy and capital projects and setting the Treasury Management Strategy.

#### Cabinet

- 2.1.5. The Cabinet is responsible for proposing council policy and budget strategies.

#### Head of Paid Service (Chief Executive)

- 2.1.6. The Head of Paid Service is responsible for the corporate and overall strategic management of the Council as a whole.

#### Monitoring Officer (Lead for Law and Governance)

- 2.1.7. The Monitoring Officer is responsible (in consultation with the Head of Paid Service and Section 151 Officer) for ensuring the lawfulness and fairness of decision making and advising whether decisions are consistent with the budget and policy framework.

- Section 151 Officer (Director of Finance and Legal Services)
- 2.1.8. The Local Government Act 1972 requires all local authorities to appoint a Section 151 Officer. The Section 151 Officer has a fiduciary duty to the Dudley taxpayer and his/her responsibilities include:
- Advising the Council on financial strategy and financial planning.
  - Managing the Council's financial affairs.
  - Setting standards to be followed throughout the Council in all financial systems, process and transactions.
  - Under section 114 of the Local Government Act 1988 the Section 151 Officer must report to the Council if there is (or is about to be) unlawful expenditure or an unbalanced budget.
  - Under section 25 of the Local Government Act 2003 the Section 151 Officer must report to Council on the robustness of the estimates for the purposes of the statutory budget calculation and the adequacy of the proposed financial reserves

- Directors (including the Chief Executive)
- 2.1.9. Directors are responsible for:
- Delivering their service within the approved budget allocation.
  - Completing (and reviewing annually) a scheme of delegation which identifies officers authorised to act upon their behalf in respect of financial matters within defined financial value limits.
  - Ensuring all employees reporting to them, directly or indirectly, are aware of and comply with the Financial Regulations.
  - Providing the Section 151 Officer with such information and explanations as the Section 151 Officer feels are necessary to meet obligations under Financial Regulations and statutory requirements.
  - Consulting with the Section 151 Officer and seeking approval on any matter liable to affect the Council's finances materially, before any commitments are incurred.
  - Informing the Section 151 Officer of failures in financial control resulting in additional expenditure or liability, or loss of income or assets.
  - Notifying the Section 151 Officer of any failures to comply with the Financial Regulations as soon as they become aware of them.
  - Ensuring the legality of their directorate's actions (taking advice from the Monitoring Officer as appropriate).

- 2.1.10. A Budget Holder is a Director or any officer who has been delegated by a Director to be accountable for a cost centre or a series of cost centres. Budget Holders must ensure that:
- They understand the requirements of Financial Regulations.
  - Their budget reflects the proposed income and expenditure.
  - They use adequate systems to enable them to monitor their budget.
  - They have explanations for significant budget variances.

- 2.1.11. Accountants within Financial Services are responsible for supporting services in managing their budgets through monitoring and forecasting expenditure and ability to challenge value for money of expenditure.

## **2.2. Accounting Policies and Records**

- 2.2.1. The Section 151 Officer is responsible for the preparation of the Council's Statement of Accounts in the format required by the CIPFA Code of Practice for Local Authority Accounting in the UK for the relevant year.

- 2.2.2. All accounting policies are reviewed annually and are detailed within the Council's Statement of Accounts. They cover items such as:

- Basis for debtors and creditors
- Fixed assets
- Reserves and provisions
- Investments
- Pensions
- Financing
- Government grants

- 2.2.3. Accounting policies need to be suitable and applied consistently. Judgements should be made and estimates prepared which are reasonable and prudent. Statutory and other professional requirements should be observed to maintain proper accounting records.

- 2.2.4. Proper accounting records help the Council to discharge its responsibility for stewardship of public resources. All of the Council's transactions, material commitments and contracts and other essential accounting information must be recorded completely, accurately and on a timely basis.

- 2.2.5. Financial documents must be retained in accordance with the requirements set out in the Council's Document Retention Policy. Sections 25 and 26 of the Local Audit and Accountability Act 2014 (and subsequent Accounts and Audit Regulations 2015 (S.I. 2014/234)) provide rights for persons to inspect a local authority's accounting records and supporting documentation and to make copies of them.

- 2.2.6. All spending transactions over £500, all procurement card spend and contracts valued over £5,000 should be proactively placed into the public domain in accordance with the Local Government Transparency Code 2015 so as to enable local people to be able to scrutinise how well their local authority manages financial assets.

## **2.3 Best Value/Effective Management**

- 2.3.1 The operations of the Council must be managed effectively. This will help the Council to provide best value services for its customers.

2.3.2 Each Director and his/her employees must ensure that they:

- Provide customers and stakeholders with best value services.
- Follow the Council's policies and procedures.
- Comply with all laid down quality, professional, management, legal and ethical standards.

2.3.3 Each Director must ensure that:

- There are appropriate and clear decision making and reporting lines within their area of responsibility.
- Decisions are appropriately recorded in an electronic directory that appropriate staff can access.
- There is an open, honest, transparent and accountable culture within their area of responsibility
- All of their employees receive up to date training to properly perform their duties.
- They have the necessary processes in place to collect data against appropriate and challenging performance targets.
- They identify the scope for efficiencies.
- Adequate business continuity plans have been prepared.

## **2.4 Financial delegations**

2.4.1 Each Director should delegate responsibility for specific financial responsibilities and tasks to appropriate officers within their directorate. In some cases delegations may have limits or restrictions attached. These delegations must be recorded.

2.4.2 Directors must ensure, prior to giving delegated authority to an officer, that there is an appropriate separation of duty within the relevant system (e.g. the same officer should not both authorise the order requisition or invoice and acknowledge receipt of the goods or service).

2.4.3 Directors are responsible for bringing to the attention of all relevant officers the need to comply with the financial delegations for the Directorate.

2.4.4 Each Director must review his financial delegations at least annually against the demands of the service being delivered. Only officers who have been given delegated powers may:

- Authorise order requisitions.
- Certify invoices (No-Order).
- Certify expenses claims.
- Authorise petty cash purchases (but see 5.1 for preferred methods of payment)
- Certify timesheets and overtime claims.
- Authorise the completion of personnel documentation.
- Sign and award contracts.

- Make purchase card payments.
  - Raise debtor invoices or credit notes.
- 2.4.5 The Section 151 Officer can request details of a directorate's financial delegations and, if they consider the delegation to an officer is inappropriate, they can request that the delegation be changed or removed.
- 3. Financial Planning**
- 3.1 General framework**
- 3.1.1 The Council is responsible for approving the budget (including Medium Term Financial Strategy) which will be proposed by the Cabinet. See Budget and Policy Framework Procedure Rules elsewhere within the Constitution.
- 3.1.2 The Section 151 Officer shall produce forecasts of financial resources and advise upon the financial implications of service development plans and programmes. In exercising this duty they shall be mindful of the Accounts and Audit Regulations 2006, the Prudential Code for Capital Finance in Local Government, current accepted local government accounting codes and will review levels of reserves and balances and ensure that a robust budget process has been undertaken.
- 3.1.3 The forecasts will indicate the likely changes to the Council's budget for the specified period both in terms of commitments arising out of statutory requirements and council policy and also the likely variations to funding from central or local sources.
- 3.1.4 The Cabinet, having considered the forecasts and options for the specified period, shall propose the overall budget strategy to the Council for approval after the consultation process as outlined in the Budget and Policy Framework Procedure Rules within the Constitution has been undertaken.
- 3.1.5 Revenue and Capital budgets are cash limited and expenditure must be restricted to the amounts approved for each revenue service or capital scheme, unless there are exceptional circumstances.
- 3.1.6 Any "key" decision by the Cabinet, Cabinet Member or Officer relating to the Revenue Budget or Capital Programme which is likely to result in the Council incurring expenditure or making savings of £250,000 or more (or which is likely to be significant in terms of its effects on communities living or working in one or more Wards in the Borough) must be included in the Forward Plan as set out in the Constitution.
- 3.2 Revenue**
- 3.2.1 The Council's financial planning will be undertaken on a medium-term basis. The Medium-Term Financial Strategy (MTFS) will be determined according to the Council's priorities, ensuring that funding is allocated according to the corporate vision, aims and objectives.
- 3.2.2 The proposed revenue budget shall be developed by the Section 151 Officer following informal consultation with Directors and Cabinet Members. The

Council's Section 151 Officer must produce a forecast of expected resources and expenditure. Directors and service managers (working with support from Accountancy) should highlight efficiencies and pressures. This assessment of spending need should take account of demographic, political and economic factors. Where there is an overall funding gap the Section 151 officer will work with Directors to produce savings options that must be presented to Cabinet and then onto Council.

- 3.2.3 The Cabinet shall consider a report on the Council's financial circumstances that would include a risk assessment prior to recommending a Budget and Council Tax to the full Council. This will include an indicative three year Medium Term Financial Strategy. Each Scrutiny Committee will also be formally consulted on the budget proposed by the Cabinet.
- 3.2.4 Full Council shall, before 11<sup>th</sup> March in advance of each financial year, set the Council Tax and the approved revenue budget for each Directorate/Service. Directors will then be accountable for managing within that budget. All spending must be on items of approved policy and incurred in accordance with Financial Regulations. Only Full Council can agree additional allocation of resources.
- 3.2.5 The Corporate Financial Information System (UNIT 4 ERP), determined by the Section 151 Officer, is the Councils prime accounting record. It provides the mechanism for Directors, with the assistance of their Accounting Team, to monitor and control budgets.
- 3.2.6 Directors will nominate an accountable officer (Budget Holder) for each cost centre. This officer will receive and review budget reports on a frequency appropriate to the complexity and volatility of their budget. Reports will be produced by each Director in conjunction with the relevant accountant showing forecast outturn compared with approved budget for each division of service and explaining how any variances have arisen and how they will be dealt with. Directors are responsible for updating their relevant Cabinet Member and Shadow Cabinet Spokesperson on the financial performance of their Directorate.
- 3.2.7 The Section 151 Officer will then report the overall summary position to Cabinet a minimum of three times per year. The Section 151 Officer can at any time decide whether additional reporting is necessary. The draft Revenue Outturn as at 31<sup>st</sup> March, subject to External Audit, should be reported to Cabinet.
- 3.2.8 Directors have powers to incur expenditure in carrying out the functions allocated to them provided:
  - The expenditure is lawful.
  - Standing Orders relating to Contracts and Financial Regulations have been followed.
  - Expenditure is within the approved budget or capital programme provision.
  - Expenditure is in respect of Council policy.
  - Consultations, where appropriate, have taken place with appropriate other Directors and/or Cabinet Members.
- 3.2.9 Each Director shall monitor and endeavour to control expenditure within their approved budget and keep the Section 151 Officer informed of any actual or

likely changes which will/may have a significant impact on current or future budgets.

- 3.2.10 All reports to Council, Cabinet or other Committees should be made available to the Section 151 Officer or their representative in reasonable time to allow financial implications to be cleared.
- 3.2.11 Each Director may, in consultation with the Section 151 Officer, vire resources from one budget to another in order to facilitate effective and efficient service provision. This does not include the virement of resources for new or substantially altered policies or strategies.
- 3.2.12 Virements may involve consequential variations in budget composition for future years, provided always that the service revenue budget limit of the appropriate Director will not be exceeded in any year as a result of the proposal.
- 3.2.13 Virements between directorates must be agreed by both directors in consultation with the Chief Executive and the Section 151 Officer. Virements for technical accounting purposes, which do not affect the resources available to directors for service delivery (e.g. depreciation), may be approved by the Section 151 Officer.
- 3.2.14 Additional income can only be used to finance additional expenditure when the Section 151 Officer is satisfied that the additional income would not be required to meet an overspending or potential overspending of the Director's approved budget limit.
- 3.2.15 If it is considered that a virement is inappropriate and additional money is required, then a request for extra resources must be submitted to the Cabinet and Council. Additional money will not be made available unless approved by Cabinet and Council.
- 3.2.16 Nothing in these Rules should prevent a Director incurring expenditure essential to meet the needs of an emergency or which is referable to Section 138 of the Local Government Act 1972, subject to their action being reported at the earliest opportunity to the Cabinet and where appropriate the Council.

### **3.3 Capital**

- 3.3.1 Capital Expenditure is defined as expenditure which gives a benefit for a period of more than one year. This may involve the acquisition or enhancement of an asset. See Capital Investment and Disposal Guide for further information.
- 3.3.2 All capital schemes must be approved as part of the Council's Capital Programme before any commitments or contracts can be entered into, no matter what the source(s) of funding. Capital schemes must normally be approved by the Council. In cases of urgency (as set out in the Constitution) schemes may be approved by the Cabinet or by the Leader in consultation with the Section 151 Officer.



- 3.3.3 Prior to being put forward for inclusion in the programme, each scheme proposal must be justified against the following criteria:
- Contributes to the delivery of the Council's strategic objectives and/or meets statutory requirements.
  - Can be supported by a coherent funding strategy, which will minimise the use of the Council's own resources.
  - Has a clear and well thought out brief which defines the objectives of the project.
  - Has been fully evaluated against alternative methods of achieving the same objectives and alternative funding sources.
- 3.3.4 Directors will identify a Lead Officer for each project who will take overall responsibility for co-ordinating all aspects of the project's implementation.
- 3.3.5 Following each relevant meeting of the Cabinet, each Director will be notified of the individual schemes approved together with any conditions that may be imposed, e.g. dependent on the sale of land, securing resources for revenue implications, reporting back to the Cabinet, etc.
- 3.3.6 For each service's capital projects, meetings will be arranged at regular intervals between Lead Officers and representatives from Finance and any relevant technical officers to monitor:
- Progress of schemes.
  - Problems and difficulties.
  - Changes to original proposals e.g. revised costs or work programmes, delays, etc.
  - Actual expenditure.
- 3.3.7 Reports will be submitted regularly to Cabinet with regard to overall progress with each Directorate's capital programme, giving details of the current position. Particular areas for concern will also be highlighted, such as:
- Potential under-spend/overspend of schemes and how the situation can be resolved.
  - Changes in the financial resources available, e.g. due to an increase/decrease in usable capital receipts or grant funding.

### **3.4 Leasing**

- 3.4.1 Following the adoption of International Reporting Standard 16 (IFRS16) from April 2022 all leases where the Council is the lessee, of duration longer than 12 months and above a set de-minimis (£15,000) will be deemed as finance leases and hence treated as capital expenditure. Therefore formal Council approval will be required.
- 3.4.2 In certain circumstances leases where the Council is a lessor may be also be deemed finance leases in which case the transaction is treated as an asset

disposal to the lessee and rental income is a capital receipt and therefore not revenue income.

- 3.4.3 Before entering into any leases for property or equipment managers should consult with Accountancy to ensure such arrangements represent best value for money and are accounted for appropriately.

### **3.5 Reserves and Balances**

- 3.5.1 The Section 151 Officer will report to the Council on the robustness of the estimates and the adequacy of reserves (when considering the budget for the following year) in accordance with the requirements of the Local Government Act 2003 and CIPFA guidance. Specifically, the report on reserves will include a statement on the adequacy of general reserves and provisions for the forthcoming year.
- 3.5.2 Directors may, with the approval of the Section 151 Officer, establish earmarked reserves from within their budgets to fund future service developments (in line with Council priorities) or expenditure of an uneven nature (e.g. renewal of equipment).
- 3.5.3 As part of each year's budget review process, all earmarked reserves will be reviewed by Directors in consultation with the Section 151 Officer. Any reserves no longer required for their original purpose will be transferred to General Reserves.
- 3.5.4 General Reserves will be managed to enable spending pressures and resources to be balanced over the medium term.
- 3.5.5 Separate ringfenced reserves will be held in relation to the Housing Revenue Account (HRA), Public Health and Dedicated Schools Grant.

## **4 Risk Management and Control of Resources**

### **4.1 Risk Management**

- 4.1.1 The Section 151 Officer is the lead officer in respect of risk management and is responsible for the corporate risk management processes of the Council. However, it is the responsibility of all officers and members to be aware of the principles of risk management and to manage risks, where appropriate for their area. All Directors have a responsibility for ensuring that risk management is fully embedded within their Directorate.
- 4.1.2 The Section 151 Officer is responsible for the development, co-ordination and maintenance of the Council's Risk Management Framework. He/she will report on a regular basis to Senior Executive Board and the Audit and Standards Committee.
- 4.1.3 All Directors are responsible for ensuring the Corporate risks are up to date (taking account of emerging risks) and that they reflect the key strategic risks that the Council faces. Where a Director is the designated officer for a risk, he/she will ensure that there are appropriate mitigating actions in place and that

these controls are operating effectively. Directors will be required to provide assurance on how a risk is being mitigated on a regular basis.

- 4.1.4 Directors are responsible for implementation of the Risk Management Framework within their Directorate. As part of this they are required to complete the Risk Assurance Protocol on a quarterly basis. By completing this protocol Directors are providing assurance, which includes that appropriate risks have been identified in line with the objectives of the Directorate and that mitigating actions are effective. In preparing the protocol the Director must require all officers reporting directly to him/her to provide similar assurance for their area of responsibility.
- 4.1.5 Directors must undertake a formal risk assessment prior to developing new strategic policies or procedures, making amendments to existing strategic policies/procedures, commencing a new project, entering into a new partnership and/or implementing new or revised services. Pertinent papers should be retained by Directorate Management Teams. If risks are identified, then they should be entered onto the Corporate Risk Management System (Spectrum).
- 4.1.6 Directors submitting a report to Cabinet, the Council or one of the Council's Committees must ensure that any risks arising from the proposed action or decision are explicitly detailed as required by the corporate report format. Any controlling/mitigating actions to be taken to reduce these risks should also be included in the report.
- 4.1.7 Directors should ensure that positive risks (i.e. relating to opportunities) as well as negative risks (threats) are identified and monitored.

## **4.2 Internal Audit**

- 4.2.1 The Section 151 Officer under section 114 of the LGFA 1988 and the Accounts and Audit Regulations 2006 has a statutory responsibility for the overall administration of the Council's financial affairs. Section 6 of the Accounts and Audit Regulations 2003, says that the Council "shall maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control in accordance with proper internal audit practices". The Section 151 Officer shall, therefore, in accordance with relevant legislation arrange for a continuous and current internal audit of all areas of Council activities.
- 4.2.2 "Proper practices" are defined by the CIPFA publication "Code of Practice for Internal Audit in Local Government in the United Kingdom". Audit Services will operate to this Code and any other relevant guidance. The definition of Internal Audit within the Code is: "Internal Audit is an assurance function that provides an independent and objective opinion to the organisation on the control environment (comprising risk management, control and governance) by evaluating its effectiveness in achieving the organisation's objectives. It objectively examines, evaluates and reports on the adequacy of the control environment as a contribution to the proper, economic, efficient and effective use of resources."

- 4.2.3 As the definition outlines, Audit Services has a key role to play in reviewing the Councils arrangements for corporate governance, risk management and internal control. It contributes to the Council's Annual Governance Statement.
- 4.2.4 The existence of a continuous internal audit service does not in any way diminish the responsibility of Directors for the management of divisions or sections under their control and their responsibilities in respect of the systems of internal control and the management of risk.
- 4.2.5 The Head of Audit Services shall ensure that Internal Audit remains independent in the planning and operation of its activities. The Head of Audit Services is responsible for maintaining periodic audit plans which have due regard to the key strategic risks of the Council, the risks involved for each service area in delivering their services and any requirements of the External Auditor. The Head of Audit Services will consult with the Section 151 Officer, Directors and the Audit and Standards Committee on the audit plan.
- 4.2.6 It is the responsibility of Audit Services to review, appraise and report upon:
- The soundness, adequacy and application of internal controls providing assurance within the Annual Governance Statement.
  - The extent to which the Council's assets and interests are accounted for and safeguarded from losses of all kinds arising from fraud and other offences, waste, extravagance and inefficient administration, poor value for money or other causes.
  - The suitability, reliability, integrity and completeness of financial and other management data developed within the organisation.
  - The soundness and adequacy of the systems operating to collect and report on performance information.
  - The corporate governance arrangements of the Council.
  - The risk management processes of the Council both at Corporate, Directorate and Service Level.
- 4.2.7 The authorised Internal Audit representatives shall be empowered to:
- Enter at all reasonable times any Council premises or land.
  - Have access to all council records, documentation and correspondence relating to any financial and other transactions as considered necessary.
  - Have access to records belonging to third parties such as contractors or partners when required (such rights of access shall be written into appropriate agreements).
  - Require and receive such explanations as are regarded necessary concerning any matter under examination.
  - Require any employee of the Council to account for cash, stores or any other Council property under his/her control or possession.
- 4.2.8 All work carried out shall have due regard for the requirements of the Human Rights Act 1998, the Data Protection Act 2018, Freedom of Information Act

2000, Regulation of Investigatory Powers Act (2000) and other legislation current at the time of the audit.

- 4.2.9 Audit Services should be consulted on any changes in financial, governance or risk management procedures and on the implementation of new or updated computer systems.
- 4.2.10 Directors are responsible for responding to Audit Services reports in accordance with the agreed audit process flowchart. Recommendations should be implemented in accordance with the agreed timescale.
- 4.2.11 It is the duty of any officer or Member to comply with the Corporate Anti-Fraud and Corruption Strategy. Wherever any matter arises which involves actual or potential financial irregularities, misappropriations or indications of corruption, the Section 151 Officer and/or Head of Audit Services should be notified immediately and he/she shall take such action as he/she considers necessary by way of investigation, report and referral to the Police. The Section 151 Officer and/or Head of Audit Services shall, where necessary, consult with the relevant Directors concerning referral to the Police and notify the Head of Paid Service and the Council's External Auditor in significant cases of fraud or corruption.
- 4.2.12 Each Director shall:
- Respond without undue delay to any enquiries or recommendations made by the Section 151 Officer.
  - Inform the Section 151 Officer as soon as possible of failures of financial control, including matters which involve, or may involve financial irregularity.
- 4.2.13 The Head of Audit Services has the authority to report, as appropriate, on any matter, without fear or favour, to all levels of the Council. This can include reporting directly to the Chief Executive, the Leader, Cabinet Member with responsibility for Finance, Chair of the Audit and Standards Committee, Section 151 Officer, Directors, the Monitoring Officer or the Council's External Auditor.

#### **4.3 External Audit**

- 4.3.1 The Section 151 Officer is responsible for ensuring that:
- The External Auditors are given access at all reasonable times to premises, personnel, documents and/or assets that they consider necessary for the purposes of their work.
  - There is effective liaison between external and internal audit.
  - The full Council, Cabinet and Directors are advised on their responsibilities in relation to external audit.

#### **4.4 Land and Buildings**

- 4.4.1 The Council holds a significant portfolio of land and buildings. These resources should only be used for the purposes of the Local Authority and should be properly accounted for. An asset register should be maintained.
- 4.4.2 The acquisition or disposal of these assets are considered capital expenditure or capital receipts respectively and therefore compliance with the Capital Investment and Disposal guide is required.

#### **4.5 Stocks and Stores**

- 4.5.1 Stock could be defined as items that generally are not held on a long-term basis, are of a consumable nature or have been purchased for resale. As a guide stock held with an aggregate value exceeding £50,000 should be recorded and the controls detailed below should be enforced.
- 4.5.2 Directors are responsible for:
- Determining an efficient stock holding policy to ensure stock levels are not in excess of operating requirements.
  - Determining minimum stock holding levels and efficient order quantities where a stock control system is operated.
  - Supplying the Section 151 Officer with such information relating to stores as may be required for the accounting records of the Council.
  - Ensuring all stocks are held in a secure location with limited access and appropriately segregated into marked areas.
  - Ensuring stock checks are undertaken at least once a year either in full or as part of a rolling programme of checks.
  - Supplying the Section 151 Officer with the value of stock in hand as at 31st March certified by the appropriate Director.
  - Ensuring that after each stock check a return is completed indicating any differences between actual and recorded stock.
  - Ensuring stock check variances are thoroughly investigated and the appropriate adjustments are authorised and applied on a timely basis.
  - Reporting to the Section 151 Officer and Head of Audit Services any suspicions of theft or misappropriation or significant unexplained variances.
  - Approving the disposal of surplus material or obsolete stock. All disposals should be recorded.
  - Ensuring that there is an appropriate separation of duty within the stores processes.
- 4.5.3 The Section 151 Officer is responsible for:
- Providing the basis for the valuation of stock.
  - Ensuring stock values are appropriately recorded in the Authority's accounts.
  - (With the Head of Audit Services) investigating suspected theft or misappropriation or significant unexplained variances.

## **4.6 Treasury Management**

- 4.6.1 Treasury management is the management of the Council's cash flows, its borrowing and investments, the management of the associated risks and the pursuit of the optimum performance or return consistent with those risks. The Council's investment activities are subject to government guidance issued under Section 15(1) of the Local government Act 2003. It is the responsibility of the Section 151 Officer to maintain a Treasury Management Policy Statement, Treasury Management Practices and an annual Treasury Strategy Statement which is approved by Council.
- 4.6.2 The Council's primary objective in relation to the investment of public funds is the security of capital. The liquidity or accessibility of the Council's investment followed by the yields earned on investments are important but are secondary considerations.
- 4.6.3 The Council can borrow to fund capital investment so long as it has sufficient revenue resources to service the resulting debt charges – principal and interest. A Council is unable to borrow for revenue purposes without express permission from Government.
- 4.6.4 No person shall do, or commit to do, any of the following without the prior approval of the Section 151 Officer:
- Lend or borrow funds under the control of or due to the Council.
  - Enter into any credit agreement.
  - Enter into an arrangement that is or may be classed as a loan at nil interest.
  - Enter into a financial guarantee.
  - Enter into any transactions involving financial futures, swaps, options, hedging and other similar financial instruments.
  - Take any course of action that would give rise to a financial asset or liability of the Council except where this is in the course of delivering services or capital schemes included in the approved budget and it is in accordance with the other requirements of this paragraph.

## **4.7 Banking and Cash Handling**

- 4.7.1 The Section 151 Officer is responsible for:
- The opening, operating and closing of bank accounts in the name of the Council.
  - Ensuring there are satisfactory arrangements in place for the ordering, storage and control of all cheques drawn on the Council's main bank accounts (but see 5.1 for preferred methods of payment).
  - Ensuring regular reconciliations are carried out between all bank accounts and the financial ledger of the Council.
- 4.7.2 Imprest accounts (petty cash) should only be established in exceptional circumstances agreed by the Section 151 Officer where there is no other

practicable means of meeting minor expenditure on behalf of the Council (see 5.1 for preferred methods of payment). The following restrictions and controls should be applied:

- Petty cash must not be used to reimburse staff for miscellaneous expenses (which should be processed through the Council's payroll) or pay suppliers' invoices.
- Individual petty cash payments should not exceed £50.
- Petty cash should be maintained on an imprest basis.
- A petty cash payment slip must be completed for every reimbursement that is made, signed by the claimant, authorised by an appropriate officer and signed by the person receiving payment.
- Receipts must be obtained where practicable.
- The Section 151 Officer reserves the right to withdraw imprest facilities from officers if it is deemed that they are being used inappropriately, the expenditure limit is exceeded, or the facility is rarely used.
- No income received on behalf of the Council may be paid into petty cash but must be separately banked.
- Petty cash accounts must never be used to cash personal cheques or make personal loans.
- The imprest account should be continually kept in balance and regular reconciliations should be undertaken by an independent officer of the cash in hand to the records maintained. These checks should be documented.
- Petty cash payments and petty cash imprest reimbursements should be authorised in accordance with the Directorate financial delegation.
- The officer responsible for an imprest account shall, if requested, give the Section 151 Officer a certificate confirming the amount held.
- Upon leaving the Council or at the request of the Section 151 Officer the responsible officer shall repay to the Council the balance of the imprest held or have the imprest formally transferred to another officer.
- Service Managers are responsible for ensuring that the imprest account is regularly reviewed and reconciled and must provide the Section 151 officer with a certificate of value of the account held at 31<sup>st</sup> March each year.

4.7.3 Same day payment methods such as CHAPs and Faster payments are generally restricted for treasury and emergency payments only. These can only be actioned by Financial Services but access to Faster Payments by the supplier payments system is available (subject to approval by the Section 151 Officer) for specific service areas where emergency payments have to be made.

#### **4.8 Assets**

4.8.1 The Council holds assets in the form of property, vehicles, equipment, furniture, information and other items worth many millions of pounds. It is important that these assets are safeguarded and used efficiently for service delivery.

4.8.2 All assets must be held in the name of the Council and not in the name of an individual officer. Managers must ensure the safe custody of vehicles, stock and stores and any other property belonging to the Council. Cash holding on



premises should be kept to an absolute minimum. All staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal and is properly authorised. Users of ICT equipment are required to comply with ICT Equipment Guardianship and Usage Policy.

- 4.8.3 All staff have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or electronic records. Information may be sensitive or privileged, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Council.
- 4.8.4 All staff have responsibility for 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.

## **4.9 Insurance**

4.9.1 The Section 151 Officer is responsible for:

- Ensuring the Council's assets and liabilities are adequately and properly insured. Only officers authorised by the Section 151 Officer may obtain insurance cover on behalf of the Council.
- Reviewing insurance covers.
- Keeping a record of all insurances.
- Processing all claims relating to the Council's external and internal insurance arrangements and negotiating settlements (where liability is accepted) within the limits and terms and conditions of these insurance arrangements.
- Where it is deemed an insurance recovery will not be forthcoming, notifying the relevant directorate as soon as possible to enable them to take any further action necessary.
- Ensuring appropriate cover for losses caused by fraudulent actions/theft by Council employees.

4.9.2 Directors are responsible for:

- Notifying the Insurance Section of acquisitions, disposals or any other material fact impacting upon the status of tangible assets. Failure to do so may mean the asset is uninsured.
- Consulting the Insurance Section on any changes to existing or new working arrangements that may impact on Public Liability, Fidelity Guarantee, Professional Negligence, Officials' Indemnity or other insurance covers.
- Consulting with the Insurance Section in respect of the terms of any indemnity which the Council is requested to give under contract to ensure the adequacy of the Council's insurance arrangements.

- Notifying the Insurance Section of any loss, liability or damage causing event that may give rise to a claim of any kind against the Council as soon as practicably possible.
- Ensuring that anyone covered by the Council's insurances is aware that they must not admit liability or make any offer to pay compensation that may prejudice the assessment of liability in respect of any insurance claim.
- Ensuring that appropriate officers co-operate at all times with the investigations of the Section 151 Officer into any claims, supply all information upon request and comply with the timescales for investigating claims.
- Ensuring that all hirers of the Council's buildings sign a formal hiring agreement requiring them to indemnify the Council against the cost of any damage caused to Council property or legal claim(s) arising from the negligent actions of the hirer.
- Providing the Section 151 Officer with any other information they may require to fulfil their duties outlined above.

#### **4.10 Payments to employees**

4.10.1 Employee costs form a large proportion of the Council's expenditure. It is essential that the Council recruits and retains employees with appropriate skills and qualifications. Controls should ensure that payments are made only where due in accordance with conditions of employment.

4.10.2 The Head of Human Resources and Organisational Development must ensure that:

- All relevant personnel and payroll records are retained in accordance with the Council's document retention policy and statutory requirements.
- All human resources and payroll policies and procedures are reviewed and updated on a regular basis.
- All key employment checks are undertaken, where appropriate including Criminal Records Bureau, Medical Clearance, References, Identity, Immigration, Asylum and Nationality Act 2006.
- Payments to staff are made at the prescribed intervals.
- Statutory deductions and other payroll deductions are taken at the correct rate and paid over to the relevant body in a timely fashion.
- All required returns are submitted to HM Revenues and Customs by the prescribed dates.
- The permissions within the Corporate Payroll and Personnel System (PIMS) are in accordance with reporting lines. Claims for variable allowances (e.g. expenses or overtime) should be authorised by the line manager.

Contractual changes (e.g. change of hours or acting up) should be authorised by the Head of Service.

4.10.3 Directors must ensure that:

- Reporting lines are accurately recorded on the Corporate Payroll and Personnel System and that no amendments are made except as authorised in accordance with the directorate delegations.
- All appointments are made in accordance with the rules of the Council (Recruitment and Selection Policy) and approved establishments, grades, scales of pay and that adequate budget provision is available for the length of the employment contract.
- All changes in contract and variable payments (e.g. overtime) are within budget and where relevant comply with the Collective Agreement and the Council's Pay Policy Statement.
- Appropriate employment status assessments are made for each contractor engaged either as sole traders or as Personal Service Companies, and that payments are made net of tax and national insurance if they are deemed to be employed for tax purposes. Managers must be able to evidence that they have tested the employment status against HM Revenues and Customs rules.
- That their Managers on a regular basis as part of budget monitoring review the salary payments made to their staff. This should be checked to ensure that the staff establishment is correct and that payments made are accurate.
- Changes that would have an impact on an individual's pay (leavers, maternity, sickness, change of hours, change in work pattern, overtime, etc.) are recorded on the Corporate Payroll and Personnel System in a timely fashion and in accordance with published deadlines.
- Any benefits in kind are notified to Human Resources and Organisational Development.
- If temporary staff are required then contact is made in the first instance with the Council's Temp Solutions Team or through the Council's approved contractor.
- The payment of any honorarium is approved by Human Resources and Organisational Development.
- No payment shall be made to a person deemed to be an employee other than through the normal payroll procedure (under no circumstances should an employee be paid in cash).

- The Collective Agreement on grading and pay and the Council's Pay Policy Statement are adhered to. Where a role changes or a new post is created (and in advance of any communication to staff about pay) directorates should liaise with Human Resources and Organisational Development to determine appropriate job grades.
  - Any other relevant Human Resources policies and procedures are adhered to.
  - All documentation supporting payments to employees is input to the Corporate Payroll and Personnel System.
  - All key employment checks are undertaken, where appropriate including Disclosure and Barring Service, Medical Clearance, References, Identity, Immigration, Asylum and Nationality Act 2006.
  - Payments to staff are made at the prescribed intervals.
  - No amendment is made to the Corporate Payroll and Personnel System except as authorised in accordance with the directorate financial delegations.
  - No payment shall be made to a person deemed to be an employee other than through the normal payroll procedure. Under no circumstances should an employee be paid in cash.
- 4.10.4 When authorising payments for travel and subsistence, line managers are responsible for ensuring that:
- Costs have been incurred for valid journeys on official Council business.
  - Mileage is accurate.
  - Subsistence claims are appropriately supported and in line with Council policies
  - Car parking and other expenses are appropriately supported and in line with Council policies.
  - Officers claiming car mileage are appropriately insured and legally allowed to drive and the vehicle has a valid MOT (if required).
  - Claims are made promptly (within three months).
- 4.11 Inventories**
- 4.11.1 Items of furniture, equipment, plant and vehicles costing over £1,000 (or that are of a highly attractive and portable nature) should be included on the inventory record.
- 4.11.2 A corporate inventory for all significant ICT assets shall be maintained by the Head of ICT Services. Directorates should not arrange relocation or disposal without appropriate notification to the Head of ICT Services.

4.11.3 Where inventory is located in accommodation managed by Corporate Landlord Services, the responsibility for the maintenance of the inventory record rests with the Director of Regeneration and Enterprise. For other buildings, Directors are responsible for the inventory in buildings which they occupy.

4.11.4 Directors are responsible for:

- Maintaining inventories of equipment that record the full description of the item (including the make, model and serial number, where appropriate), the location of the item, the cost and order number (where appropriate).
- Ensuring the inventory is updated as soon as the item is received
- Ensuring inventory items are marked “Dudley MBC”, where appropriate
- Ensuring that inventory items are held securely at all times, particularly expensive, moveable items.
- Organising an independent annual check of their inventory and getting it approved by a senior officer.
- Ensuring disposal of obsolete items is appropriately authorised and documented.
- Ensuring all leased or third party inventory items are clearly identified and labelled (indicating that the item should not be sold or disposed of).
- Ensuring that all significant discrepancies are reported to the Section 151 Officer.

4.11.5 The Director of Regeneration and Enterprise is responsible for:

- Maintaining a database of all properties owned or rented by the Council and for ensuring that valuations are reviewed on a regular basis.
- The acquisition and disposal of all land and property owned / to be owned by the Council, letting, sublettings, rent reviews and renewal of leases and tenancy agreements.

## **4.12 Management of Information**

4.12.1 Directors are responsible for the security of all information within their Directorate. Information exists in many forms. It can be printed or written on paper, stored electronically, transmitted by post or electronically, shown on films, or spoken in conversation. Whatever form the information takes, or means by which it is shared or stored, it must be appropriately protected.

4.12.2 Directors must ensure compliance with the Council's information governance policies so that the requirements of the Data Protection Act 2018, UK GDPR, Computer Misuse Act 1990, Copyright and Patents Acts, Human Rights Legislation and the Freedom of Information Act 2000 are met.

4.12.3 Directors must ensure that data quality is maintained within their Directorates.

4.12.4 Directors are responsible for evaluating third parties' security arrangements and where appropriate ensure that contracts include clauses relating to the

processing of personal data in accordance with the requirements of the Data Protection Act 2018.

## **5 Financial Systems and Procedures**

### **5.1 Ordering goods and services**

- 5.1.1 Order requisitions are to be authorised by officers approved by Directors within the scheme of financial delegation. Authorised officers are responsible for ensuring that, before an order is issued, there is adequate budget provision and that Standing Orders Relating to Contracts and Financial Regulations have been complied with.
- 5.1.2 Orders shall indicate clearly the date of the order, the quantity, quality and nature of the goods, works and services and the contract or agreed price. An estimated price shall be provided when an agreed price is not available.
- 5.1.3 It is a requirement that the officer who raises the requisition is different from the officer who approves the requisition. In some services, where there is a requirement to process many small value invoices, it may be appropriate for orders to be self-approved by the requisitioner up to a value of £250 (but as a compensating control managers will review any self-approved orders for their area of responsibility each month). It is also a requirement that the officer who approves the requisition is different from the officer who receipts the goods or service.
- 5.1.4 Purchase orders should be raised and authorised within UNIT 4 ERP for all expenditure other than for specific areas which have been agreed with the Section 151 Officer, where a No-Order invoice should be approved.
- 5.1.5 Where payment is to be made, Directors should ensure that the officers who authorise No Order invoices for payment or have approved invoice variations have prior to authorisation confirmed that:
- A valid invoice has been received.
  - The goods, services and work have been received or carried out, examined and approved as to quality and quantity.
  - The expenditure is necessary, legal and within the estimates provision.
  - The prices are in accordance with any quotation, tender or contract and/or are reasonable.
  - Discounts or credits due have been deducted.
  - VAT or other tax treatment is correctly stated.
  - The account is arithmetically correct.
  - The amount has not been previously paid or certified for payment, either in whole or part.
  - Appropriate entries have been made in asset registers, inventories and stock records.
  - The information shown on the scanned invoice is in agreement with the details to be paid.
  - There is an appropriate separation of duty.
- 5.1.6 Where an invoice is incorrect, e.g. because of an addition error, the VAT is incorrectly calculated or the invoice is not addressed to the Council, it should be

- returned to the supplier with an explanatory note. Amendments should not be made to an invoice as this may invalidate the recovery of VAT. A credit note should always be requested, where required.
- 5.1.7 Officers should monitor the orders raised and ensure that goods/services are received/provided within the stipulated timetable. Where an order or part of an order is no longer required, then it should be cancelled off the system so that the outstanding commitment is amended on the appropriate budget report.
- 5.1.8 The preferred payment method for suppliers is via BACS. Due to increased risk of fraud and loss, cheque payments must only be made in exceptional circumstances where it is not possible to obtain the payee's bank details.
- 5.1.9 Purchase cards are an alternative payment method which are useful in particular for transactions where a purchase order is not practicable. All purchase card holders must complete relevant training and refer to the Purchase Card Manual for guidance on purchase card payments. Card holders must ensure that they reconcile their payments against their monthly statements and where necessary reclaim unclaimed VAT. Users should carefully consider the relative advantages and disadvantages of using a purchase order or a purchase card for their specific transactions. Further support is available from the VAT and Creditor teams.
- 5.1.10 Some suppliers will only accept payment via Direct Debit. Usually this is prevalent within certain markets, such as energy. The signing of the contract permits the supplier to debit the Council's bank account and without authorisation being tracked through Business World. Therefore, only the Section 151 Officer can approve contracts that require payment via Direct Debit.
- 5.1.11 Where appropriate in the interests of efficiency, non-financial ICT systems may be interfaced with the UNIT 4 ERP system in order to drive payments to suppliers (e.g. Liquid Logic for social care payments). In these cases, the Section 151 Officer or his/her representatives must be satisfied that there are equivalent controls (including separation of duties) and that these controls are properly documented.

## **5.2 Income**

- 5.2.1 Council operations are funded by multiple income streams, which can be categorised as:
- Government Grants, e.g. DSG.
  - Other Specific Grants and contributions, e.g. Lottery, Section 106 and Community Infrastructure Levy (CIL).
  - Local taxation, e.g. Council Tax and Business Rates.
  - Fees and Charges, e.g. Leisure Centre charges, Housing Rent.
- 5.2.2 It is the responsibility of the Section 151 Officer to ensure that procedures for recording, collection, reconciling and recovery of income are effective. Directors must ensure that all income for their directorate is recorded in a timely manner and support is given to debt recovery teams.
- 5.2.3 For general income, debtor invoices should be raised via UNIT 4 to record and start the recovery process. Where appropriate, other ICT systems may be interfaced with the Unit4 system in order to record and recover income. (e.g.

Northgate systems for Housing rents, Council Tax and Business Rates). In these cases, the Section 151 Officer or his/her representatives must be satisfied that there are equivalent controls (including separation of duties) and that these controls are properly documented.

- 5.2.4 Directors shall, wherever possible, separate the responsibility for identifying the amount due/raising of accounts from the responsibility for collection. They should also ensure that any unbanked income is retained securely to safeguard against loss or theft and that receipts, tickets and other records of income are held securely for the appropriate period.
- 5.2.5 All debts will be followed up via reminders and debt recovery procedures as prescribed by the Section 151 Officer. No debt in respect of an amount due to the Council once established shall be discharged otherwise than by payment in full except where write-off has been properly authorised.
- 5.2.6 All proposals to write off debt must be approved by the Section 151 Officer. The cost of all write-offs will be borne by the budget holder, whose service originally benefited from the credit.
- 5.2.7 Income should be obtained in advance of supplying goods or services where it is considered that payment may be at risk. Whenever possible for sums below £100 credit should not be given and these sums should be collected on or before service delivery.
- 5.2.8 There are a number of methods of payment available to a Dudley resident, customer, client or funding body:
- Direct debit instalments.
  - BACS/Bank transfer.
  - Payment at Post Offices, Pay point and Payzone Outlets.
  - Card payments (in person, over the telephone or online).
  - Cash at certain locations (but see below for preferred methods of receiving income).
- 5.2.9 Appropriate payment methods should be promoted for each category of income. Due to risk of fraud, loss and costs, payment by cheque is strongly discouraged and should not be promoted on bills or in any other communications. For similar reasons, payment in cash at council-run locations is discouraged. Services may refer to the Income Management Group or Financial Services for further guidance.
- 5.2.10 Each officer who receives money on behalf of the Council, or for which they are accountable to the Council, shall keep such records as required by the Section 151 Officer. All receipts, tickets and other acknowledgements for payments received shall be in a form approved by the Section 151 Officer.
- 5.2.11 All money received by an officer on behalf of the Council shall be paid promptly and completely and at the earliest opportunity to the Council's bankers. In the interim the money should be kept securely, preferably in a locked safe and



within the insured amount for that safe. No deductions may be made from such money other than as may be approved by the Section 151 Officer or the Head of Audit Services. When money is banked information as to the reason for its receipt, or its origin, shall be supplied.

- 5.2.12 Money held on behalf of the Council shall not be used to cash personal cheques for members, officers or third parties.
- 5.2.13 In all instances when acknowledgement for payment is not provided, two members of staff must be present when collecting, counting and recording cash and a document must be completed recording the amount collected and signed by the two officers present to certify the accuracy of the information. If this is not possible a suitable record of income due and collected should be maintained with a subsequent check on the completeness of the income by examining and reconciling to supporting information and signed by the person undertaking the check. Any subsequent transfer of cash between two employees shall be acknowledged by both officers signing and dating a record of the transfer.
- 5.2.14 Money laundering is any attempt to convert the proceeds of crime to money or assets that appear to have derived from legitimate activities. Anyone who becomes involved in an activity which they know or suspect is related to the proceeds of crime may be guilty of money laundering. The areas which are most at risk of money laundering include;
- Conveyancing.
  - Cash payments in excess of £8000.
  - Refunds of overpayments to accounts.
  - Suspiciously low tenders.
- 5.2.15 Employees receiving cash on behalf of the Council must:
- Ensure that they are familiar with the Council's Anti-Money Laundering Procedures.
  - Ensure that no payment to the Council should be accepted in cash if it exceeds £8000.
- 5.2.16 Further information is available in the Council's Anti-Money Laundering Policy.

### **5.3 Taxation**

- 5.3.1 Like all organisations, the Council is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax can be severe. It is therefore essential that all officers are aware of their role. Any penalties from incorrect application of VAT or tax will be passed on to the relevant service area.
- 5.3.2 The Section 151 Officer is responsible for submitting claims to HMRC in relation to VAT and the Construction Industry Tax Deduction scheme.

- 5.3.3 The Council is able to recover VAT on its expenditure if it has received the supply. Services are responsible for correctly recording VAT and keeping relevant evidence such as receipts so that claims to HMRC can be completed efficiently and accurately by Financial Services. Managers should liaise with Financial Services should they have any queries.
- 5.3.4 The Council is able to recover VAT incurred in relation to “exempt” business income. The main services impacted are Bereavement, Leisure, Property and Lettings. However, this is subject to not exceeding the Partial Exemption limit imposed by HMRC. Managers of these service areas should consult with Financial Services if they are planning changes to service delivery or expansion of the current service, so that the most VAT efficient arrangements can be explored.
- 5.3.5 Employment status for tax purposes is a complex area but managers who engage workers as sole traders or through Personal Service Companies must carry out assessments of the engagement using HMRC’s online Check for Employments Status Tool (CEST) and liaise with HROD and Financial Services for advice. Where the tax status cannot be determined by the CEST the default position for workers is that they are employed for tax purposes. All invoices for workers deemed to be employed for tax purposes must be paid via PIMS payroll system net of income tax and national insurance deductions.
- 5.3.6 Certain sales and purchases of land and property may fall within the scope of Stamp Duty Land tax. In these situations advice must be sought from Finance and Legal Services.

## **6 External Arrangements**

### **6.1 External Funding**

- 6.1.1 External funding forms an essential source of funding to support and deliver Council services and priorities. Capital and Revenue grants can be automatically awarded to Local Authorities (including Schools) or they are made available via an application process.
- 6.1.2 Bids for external funding should only be made if the purpose of the grant fits with the Council’s objectives. Some funding agencies only provide part of the total project costs so it is essential that other funding sources are secured. It cannot be assumed that the Council’s General Fund can support project initiatives or for example staff costs once the finite funding has run out. Externally-funded capital expenditure must be included within the Council’s Capital Programme.
- 6.1.3 Managers should ensure that the key conditions of funding and any statutory requirements are complied with and the responsibilities of the Accountable Body are clearly understood. Grant funding must only be used for the designated purposes. All income and expenditure relating to external funding must be recorded via UNIT 4 ERP. Where grant claims or returns are a

condition of the grant these must be completed in consultation with the appropriate service accountant.

- 6.1.4 The Council's External Funding Code of Practice must be complied with in respect of all aspects of external funding and contains further information and guidance.

## **6.2 Partnerships**

- 6.2.1 Partnership working could be defined as "two or more groups coming together to achieve a common purpose". The Council works in partnership with a wide variety of organisations to help deliver its priorities, find new ways to share risk, access resources, improve services, work in innovative ways and forge relationships with other organisations.

- 6.2.2 Partnerships can be distinguished into:

- Non-commercial partnerships such as pooled budget arrangements with health partners.
- Commercial partnerships such as where the Council lets a contract or undertakes a formal joint venture with another entity.

- 6.2.3 Non-commercial partnerships do not come within Contract Standing Orders, but any contracts the Council lets under such a partnership must comply. Commercial partnerships must follow Contract Standing Orders.

- 6.2.4 The responsibility of the Section 151 Officer is to advise on the key elements of funding a project, including:

- A scheme appraisal for financial viability in both the current and future years.
- Risk appraisal and management.
- Resourcing, including taxation issues.
- Audit, security and control requirements.
- Carry-forward arrangements.
- Treatment of assets used by the partnership.
- Ensuring that the accounting arrangements are satisfactory.

- 6.2.5 Directors are responsible for:

- Maintaining records of all partnership agreements.
- Ensuring that a detailed business case and risk appraisal has been prepared before entering into the partnership.
- To ensure that there are no adverse impacts on services provided by the Council.
- To provide any information required by the Section 151 Officer where required to disclose the partnership in the Statement of Accounts.

### **6.3 Work for Third Parties**

- 6.3.1 Work can only be undertaken for third parties where the Council has the legal powers to undertake the work. Such work may enable a service area to maintain economies of scale and existing expertise. Directors are responsible for:
- Consulting with the Director of Digital, ICT and Commercial.
  - Ensuring the appropriate contractual arrangements are in place between the Council and the customer.
  - Ensuring that no contract adversely impacts upon services provided by the council.
  - Ensuring that at least all marginal costs of the activity are recovered via the charging mechanism.
  - Contacting the Insurance section so that appropriate officer/professional indemnity insurance can be arranged.
- 6.3.2 Advice must be sought from the Section 151 and Monitoring Officer prior to the Council creating a Local Authority Company or the Council taking an interest in a company. A decision of this nature is made by Full Council.

## 7. Glossary of Terms

Accountable Body	The organisation within a partnership responsible for accounting for proper use of funds
BACS	Bankers' Automated Clearing Services (system for all UK automated payment methods)
Capital expenditure	Expenditure on the acquisition, creation or improvement of assets with long term value
CHAPS	Clearing House Automated Payment System (a same day payment method)
Creditors	Sums owed by the Council
Debtors	Sums owed to the Council
DSG	Dedicated Schools Grant (ringfenced account for schools and education functions)
Faster Payments	A method for payments within up to 2 hours
Fidelity Guarantee	Insurance against losses due to employee dishonesty, theft or fraud
GDPR	General Data Protection Regulation
General Fund	Account for the general functions of the Council (i.e. those not covered by the HRA, DSG or PHG)
HMRC	Her Majesty's Revenue and Customs
HRA	Housing Revenue Account (ringfenced account for housing landlord functions)
Imprest	A fund for small items of expenditure that is restored to a fixed amount periodically
IR35	Tax legislation determining whether an individual is an employee or self-employed for tax purposes
Liquid Logic	Social care ICT system
PHG	Public Health Grant (ringfenced account for public health functions)
PIMS	People Information Management System (corporate payroll and HR system)
Provisions	A charge for an estimated expense
Reserves	Funds held for a specific purpose
Revenue expenditure	Expenditure for day to day purposes, not related to assets of long-term value
Spectrum	The Council's performance and risk management system
UNIT4 ERP	Corporate financial ICT system (formerly known as Business World and Agresso)
Vire (v) / virement (n)	Transfer of budget from one purpose to another

**8. List of documents to support Financial Regulations**

- a. Annual Governance Statement
- b. Anti-Fraud and Corruption Strategy
- c. Anti-Money Laundering Procedures
- d. Budget and Policy Framework Procedure Rules (part of Constitution)
- e. Capital Investment and Disposal guide
- f. Capital Strategy
- g. Code of Conduct for Employees (part of Constitution)
- h. Collective Agreement on Grading and Pay
- i. Constitution
- j. Document Retention Policy
- k. External Funding Code of Practice
- l. ICT Equipment Guardianship and Usage Policy
- m. Members Code of Conduct (part of Constitution)
- n. Pay Policy Statement
- o. Purchase Card Manual
- p. Responsibility for Functions (Scheme of Delegation) (part of Constitution)
- q. Risk Management Framework
- r. Standing Orders Relating to Contracts (part of Constitution)
- s. Treasury Management Policy
- t. Treasury Management Practices
- u. Treasury Strategy Statement

## **PART 6**

# **CODES AND PROTOCOLS**

# **STANDARDS ARRANGEMENTS**

## **(INCLUDING MEMBERS' CODE OF CONDUCT)**



## **Arrangements for Dealing with Standards Allegations under the Localism Act 2011**

### **1. Context**

The Localism Act 2011 requires the Council to adopt arrangements to deal with allegations that a Member or Co-opted Member has failed to comply with the Members' Code of Conduct. These arrangements set out how any such complaints or allegations will be investigated and dealt with.

The Council has appointed an Independent Person. The Monitoring Officer will seek the Independent Person's views before a decision is taken on any allegation that is formally investigated. The Independent Person's views can be sought at any other stage by the Monitoring Officer or by a Member against whom an allegation has been made.

### **2. The Members' Code of Conduct**

The Council has adopted the attached Members' Code of Conduct. The document is available on the website and from the Council on request.

### **3. Making a Complaint against a Member or a Co-opted Member**

It is a requirement of the Localism Act 2011 that any complaint or allegation that a Member has failed to comply with the Members' Code of Conduct must be in writing.

Anyone wishing to make a complaint will need to complete the complaints form, which is available on the website and on request from the Council. If you have difficulty completing the form, please contact the Monitoring Officer. The completed form should be sent to:-

The Monitoring Officer  
Dudley Metropolitan Borough Council  
The Council House, Priory Road, Dudley DY1 1HF  
E-mail: [mohammed.farooq@dudley.gov.uk](mailto:mohammed.farooq@dudley.gov.uk)  
Telephone: 01384 815301

The following points should be noted before a complaint is made:

- Complainants need to provide their name and a contact address or email address, so that the Monitoring Officer can acknowledge receipt of the complaint and keep the complainant informed on its progress.

- The Council will not investigate anonymous complaints unless there is a clear public interest in doing so.
- Other than in exceptional circumstances, the Council will only consider complaints made in writing within 3 months effective from the date on which the alleged breach of the Members' Code of Conduct took place.
- There is a presumption that a complainant will not be allowed to claim confidentiality unless exceptional circumstances exist. If a complainant wants to keep their name and address confidential, this should be indicated in the space provided on the complaint form. We will not then disclose the name and address without prior consent.

#### 4. **Procedure for Dealing with a Complaint**

The Monitoring Officer will acknowledge receipt of the complaint and notify the Member concerned of the receipt of a complaint against him/her.

The Monitoring Officer will decide if any further information is required at this stage. Both parties to the complaint will be notified if this is necessary.

No decisions on complaints will be made by the Monitoring Officer during the pre-elections 'purdah' period (usually the six weeks period before an election is held).

The Monitoring Officer will carry out an initial assessment of the complaint and may consult with the Independent Person at any point. The initial assessment will be in two stages:

##### **Initial assessment – Stage 1**

The Monitoring Officer will consider whether the complaint is within jurisdiction. For example, does the complaint relate to a Councillor who was acting as a Councillor at the time of the alleged breach.

##### **Initial assessment – Stage 2**

The Monitoring Officer will consider the following criteria to decide whether the complaint should be taken forward (this is not an exhaustive list):

- Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
- Are there alternative, more appropriate, remedies that should be explored first?
- Where the complaint is by one Councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression.
- Is the complaint malicious, politically motivated, or 'tit for tat'?
- Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction.

- Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted.
- Whether a substantially similar complaint has been submitted and accepted.
- Does the complaint relate to conduct in the distant past? This would include consideration of any reason why there had been a delay in making the complaint.
- Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting or on social media.
- Does the complaint relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?
- Is it about someone who is no longer a Councillor?

The Monitoring Officer may then decide:

- **There is no case to answer**

The Monitoring Officer will notify the Member and the complainant of the outcome of the initial assessment and the reasons for his/her decision.

- **To seek an informal resolution of the complaint**

The Monitoring Officer will contact the complainant and the Member to discuss any proposal to resolve the complaint informally. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. If both parties to the complaint accept informal resolution, the Monitoring Officer will notify them accordingly and conclude the complaint.

If the complainant refuses a reasonable offer of informal resolution, the Monitoring Officer will take this into account in deciding whether the complaint merits formal investigation. The Monitoring Officer may dismiss the complaint at this stage.

If the Member agrees to informal resolution, and subsequently fails to comply with any agreed action to informally resolve the matter, the Monitoring Officer may refer the matter to the Standards Sub-Committee.

The decision of the Monitoring Officer is final and not subject to an appeal.

- **To refer the complaint to the Police and/or regulatory agencies**

If the complaint identifies potential criminal conduct or breach of other regulations by any person, the Monitoring Officer has the power to inform the Police and/or any other appropriate regulatory agencies.

- **To refer the complaint for a formal investigation**

Following consultation with the Independent Person, the Monitoring Officer will appoint an Investigator. This may be another senior officer of the Council, a senior officer from another Authority, or an external investigator.

All decisions will be made in accordance with the following principles:

- proportionality (i.e. the action must be proportionate to the desired outcome, including consideration as to cost);
- due consultation and the taking of professional advice;
- a presumption in favour of openness;
- clarity of aims and desired outcomes;
- taking account and explaining the options considered and the reasons for the decision taken;
- due regard to the Members' Code of Conduct.

## 5. **Formal Investigations**

The Council will ensure that formal investigations are carried out as quickly and thoroughly as possible in line with the principles of fairness, natural justice and other legal issues.

There are many factors that can affect the time it takes to complete a formal investigation. Most formal investigations should be carried out, and a report completed, within six months of the original complaint being received by the Monitoring Officer. The Monitoring Officer will oversee the process to minimise delays wherever possible.

The Investigator will normally write to the Member against whom the complaint is made and provide him/her with a copy of the complaint. The Investigator will ask the Member to provide his/her explanation of events, and to identify what documents if any he/she needs to see, and whom he/she needs to interview.

In exceptional cases, where it is appropriate to keep a complainant's identity confidential, or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete the name and address from the documents given to the Member, or delay notifying the Member until the investigation has progressed sufficiently. The Monitoring Officer shall keep the issue of confidentiality under review throughout the complaints process.

The Investigator will advise the complainant and the Member of the scope of the investigation, including proposed timescales, the witnesses to be interviewed and the documents required. The Investigator has sole discretion as to how to conduct the investigation and conclude the investigation report.

At the end of his/her investigation, the Investigator will produce a draft report and will send copies of that draft report, in confidence, to the Monitoring Officer, the complainant and to the Member concerned.

The Monitoring Officer, the complainant and the Member will have an opportunity to comment on the draft report. However, the Investigator has sole discretion as

to whether to amend the report taking account of any comments made. The Investigator will then forward the final report to the Monitoring Officer, the complainant, and the Member.

The Monitoring Officer will review the Investigator's report and consult the Independent Person as necessary.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly or is insufficient to determine the complaint, he/she may ask the Investigator to reconsider his/her report. If the Monitoring Officer is satisfied that the Investigator's report is sufficient, the Monitoring Officer will determine one of the following courses of action:

- **That the report finds no breach of the Members' Code of Conduct** – the Monitoring Officer will advise the complainant and the Member that the matter is concluded.
- **That the report finds a breach or a potential breach of the Members' Code of Conduct** – the Monitoring Officer will write to the parties confirming this and propose one of the following options:
  - (i) The Monitoring Officer may consider that the matter can be reasonably resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with the complainant to agree what is a fair resolution. Such a resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action. If the Member complies with the suggested resolution, the Monitoring Officer will take no further action. If the Member concerned is not prepared to undertake any proposed action (such as giving an apology), then the Monitoring Officer will refer the Investigator's report to the Standards Sub-Committee.
  - (ii) Referral for a hearing by the Standards Sub-Committee.

## 6. **Procedure for Hearings by the Standards Sub-Committee**

### (i) **Pre-hearing**

The Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigator's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.

As part of the pre-hearing process, the Monitoring Officer can also take any steps he/she thinks may assist the smooth running of the hearing. These may include clarifying whether the Member will be represented or not (the Member can choose to be accompanied or represented by a person of their choice), clarifying if any witnesses are to be called and ensuring that any access needs of the Member or any participant are accommodated.

(ii) Standards Sub-Committee Hearing Procedure

The procedure for meetings of the Standards Sub-Committee shall be as follows:

1. The Chair of the Sub-Committee to make introductions and deal with any preliminary business.
2. The Sub-Committee to consider whether the meeting should be considered in public or private session under the provisions of the Local Government Act 1972.
3. The Independent Person shall be entitled to attend the meeting to give advice and views to the Sub-Committee at any stage.
4. The Chair will explain the procedure to be followed at the hearing.
5. The Sub-Committee may take advice, in private if necessary, at any time during the hearing.
6. The Sub-Committee shall resolve any issues or disagreements about how the meeting should continue that have not been resolved prior to the meeting during the “pre-hearing” process.
7. The Monitoring Officer to present his/her report to the Sub-Committee.

**Findings of Fact**

8. The Investigator to present his/her report, call any witnesses, and to make any representations to the Sub-Committee.
9. The Chair to invite any questions to the Monitoring Officer, Investigator or any witnesses from the Member, Independent Person and the Sub-Committee.
10. The Chair to invite the Member to give his/her evidence, call witnesses and to make representations to the Sub-Committee.
11. The Chair to invite any questions to the Member or any witnesses from the Monitoring Officer, Investigator, Independent Person and the Sub-Committee.
12. If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Sub-Committee will consider whether it would be in the public interest to continue in their absence.

After considering the Member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:

- continue with the hearing, relying on the information in the Investigator's report; or
- allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
- postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if they are not already.

13. The Sub-Committee to adjourn to consider the findings of fact in private.

14. The Chair to announce the Sub-Committee's findings of fact.

### **Has there been a breach of the Members' Code of Conduct?**

The Sub-Committee to consider whether, based on the facts it has found, that the Member has failed to follow the Members' Code of Conduct:

15. The Chair to invite the Member to give relevant reasons why the Sub-Committee should decide that he/she has not failed to follow the Code.

16. The Chair to invite representations from the Investigator.

17. The Chair to invite representations from the Independent Person.

18. The Sub-Committee may, at any time, question anyone involved on any points they raise on their representations.

19. The Chair to invite the Member to make any final relevant points.

20. The Sub-Committee will then adjourn to consider the representations and evidence in private as to whether the Member failed to comply with the Members' Code of Conduct.

21. The Chair will announce the Sub-Committee's decision as to whether the Member has failed to follow the Members' Code of Conduct.

### **Conclusions, Sanctions and Recommendations**

22. If the Sub-Committee decides that the Member has not failed to follow the Members' Code of Conduct, the Sub-Committee can consider whether it should make any recommendations to the Council.

23. If the Sub-Committee decides that the Member has failed to follow the Members' Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:

- Whether the Sub-Committee should take any action.
- What form that action should take.

24. The Sub-Committee may question all parties and take any advice, to make sure they have information they need to make an informed decision.

25. The Sub-Committee will then adjourn to deliberate in private and consider whether to take any action in respect of the subject Member and, if so, what action to take.
26. The Sub-Committee may also consider whether it should make any other recommendations to the Council.
27. The Chair to announce the Sub-Committee's decision.
28. A decision letter will be sent to all parties as soon as possible.
29. The public minutes of the Standards Sub-Committee will be published on the Council's website and submitted to the next convenient meeting of the Audit and Standards Committee for information.

## **7. Action available to the Standards Sub-Committee**

The Council has delegated powers to the Standards Sub-Committee to determine the appropriate course of action in respect of any complaints heard.

The action taken by the Sub-Committee, following a finding of a breach of the Members' Code of Conduct, must be proportionate taking account of the facts and circumstances of each individual case. The Sub-Committee has no power to suspend or disqualify the Member from office or to withdraw Members' Allowances.

The Sub-Committee may consider the following actions (although this is not an exhaustive list):

- Reporting the findings to Council.
- If the Member is a member of a political group, recommending to the Member's Group Leader that the Member in question be removed from the Cabinet, any or all Committees or Sub-Committees of the Council or Other Bodies subject to statutory and constitutional requirements.
- Formal letter from the Council or the Chair of the Audit and Standards Committee to the Member in question.
- Formal censure through a motion.
- Withdrawal of facilities (eg: ICT).
- Arrange training for the Member.

## **8. Appeals**

There is no right of appeal for the Complainant or for the Member against any of the decisions made by the Monitoring Officer or by the Standards Sub-Committee in accordance with these arrangements.

If a complainant feels that the Council has failed to deal with the complaint properly, he/she may make a complaint to the Local Government and Social Care Ombudsman.



## **Members' Code of Conduct**

### **1. Purpose**

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

### **2. Definitions**

For the purposes of this Code of Conduct, a "Councillor" means a member or co-opted member of a local authority.

A "Co-opted Member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a Member of the authority but who:

- a) is a Member of any Committee or Sub-committee of the authority, or;
- b) is a Member of, and represents the authority on, any joint Committee or joint Sub-Committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that Committee or Sub-Committee".

### **3. General Principles of Councillor Conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles. These are shown in Appendix A.

Building on these principles, the following general principles have been developed specifically for the role of a Councillor:

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

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

In undertaking my role:

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

#### **4. Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Councillor or attend your first meeting as a Co-opted Member. It continues to apply to you until you cease to be a Councillor.

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

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

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

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

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

The Council's Monitoring Officer has a statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from the Monitoring Officer on any matters that may relate to the Code of Conduct.

#### **5. Standards of Councillor Conduct**

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

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

## **General Conduct**

### **5.1 Respect**

**As a Councillor:**

- **I treat other Councillors and members of the public with respect.**
- **I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

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

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

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the Police. This also applies to fellow Councillors, where action could then be taken under the Members' Code of Conduct, and local authority employees, where concerns can be raised with the Chief Executive, Monitoring Officer or appropriate Director.

### **5.2 Bullying, harassment and discrimination**

**As a Councillor:**

- **I do not bully any person.**
- **I do not harass any person.**
- **I promote equalities and do not discriminate unlawfully against any person.**

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

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

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

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

### **5.3 Impartiality of officers of the Council**

**As a Councillor:**

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

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

### **5.4 Confidentiality and access to information**

**As a Councillor:**

- **I do not disclose information:**

- (a) given to me in confidence by anyone**
- (b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - (i) I have received the consent of a person authorised to give it;**
  - (ii) I am required by law to do so;**
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - (iv) the disclosure is:**
    - reasonable and in the public interest; and**
    - made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - I have consulted the Monitoring Officer prior to its release.**
- I do not improperly use knowledge gained solely as a result of my role as a Councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**
- I do not prevent anyone from getting information that they are entitled to by law.**

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

## **5.5 Disrepute**

**As a Councillor:**

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

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

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

## **5.6 Use of position**

**As a Councillor:**

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

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

## **5.7 Use of local authority resources and facilities**

**As a Councillor:**

- **I do not misuse Council resources.**
- **I will, when using the resources of the local authority or authorising their use by others:**
  - (a) **act in accordance with the local authority's requirements; and**
  - (b) **ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

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

Examples include:

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

These are given to you to help you carry out your role as a Councillor more effectively and are not to be used for business or

personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **5.8 Complying with the Code of Conduct**

**As a Councillor:**

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

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

## **5.9 Protecting your reputation and the reputation of the local authority**

### **Interests**

**As a Councillor:**

- **I register and disclose my interests.**

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

You need to register your interests so that the public, local authority employees and fellow Councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable.

You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also

important that the public know about any interest that might have to be disclosed by you or other Councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. You should note that failure to register or disclose a disclosable pecuniary interest is a criminal offence under the Localism Act 2011.

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

### **Gifts and hospitality**

#### **As a Councillor:**

- **I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- **I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £100 within 28 days of its receipt.**
- **I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

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



## **The Seven Principles of Public Life**

The principles are:

### **Selflessness**

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

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

### **Objectivity**

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

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

### **Members Interests**

The Localism Act 2011 provides for the registration and disclosure of interests. The form in Table 1 shall be used to record interests disclosed by Councillors. The Monitoring Officer shall be responsible for maintaining the register of interests and its publication on the Council's website.

Any reference to a "meeting" below means any meeting organised by or on behalf of the Council, including:

- Any meeting of the Council, the Cabinet or any Committee, Sub-Committee or Working Group.
- In taking a decision as an individual Cabinet Member or Ward Member.
- Any briefing with officers.
- Any site visit associated with any business of the Council.

### **Disclosable Pecuniary Interests**

Members must:

- Comply with the statutory requirement to register, disclose and withdraw from participating in respect of any matter in which you have a Disclosable Pecuniary Interest.
- Ensure that the register of interests is kept up to date and notify the Monitoring Officer, in writing, within 28 days of becoming aware of any change(s) in respect of your interests.
- Make a verbal declaration of the existence and nature of any Disclosable Pecuniary Interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.

### **Other Interests**

In addition, if Members attend a meeting at which any item of business is to be considered and you are aware that you have a "Non-Disclosable Pecuniary Interest" or a "Non-Pecuniary Interest" in that item, you must make a verbal declaration of the existence and nature of the interest at or before the consideration of the item or as soon as the interest becomes apparent.

You have a "Non-Disclosable Pecuniary Interest" or a "Non-Pecuniary Interest" in an item of business where:-

- A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax Payers, ratepayers or inhabitants of the ward or

electoral area for which you have been elected or otherwise of the Council's administrative area; or

- It relates to or is likely to affect any of the interests set out in the form attached to this Code, but in respect of a member of your family (other than a relevant person referred to on the form) or a person with whom you have a close association;

and that interest is not a Disclosable Pecuniary Interest.

It is the responsibility of Members to disclose interests and to withdraw from participating in meetings as and when necessary in accordance with both the requirements of the Members' Code of Conduct and the Council's Constitution.

### **Sensitive interests**

"Sensitive interests" mean those that contain information, the details of which if disclosed publicly, could lead to a Member or a person connected with a Member, being subjected to violence or intimidation.

Where a Member considers that the details of a Disclosable Pecuniary Interest contains sensitive information, and the Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on the public version of the register. The Monitoring Officer may include a statement that an interest exists but the details are withheld.

### **Dispensations**

The Council may grant a dispensation, but only in limited circumstances, to enable a Member to participate and vote on a matter in which they have a Disclosable Pecuniary Interest.

Members do not have Disclosable Pecuniary Interests in any business of the Council where that business relates to functions of the Council in respect of:

- housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
- school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full-time education, or are a parent governor of the school, unless it relates particularly to the school which the child attends;
- statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- any allowance, payment or indemnity given to Members;
- any ceremonial honour given to Members; and
- setting the Council Tax or a precept under the Local Government Finance Act 1992 as amended.

**Localism Act 2011 – Section 30(3)****The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012****REGISTER OF MEMBER'S DISCLOSABLE PECUNIARY AND OTHER INTERESTS**

NAME

A Member of

DUDLEY METROPOLITAN BOROUGH COUNCIL

PLEASE NOTE that you are required to register the Disclosable Pecuniary Interests of 'relevant persons' which includes:-

- (a) yourself as the Member or Co-opted Member;
- (b) the interests of the following persons in so far as you are aware of the existence of the interests of the other person(s):
  - your spouse or civil partner
  - a person with whom you are living as husband and wife
  - a person with whom you are living as if you were civil partners.

PLEASE STATE 'NONE' WHERE APPROPRIATE

**(a) Employment, office, trade, profession or vocation**

Any employment, office, trade, profession or vocation carried on for profit or gain.

**(b) Sponsorship**

Any payment or provision of any other financial benefit (other than from the Council) made to the Councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a Councillor, or towards his/her election expenses.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

**(c) Contracts**

Any contract made between the Councillor or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director\* or a body that such person has a beneficial interest in the securities of\*) and the Council

- (a) under which goods or services are to be provided or works are to be executed; and;
- (b) which has not been fully discharged.

**(d) Land and Property**

Any beneficial interest in land which is within the area of the Council.

'Land' excludes an easement, servitude, interest or right in or over land which does not give the Councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.

**(e) Licenses**

Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer

**(f) Corporate tenancies**

Any tenancy where (to the Councillor's knowledge)—

- (a) the landlord is the Council; and
- (b) the tenant is a body that the Councillor, or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/ civil partners is a partner of or a director\* of or has a beneficial interest in the securities\* of.

**(g) Securities**

Any beneficial interest in securities\* of a body where:

(a) that body (to the Councillor's knowledge) has a place of business or land in the area of the Council; and

(b) either:

(i) the total nominal value of the securities\* exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the Councillor, or his/ her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

**(h) Gifts and Hospitality**

Details of the interests of any person from whom a gift or hospitality has been received with an estimated value of at least £100; or

Details of any significant gift or hospitality that the Councillor has been offered but has refused to accept.

**(i) Other Registrable Interests**

You must register as an Other Registerable Interest:

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
  - exercising functions of a public nature
  - directed to charitable purposes
  - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
  - of which you are a member or in a position of general control or management.

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

\* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

# Code of Conduct

DUDLEY METROPOLITAN BOROUGH COUNCIL



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## **1.0 Introduction from Chief Executive**

The public is entitled to expect the highest standards of conduct from all employees. It is therefore important that everyone understand their roles and responsibilities whilst at work and where necessary understand how behaviours and activities outside of work may impact upon their ability to do their work during working hours.

This code of conduct is based on the Council's Contract Standing Orders and Financial Regulations, the provisions of general law as well as your conditions of service. This code of conduct should also be read in conjunction with other policies and guidance referred to throughout this document.

As the code applies to everyone, please take time to carefully read this document and ensure that your conduct is at all times consistent with its requirements. It provides you with the guidance you need to protect yourself and compliance with the code will help maintain the reputation of Dudley Council.

**This document forms part of your contract of employment and you are required to complete the Code of Conduct for Employees Policy Acceptance via the Policy and Learning Centre Page on Connect on an annual basis.**

**Staff working within Schools should complete a Code of Conduct for Employees Policy Acceptance form and submit this to their Headteacher on an annual basis.**

**This is to confirm that you have read and understand the standards, values, behaviours and conduct expected of you.**

Democratic local government cannot be taken for granted – all of us involved in providing services to the public should work together to make a special effort to retain public confidence, serve our community and support the delivery of the organisational priorities such as a 'one council approach'.

I am sure I can rely on you all to play your part in up-holding the highest standards in public life.

**Chief Executive**

# QUICK VIEW - SUMMARY

**The Code of Conduct applies to all employees  
(worker, contractor, interim, consultant, apprentice,  
work experience, volunteer or partner)**

The highest standards and behaviours are expected to protect  
the Council and all employees

**The Code of Conduct for Employees requires the following**

**Values and Behaviours** - are at the core of our business and they underpin the  
way we perform our duties and the standards to be followed

**Policies and  
procedures** - to comply  
and follow at all times

**Equality** - committed to promoting equality, treating  
everyone fairly, with dignity and respect

**Safeguarding** - is everyone's  
responsibility to protect children, young  
people and adults at risk

**Information Governance and  
confidentiality** - store, process  
and protect all information

**Conflict of interest** - identify private and council work and do not use official  
position, status, powers or authority to influence a decision or action

**Gifts and hospitality** - declared and  
approved upfront and recorded in the  
Chief Officer's register

**Use of Council property,  
facilities & equipment** - to be used  
for Council purposes only

**To seek clarification, advice or interpretation of Dudley's Code of Conduct,  
contact your Manager, Headteacher or Human Resources**

## 2.0 Values

### Our Values underpin everything we say and do

Our code of conduct has the Council's values at its core and sets out the standards for the way we work that are consistent with the Values and Behaviours Framework.

Dudley's six core values outlined below underpin everything we say and do, how we work and behave. Working together, demonstrating our values through everything we do underpins the organisation's culture. Essentially core values are the organisation's guiding principles that should be lived through the actions of everyone representing Dudley Council.



..... **The Values and Behaviours framework supports our vision to deliver best value services, supporting a one council approach, building an effective and dynamic organisation.**

It is important that everyone takes the time to read and understand the framework as it clearly sets out the behaviours we, as employees and as an organisation are expected to demonstrate to achieve our priorities to include adopting a 'one council' approach.

[connect.dudley.gov.uk/initiatives/values and behaviours framework](https://connect.dudley.gov.uk/initiatives/values-and-behaviours-framework)

## 3.0 Our Code of Conduct

Dudley Council relies on the professionalism, reliability and loyalty of its employees. This code of conduct sets out the Council's expectations of everyone to maintain the highest standards of integrity and personal conduct. Anyone representing the Council in their work is required to promote and maintain these standards to uphold the strong reputation of the Council and its services.

## **Aim of the Code**

### **The code will:**

- **Support the effective operation of the Council's business and wellbeing of its employees;**
- **Assist all employees to perform their duties effectively by ensuring the rules and standards of the organisation are clearly communicated and adhered to;**
- **Guide all employees in their dealings with the public, Elected Members and all other members of staff.**

### **Who is covered by the Code of Conduct?**

The code of conduct covers all employees (employees for the purposes of this code of conduct means any worker, contractor, interim, consultant, agency worker, apprentice, work experience, volunteer or partner whether permanent or temporary) who are either employed or are engaged to provide services to Dudley Council.

This includes all employees employed or are engaged to provide services in Community and Voluntary Controlled Schools.

A separate Code of Conduct/Member Officers Charter is in place for Elected Members.

### **Breaches of the Code of Conduct?**

We hope you appreciate that this code is in everyone's best interests and you will need to familiarise yourself, refer to and follow this code of conduct and all the associated policies and procedures. This document forms part of your contract of employment and failure to comply or breaches of the code of conduct may be considered to be gross misconduct which will lead to disciplinary action being taken under the ***Council's Disciplinary Policy and Procedures***, not excluding dismissal.

### **If in doubt, seek advice?**

The code cannot cover everything. So, when dealing with an issue that it doesn't address directly, you should use our values to help resolve the issue, speak to your Manager, Headteacher or consult with Human Resources.

In the same way, if you need any clarification about anything held within this code of conduct, please talk to your Manager, Headteacher or Human Resources who will be able to support you.

### **If you suspect a breach of the Code:**

You should without fear of recrimination raise immediately with your Manager, Head of Service, Director or Headteacher.

OR

-report through the ***Whistleblowing Policy*** for employees

### 3.1 Standards

All employees representing the Council are expected to give the highest possible standard of service to the public and where it is part of their duties, to provide appropriate advice to Elected Members, the public and fellow employees with impartiality.

All employees will be expected to bring to the attention of the appropriate level of management any deficiency in the provision of services or any impropriety or breach of our code, policies and/or procedures.

#### 3.1.1 Leadership

All leaders and managers are responsible for the application of this code of conduct in their area of work. They must ensure the code is adhered to and will:

- Be a role model of the required standards of behaviour;
- Reinforce the required standards of behaviour through appropriate communications within their teams;
- Explain the provisions of the code to promote understanding;
- Coach, support and provide feedback to employees on their performance and define what is expected and deal with concerns about the work and conduct;
- Actively promote and robustly support and be willing to take appropriate action at the earliest opportunity to deal with non-compliance with the standards of the code.

To be fully accountable, transparent and open and to achieve excellence leaders the Council have in place core **Leadership Accountabilities** which must be followed at all times.

### 3.2 Standards of Behaviour and Conduct in the Workplace

Employees are expected to treat members of the public and colleagues, with the utmost dignity and respect, this is expected in the manner in which they communicate either through verbal or written communication.

More specifically employees must:

- Ensure that their conduct is not discriminatory, bullying or harassing to others;
- Ensure that their behaviour and performance meets workplace standards at any time they are at work, representing the Council/School or are likely to be identified or associated with their role as a public official or employee serving Dudley Council (whether or not they are working at the time);
- Make sure that they are familiar with and follow the Council's/School's Equality strategies, policies and aim to advance equality of opportunity and foster good relations;
- To ensure values are adhered to, including democracy, the rule of law, employee liberty and mutual respect. At all times respect those employees and service users with different faiths and beliefs;
- Work in accordance with the terms and conditions of your principal statement of employment and job description;



- Ensure you act in accordance with the statutory requirements of '*Keeping Children Safe in Education*;'
- All Teachers must act within the *Teacher Standards Part Two – Personal and Professional Conduct*;
- Comply with Safer Working Practices;
- Comply with the requirements of the *UK General Data Protection Regulations (UK GDPR)*, *Data Protection Act 2018* and Council Policies relating to the protection of personal and special categories of personal data.

### **3.2.1 Policies, Procedures and Professional Codes of Practice**

Employees must comply with all reasonable management instructions and abide by legislation, the Council's constitution, policies and procedures, operational practices and health and safety rules. You must also follow the protocols of any relevant professional bodies and the standards required of your profession.

### **3.2.2 Safeguarding**

Protecting children, young people and adults at risk is everyone's responsibility for the Council, agencies and within the community, to apply a zero tolerance and create a safe environment.

For all employees within Dudley Council, if you are worried or concerned about a child, young person or adult, who you think is being abused, exploited or neglected, then you must report your concerns.

The *Dudley Safeguarding People Partnership* is in place to support Dudley Council and has a website providing a range of policies, procedures and practices for all employees who work with children and adults to follow. Any concerns, questions or if a referral is necessary, then you should contact the *Children's or Adults Safeguarding Boards* or within School's follow your child protection and safeguarding policy and liaise with the Schools Designated Safeguarding Lead (DSL).

### **3.2.3 Equality**

The Council requires the highest standards of behaviour from all employees and we are committed to ensuring that discrimination does not affect our judgements, behaviours or decisions either at work or in dealing with others outside of Dudley Council.

All employees must ensure that our policies and practices relating to equality are adhered to, in addition, to the requirements of the law and the Equality Act 2020. All members of the local community, public, customers, partners and other employees have the right to be treated with fairness and equity.

The Council is fully committed to combating against all forms of racism, including antisemitism. Any behaviours or use of language which targets or is perceived to target and/or intimidates any individual's or members of ethnic or religious groups/communities, is unacceptable and will not be tolerated and will be dealt with in accordance with the *Council's Disciplinary Policy*.

### **3.2.4 Health, Safety and Wellbeing**

Employees must comply with the Health and Safety at Work Act 1974, associated regulations, guidance and approved codes of practice. You are also required to comply with the Council's/School's ***Health and Safety Policy*** and take reasonable care and be responsible for your own health and safety and that of others whilst carrying out your duties.

Therefore, you are legally bound to comply with all safety rules and instructions set by the Council. Employees should inform their manager of any medical conditions that may impact on their ability to carry out the duties and responsibilities of their role.

### **3.2.5 Information Governance and Confidentiality**

It is crucial to the success of Dudley Council that all information including 'sensitive information' is appropriately managed to protect our operational interests and our responsibilities towards the public, partners, agencies and our employees. To ensure accountability we should take an "open by default" approach to making information regularly and routinely available to those who wish to see it. However, when dealing with personal data and special categories of personal data we should value, protect and use information in a way that demonstrates that we have taken a "privacy by design" approach.

You must undertake your mandatory training and make yourself aware of our policies and procedures relating to information governance and all information must be treated in accordance with our information security and privacy notices and the associated standards;

***UK General Data Protection Regulations (UK GDPR) Guidance***

***Privacy Notice Statement***

***Freedom of Information***

***Environmental Information Regulations***

***Local Government Transparency Code***

### **3.2.6 Legal and Constitutional Compliance**

We must comply with the law and it is a fundamental principle we must follow in all our dealings and behaviours. Employees must ensure that they have the required delegated powers to make appropriate decisions or carry out appropriate actions and this may require an onward delegation from Council, Cabinet, Committee, Cabinet Member, Governors or Senior Officers/Headteachers.

### **3.2.7 Upholding Public Trust**

Everyone has a duty to behave in a way that actively upholds public trust and gives people confidence in the integrity of Dudley Council and we should never behave at work or in public, in a manner which may damage or bring Dudley Council into disrepute.

### **3.2.8 Working Together**

We should always treat colleagues with politeness and respect and show respect for local cultures and customs. As in our relationships with colleagues we should treat people outside of Dudley Council with the utmost dignity and respect.

Dudley Council believe that fair treatment is very important to help build lasting and successful relationships and working together to deliver effective, timely support and/or services and to meet the organisation's vision, priorities and plans to serve our community to the best of our abilities.

Should you witness what you believe to be unacceptable behaviour towards others or within working practices, even if you are not directly affected, you should raise any concerns through the **Whistleblowing Policy**, or the **Dudley Safeguarding People Partnership** for any concerns regarding children and vulnerable adults, or by raising with your Manager, Headteacher and Human Resources or with your Trade Union Representative.

The Council will also do whatever it takes to minimise the risk from Serious and Organised Crime. Employees need to be aware of the risks of Serious and Organised Crime and flag up any concerns to their manager.

### **3.2.9 Standards of Dress & Appearance**

Employees should ensure they dress appropriately, safely, and professionally in accordance with the environment and role they are employed to undertake.

## **3.3 Protecting the Council**

### **3.3.1 Criminal charges and convictions**

Unless covered by the Rehabilitation of Offenders Act, all applicants are required to disclose any live criminal convictions or charges. Certain positions are exempt from the Rehabilitation of Offenders Act and require DBS (Disclosure and Barring Service) clearance before the applicant is offered a post. Where a post is subject to a DBS clearance, employees in the post will be required to participate in further DBS check renewals during employment in line with regulatory requirements and/or the Council's/School's Policy. Please refer to the **DBS Policy** for further guidance.

If during the course of employment or services provided to the Council where an employee is charged, convicted of a crime or receives a caution or other form of reprimand in relation to a criminal or civil offence, even if the offence does not relate to their employment or contract with the Council, they must report as soon as possible and within 5 working days, the conviction or caution or other form of reprimand to their Manager/Headteacher or Human Resources Services.

The Manager/Headteacher may consult with the Head of Organisational Development, Human Resources Team or Legal Services, who will consider the impact upon the employee's position and if there has been a breach of Council Policies and Procedures, it may lead to disciplinary action in accordance with the Disciplinary Policy and Procedures.

Dependent upon the employee's position, consideration must be given to whether this poses a risk to children or young people or to adults who access any health, social care or educational services and a referral through safeguarding procedures may be necessary.



### 3.3.2 Use of Council Property, Facilities and Equipment

Employees must exercise reasonable care and skill in their use of the Council's facilities and equipment. The Council is entitled to expect at least the same standard of care of its property as employees give to their own property.

Council facilities are to be used for Council business and for no other purpose unless the employee has the relevant Headteachers or Director's approval beforehand in writing.

When an employee leaves the employment of Dudley MBC, they must return all equipment including laptop, tablet, mobile phone. They should also hand back to their Manager their Identification Badge and any keys they have been provided (buildings, cabinets etc). Officers who do not return equipment maybe charged the cost of replacement.

Reasonable use of telephones and photocopiers is allowed in exceptional circumstances provided the employee has been authorised to do so by their Manager. However, non-Council work may not be carried out in the Council's time, or on the Council's premises or with the use of the Council's equipment.

Employees may use the internet for incidental and occasional personal use, as recognition that familiarity with this technology is imperative to the Modernisation of Local Government. Consequently, employees will be able to use the Internet during their own time for personal use e.g. during lunch breaks. Further guidance can be found in the Council's/School's [\*Internet Acceptable Usage Policy\*](#) and [\*Use of Emails Policy\*](#).

### 3.3.3 Use of Social Networking Sites and Social Media

Staff have the opportunity to request access to social media for work purposes, using Council equipment. The guidelines and support needed are available in the Council's [\*Social Media Policy\*](#) which details your responsibilities and the standards you must comply with to protect the Council and its employees. In summary:

- You **must not** use any social media or social networking communications that could damage the Council's business, operations or reputation including, contents posted that could still be construed as relevant to your employment at Dudley Council even if you do not directly identify yourself as an employee.
- You **must not** post any messages or comments that may directly or indirectly cause serious offence, or would be discriminatory, defamatory, potentially damaging about the Council, its employees, fellow colleagues, Elected Members, contractors, partners, clients, or customers.
- Ensure nothing is posted on the internet or on social media that could bring the Council into disrepute, break the law e.g. data protection law.
- Employees **must not** do anything including inappropriate contact/communication with children, young people or vulnerable adults that puts them in a potentially compromising situation in relation to their employment e.g. accepting inappropriate friendships with any children, young people who access Dudley MBC services, or to adults who access any health or social care services provided by Dudley MBC, on social networking sites.

- Be aware that any communication you post via social media communication tools may be disclosable under Data Protection and Freedom of Information laws.

Schools staff should refer to the Schools Social Media Policy.

### **3.3.4 Other Employment and Conduct outside of Working Time**

Employees paid at grade 8 to 15 have conditions of service which require them to obtain written consent to take any outside secondary employment. This will be detailed in the employee's principal statement of employment. All employees should be clear about contractual obligations and must not take outside employment which conflicts with their position or with the Council's interests. Any additional employment must be in accordance with any legislation that may apply such as the Working Time Regulations (1998) (as amended). They must also ensure that Council time and/or resources are not utilised in connection with any private employment.

Generally, what an employee does outside work is of their own concern (unless professional standards state otherwise), but they must avoid doing anything that might adversely affect the reputation of the Council or impact on the Council's or their profession's confidence in their ability to do their job. This includes the use of social media and the internet. If in doubt, employees should seek the advice of the Lead for Law & Governance (Council's Monitoring Officer) or Head of Communications and Public Affairs.

### **3.3.5 Use of Financial Resources**

Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They must strive to ensure value for money to the local community and to avoid legal challenge to the Council. Employees with responsibilities for financial resources such as budget management, procurement, payment, income, and asset/inventory processes must understand and comply with the Council's ***Contract Standing Orders*** and ***Financial Regulations***. Employees must ensure that any expenditure is within the limits that they are personally authorised to incur.

Employees may not order, in the name of the Council, any good or service, whether with a discount or not, from official Council suppliers for their own personal use even if the cost is reimbursed in full to the Council or School.

### **3.3.6 Miscellaneous Income**

Under Section 117 of the Local Government Act 1972, an officer (employee) of a local authority shall not, under colour of her/his office or employment, accept any fee or reward whatsoever other than his/her proper remuneration.

Any income (with the exception of an employee's salary) that is generated from an employees' work that is directly or indirectly from his/her position with the Council, irrespective of whether it was carried out in private time should be treated as income of the Council or School.

### 3.3.7 Contractors

Section 117 of the Local Government Act 1972 requires all employees to give written notice of any contract or proposed contract in which the Council is involved in and which the employee has a financial interest (either direct or indirect) as soon as the employee becomes aware of it. Failure to declare an interest is a criminal offence and may result in prosecution.

A direct financial interest arises where an employee or their spouse/partner, family member or close friend has a financial interest in a contract or proposed contract whether to their advantage or disadvantage, in which the Council is involved. An indirect financial interest may arise where an employee or their nominee or employee's spouse/partner holds securities or shares in a company which exceeds £5,000 or 1/100th of the nominal issued share capital of a company which they have a direct financial interest, whichever is the lesser amount.

A non-financial interest may occur when an employee or their spouse/partner, family member or close friend has membership or association in a company, society, club or other body, trade union or voluntary body, or is employed by another person or company which has direct financial interests in any matter which is the subject of discussions/negotiations with the Council.

Employees with a financial (direct or indirect) or non-financial interest in any matter should not only declare that interest but not have any involvement in the matter. Employees must be open and up front about their interest in all associated dealings. In particular, any such interest must be stated at meetings, whether Council meetings or other meetings, public or private. Notes taken at the time should be placed in the appropriate file concerning the interest(s) and how it has been handled.

Employees involved in the award or management of contracts shall declare in writing to their Director any association or friendship with any contractor and should take no part in a tender process involving the contractor.

Any reference to contractor includes their sub-contractors, partners, and stakeholders.

All such relationships of a business or private nature with external contractors, or potential contractors, must be declared via the **Disclosure of Relationships Form in PIMS Employee Self-Serve (ESS)** and the user guide on how to action this is available via the PIMS Hub on connect, or directly to the Headteacher/Governors.

The requirement to make a declaration under this paragraph also applies to employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with a contractor.

Orders and contracts must be awarded on merit by fair competition and no special favour may be shown to any business run by, for example, friends, partners, or relatives, in the tendering process. No part of the local community may be discriminated against.

### **3.3.8 Separation of Roles during Tendering**

Employees involved in the tendering process and dealing with contractors need to be clear of the separation of client and contractor roles within the Council and Schools. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors, and sub-contractors.

Employees who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information to any unauthorised party or organisation.

Employees contemplating a management buyout must, as soon as they have formed a definite intent, inform the appropriate manager, and withdraw from the contract awarding processes.

Employees must ensure that no special favour is shown to current or former employees or their partners, close relatives, or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

Employees must not use their position and knowledge of the Council or School to gain access to and provide information which puts a particular contractor or anyone else in a better position than any other contractor tendering to undertake work or to provide services or supplies.

### **3.3.9 Conflict of Interest**

A conflict of interest is a conflict between an employee's private interests or the private interests of others, such as their spouse/partner, close family or close friends and their official responsibilities as a person in a position of trust, as an employee of the Council.

Employees must not use their official position, status, powers, or authority to seek to improperly influence a decision or action.

Employees are expected to provide honest, impartial, and comprehensive advice, regardless of their personal feelings on a matter. If an employee's personal views conflict with the performance of their official duties or if they believe they cannot act impartially, they should contact their line manager and attempt to resolve the conflict.

In their role of Council employee or even in a personal capacity, employees must not allow their personal interests to conflict with the Council's requirements or use their position to improperly confer an advantage or disadvantage on any person.

Where an employee faces a conflict between their private interests and public duties, they must resolve the conflict in favour of their public duties. Where a conflict of interest is likely to occur, the employee must inform their manager as soon as possible, who will ensure that the Council is not compromised. This is particularly pertinent where the employee is involved in making

decisions affecting contracting, tendering or regulatory functions. Employees must declare any situations (**using the Disclosure of Relationships Form in PIMS ESS or directly to their Headteacher**) whereby there are any doubts as to whether their actions could be seen as a conflict of interest.

Examples of possible conflicts of interests are as follows:

- Employees with access to computer databases of customers updating their own personal records or those of close relatives
- Employees being contracted to provide services to the Council outside their paid employment
- Purchasing goods from a company that employs your spouse/partner
- Generating work which involves travel to provide an opportunity to visit friends
- A supervisor who is in a position to approve overtime to a subordinate where a close personal relationship exists
- Involvement with an interview panel when a relationship exists with one of the applicants
- Processing a payroll transaction that affects a close friend
- Determining a housing benefits application for your next-door neighbour
- Approving a Council house application for your close relative
- Undertaking a regulatory check of your relative's restaurant.

*Please note the above is illustrative only and is not an exhaustive list.*

You must declare any personal relationship with another employee, where the relationship could affect, or could be perceived to affect your or any colleagues' performance.

### **Declaring potential Conflicts of Interest**

**Employees must declare via the Disclosure of Relationships Form in PIMS Employee Self-Serve - ESS (user guide on how to complete this is available via connect) or directly to their Headteacher** any financial or non-financial interests, whether direct or indirect, which could conflict with the interests of the Council. This would include any cases where the employee is a company director, company secretary, School Governor, or voluntary organisation trustee. PIMS reporting will automatically notify and update the relevant Director or in the case of a school, the Head teacher of any disclosures.

#### **3.3.10 Gifts and Hospitality**

##### **Bribery Act 2010**

Employees must be aware that it is a serious criminal offence for them to corruptly receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity as a Council employee. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

##### **Hospitality**

Employees **must only** accept offers of hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions must be accepted only when these are part of the life of the community or where the Council must be seen to be represented.

**Acceptance of hospitality must be agreed (prior to receiving the hospitality) with the relevant Director and the details should be recorded in the Gifts and Hospitality Register.**

When the hospitality has to be declined those making the offer need to be courteously but firmly informed of the procedures and standards operating within the Council. Although declined the offer of hospitality needs to be brought to the attention of your Director, who should ensure that the offer is recorded in the Gifts and Hospitality Register.

When receiving authorised hospitality employees need to be particularly sensitive as to its timings in relation to decisions which the Council may be taking affecting those providing the hospitality.

Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the Director gives consent in advance and where the Council is satisfied that any purchasing decisions are not compromised.

An offer of hospitality to individual employees calls for special caution particularly if the host is undertaking or applying to do business with the Council or hoping to obtain a decision from it. It is very important to avoid any suggestion of improper influence.

Where visits to inspect equipment, etc. are required, employees must ensure that the Council meets the cost of such visits and any meals to avoid jeopardising the integrity of subsequent purchasing decisions.

Hospitality must not be accepted unless the acceptance can be readily acknowledged in public or is similar to that which the Council would provide in the same circumstances.

**All hospitality offered whether received or not should be recorded in the Gifts and Hospitality Register.**

### **Donations**

Where an outside organisation wants to make a donation to a local government activity, whether by invitation, or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

The donation should be approved by the appropriate Director and recorded in their Gifts and Hospitality Register or separate register. If the donation has been specified to a particular service area, it can go to that area's budget with the approval of the Director. If the donation is non-specific it should be given to the Mayor's charity.

## **Gifts**

Employees may only accept insignificant items of token value (i.e. less than £10). Other items must be handed to the Mayors' office for a prize in any raffle or tombola for charity if they are non-perishable, or perishable items such as flowers/cakes must be used to display in public areas or distributed amongst the service team. Alternatively, for employees working within schools they can hand these other items to their Headteacher to be used for a prize in their own school raffle. Irrespective of whether the gift has been received or not (i.e. offered but not accepted) it must be brought to the attention of the appropriate Director/Headteacher and recorded in the Gifts and Hospitality Register.

Gifts offered by persons who are providing, or seeking to provide goods or services to the Council, or who are seeking decisions from the Council, should be refused and returned, as should gifts offered by those receiving services from the Council (unless the item is of token value i.e. under £10).

Employees must not accept under any circumstances significant personal gifts from contractors and outside suppliers and they should notify their Director or Headteacher of any such offers.

Employees who are bequeathed gifts or money in the will of a service user that they know from their working capacity must not accept the gifts or money unless they are insignificant items of token value (i.e. less than £10). When the gifts/money has to be declined the executor of the will needs to be courteously but firmly informed of the procedures and standards operating within the Council.

## **Gifts and Hospitality Register**

**Each Director/Headteacher should maintain a Gifts and Hospitality Register, which should record the gifts and hospitality offered/received by their staff. If a Director is offered or receives a gift or hospitality, this needs to be approved by the Chief Executive or Deputy Chief Executive and recorded in their Gifts and Hospitality Register. If the Chief Executive or Deputy Chief Executive are offered or receive a gift or hospitality, then this should be recorded in the Register maintained by the Chief Executive and brought to the attention of the Leader of the Council.**

### **3.3.11 Appointments and Other Employment Matters**

Employees involved in appointments must ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees must not be involved in an appointment where they are related to an applicant or have a close personal relationship outside of work with the applicant.

Similarly, employees must not be involved in decisions relating to recruitment, disciplinary, promotion, performance or pay adjustments for any other employee who is a relative, partner, close friend etc.

### **3.3.12 Sponsorship – Giving and Receiving**

Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

Where the Council wishes to sponsor an event or service either an employee, or any partner, spouse, relative or close friend must not benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees must ensure that impartial advice is given and that there is no conflict of interest involved.

### **3.3.13 Political Neutrality**

Employees serve the Council as a whole. It follows they must serve all Elected Members and not just those of the controlling group and must ensure that all Elected Members are respected.

Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their personal or political opinions to interfere with their work. They must be seen to be able to remain unbiased in the performance of their duties.

### **3.3.14 Professional and Trade Union Activity**

Members of professions are expected to uphold the standards of performance and conduct set by the relevant professional association and this code of conduct. Employees are expected to raise any concerns they may have regarding a conflict of interest between their role at the Council or School and the standards of their profession.

When speaking in the capacity of workplace or trade union representative or professional association, it must be made clear that the opinion is made on behalf of the union or association represented and not the Council or School.

### **3.3.15 Disclosure of Information**

You may acquire information at work which has not been made public or is of a confidential nature. Employees must never disclose confidential information, without the consent of a person authorised to give it unless they are required to do so by law.

Employees must not use any information which is obtained through their work for the Council for personal gain or benefit, nor may they pass it on to others who might use it in such a way. Any particular information received by an Employee from a Councillor which is personal to that Councillor and does not belong to the authority must not be divulged by the Employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.



We have legal obligations towards privacy and security whilst processing personal information relating to any living Employee. Such information must be processed in accordance with the Council's Data Protection Policy and Freedom of Information Policy.

Further information relating to Data Protection and Freedom of Information requirements can be obtained from the ***General Data Protection Regulation Update***.

In the event that, during the course of their employment with the Council an Employee has been employed within a traded services area and/or during their employment acquired access to confidential information relating to the traded service then the following principles will apply:

- The Employee shall not for 6 months after the end of their employment, solicit or endeavour to entice away from the Council the custom of a client/customer with whom they have had contact with during the period of their employment, with a view to providing goods or services to that client/customer.
- The Employee shall not for 6 months after the end of their employment offer to employ or engage or otherwise endeavour to entice away from the Council any person employed or engaged by the Council who was involved in any capacity within the traded services area and with whom they have dealt with.
- The Employee shall not for 6 months after the end of their employment, be involved in the preparation of any tender for services, good or works relating to the service area they previously worked.

In addition, if a Council employee is made redundant from a traded services area then they must adhere to the ***Managing Employees at Risk of Redundancy (MEARR) Policy Section 5.5*** which advises they must not re-engage with the Council on either a permanent or temporary basis within a 12 month period following the leaving date (*with the exception of employees working in schools who adopt the Schools Redundancy Policy*).

Please note for staff employed by schools and/or any employees approached or securing employment outside of the Council following a redundancy situation could chose to secure alternative employment in a traded service area. In these circumstance, individuals must be aware of the above and not share any confidential information relating to the traded services area they previously worked for or entice away custom or any other person employed or engaged by the Council.

However, you must be made aware of the ***Redundancy Payments (Continuity of Employment in Local Government) (Modification Order 1999)*** which clearly defines that to be able to receive redundancy payments at least a break in the contracts of employment of four weeks or more is required if the new employer is included in the list of organisations within the Modification Order

### **3.3.16 Intellectual Property**

Under copyright law the Council owns any material made by the Council or under its direction. As an employee, any material produced in the course of work belongs to the Council unless otherwise explicitly provided for in the contract of employment. Therefore, to use any work owned by the Council the Employee must seek permission from their Director.

### **3.3.17 Public Communication**

All media requests for information and enquiries that relate to policy and procedures and operational activities must be responded to by the Communications and Public Affairs Team.

When making a public comment in an official capacity employees must:

- Ensure that it is part of their official role
- Ensure that the facts are not misrepresented
- Ensure that Data Protection Law is not contravened
- Respect the confidentiality of information that has not been approved for release either by Cabinet or through official Council channels.

As private citizens employees have the same rights as members of the public to openly discuss or comment on community and social issues. Employees must make it clear that when commenting in this capacity that it is their personal opinion and not that of the Council and they are not abusing their position, by using knowledge gained from their role as a Council officer.

### **3.3.18 Internal Audit**

When an internal audit or corporate fraud investigation is carried out there is a duty on all employees to co-operate fully with the audit/fraud process, to be open and honest and provide all documentation and explanations required.

If an employee is identified within an audit action plan, there is an onus on them to complete the agreed action(s) within the timescale set.

## **4 Ways of Working**

### **4.1 Working with Elected Members**

Employees are responsible to the Council through its senior managers. For some, their role is to give advice to Elected Members and senior managers and all are there to carry out the Council's work. Mutual respect between Employees and Elected Members is essential to good local government.

### **4.2 Working with Local Communities and Service Users**

Employees must always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and employees within that community as defined by the policies of the Council.

### **4.3 Agile Working**

Through modernisation of the Council's workforce and working arrangements, the relationship between the Council and its employees relies ever more heavily upon trust and the management

of outcomes rather than presence at an office base, where applicable. Any abuse of the policies, procedures, guidance and or flexibility afforded will be fully investigated and may lead to disciplinary action being taken. Please refer to the [\*Agile Working Policy\*](#) for further information.

## **5 Whistleblowing (Confidential Reporting)**

Since 1999 the Council has had a policy on confidential reporting, i.e. whistleblowing. Under this policy employees who have serious concerns about any aspect of the Council's work are encouraged to come forward and voice those concerns. A copy of the policy can be obtained from your Directorate, Human Resources or from the Council Intranet Site or the Traded Services Portal.

## **6 Employee Personal Data**

The Council collects and processes personal data relating to its Employees to manage the employment relationship. A detailed [\*employee privacy notice\*](#) is available to provide further information as to why the Council processes employee information.

## **7 Interpretation**

If an Employee is unsure about any aspect of the code of conduct, they must raise this with their line manager immediately. Employees of the Council who disagree with the interpretation of this document (as it may affect them) have the right to raise the matter through the Council's/School's Official Grievance Procedure or complaint procedure.

## **MEMBER OFFICER CHARTER**

We serve our communities, are guided by our values, take pride in the council and respect each other



**Members are:** democratically elected politicians who give overall direction to the council using their knowledge of the needs and aspirations of the communities they represent

**Officers are:** politically neutral and employed to manage and deliver services using their skills and knowledge



...the historic capital of the Black Country



**CODE OF PRACTICE FOR MEMBERS AND OFFICERS**  
**DEALING WITH PLANNING MATTERS**

## **ADOPTED CODE OF CONDUCT FOR MEMBERS AND OFFICERS - PLANNING MATTERS**

### **1. INTRODUCTION**

- 1.1 This Code has been prepared and adopted for the guidance of Officers and Councillors in their dealings with planning matters. The Code was adopted by the Council on 24<sup>th</sup> February, 2014.
- 1.2 **The aim of this code** is to ensure that, in the planning process, there will be no grounds for suggesting that a planning decision has been biased, partial or not well founded on planning considerations and to inform potential developers and members of the general public of the standards adopted by the Council and the performance of its planning function.
- 1.3 **The aim of the planning process** is to plan control and manage development in the public interest.
- 1.4 **When this code applies** - to all members of the Development Control Committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at Development Control Committees, or if an officer, making delegated decisions on applications, or on less formal occasions such as meetings between members and Officers and/or Members of the public on planning matters. The Code applies equally to planning enforcement matters or site-specific policy issues and to planning applications.
- 1.5 Planning decisions made by Councillors can have a considerable effect on the value of land, the nature of its development and on the lives and amenities of people living in the vicinity. The process of arriving at decisions on a planning matter must be open and transparent and the involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are:-
- 1.5.1 The key purpose of planning is to deliver sustainable development which effectively balances economic, social and environmental interests and takes relevant location circumstances into account.
- 1.5.2 Your overriding duty as a Councillor is to all residents in Dudley and in relation to planning issues to help ensure that the Council's planning policies are achieved.
- 1.5.3 Your role as a member of the Planning Authority is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.
- 1.5.4 Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to decide what view to take on any question which councillors have to decide.
- 1.5.5 Section 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act requires you to take planning decisions in accordance with the provisions of the development plan

(the Black Country Core Strategy, the Unitary Development Plan and any other development plan document) unless material considerations indicate otherwise. You should ensure that all decisions that you make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust.

- 1.5.6 The Code applies to all decisions of the Council on planning related matters. This includes Members' involvement in any planning application, whether or not it is reported to a Committee, all applications determined by any committee or by Full Council acting as a local Planning Authority.
- 1.5.7 When acting in your capacity as a Councillor you must have regard to the Council's adopted Code of Conduct.
- 1.6 If you have any doubts regarding whether this Code of Conduct for Members or Officers applies to your particular circumstances then you should take advice at the earliest possible opportunity from the Monitoring Officer or one of their staff. Any such advice should be sought well before any meeting of the local Planning Authority takes place.

## **2. THE MEMBERS' CODE OF CONDUCT**

- 2.1 The Member's Code of Conduct sets out the standards of behaviour expected of Councillors and the requirements in relation to the declaration of interests in the Members' Register of Interests and at meetings. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter you should have primary regard for the Code, and particularly the requirement to properly declare all interests.
- 2.2 **DO** comply with the requirements of the adopted Code of Conduct first.
- 2.3 **DO** then apply the rules in this Planning Code of Good Practice which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control.
- 2.4 If you have any doubts about the application of this Code to your own circumstances, you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.
- 2.5 **If you do not follow** and apply the Code then you may put:-
  - 2.5.1 the Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration; and
  - 2.5.2 yourself at risk of sanction if there has been a failure to comply with the adopted Members' Code of Conduct.

## **3. DEVELOPMENT PROPOSALS AND DECLARATION OF INTERESTS UNDER THE MEMBERS' CODE OF CONDUCT**



- 3.1 When considering planning matters, Members may find that they need to:-
- 3.1.1 declare interests in accordance with the requirements of the adopted Code of Conduct; or
  - 3.1.2 indicate whether or not they may have come to a fixed view on a planning application prior to the meeting (i.e. pre-determination).
- 3.2 The existence and nature of any interest should be disclosed in accordance with this Code at any Development Control Committee, any informal meetings or discussions with Officers and any other Members.
- 3.3 Members should preferably disclose their interests at the commencement of the meeting and not at the beginning of the discussion on that particular matter.
- 3.4 **Where you have a Disclosable Pecuniary Interest (DPI's)**
- 3.4.1 **DO NOT** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.
  - 3.4.2 **DO NOT** try to represent ward views - get another Ward Member to do so instead.
  - 3.4.3 **DO NOT** get involved with the processing of the application and direct any queries or technical matters to the relevant officer.
  - 3.4.4 **DO NOT** seek or accept preferential treatment or place yourself in such a position so as members of the public would think you are receiving preferential treatment because of your position as a Councillor. An example would be where a member has an interest in a property and uses his/her position as Councillor to discuss a planning application with Officers or Members when ordinary members of the public would not have the same opportunity to do so. You may need to identify another local member who is prepared to represent local interests.
  - 3.4.5 There is a requirement to withdraw from the meeting whilst the item is being discussed
- 3.5 Development Proposals and Interests under the Members' Code
- 3.5.1 **DO** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have an interest to an appropriate Officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. However, you will be able to make use of the public speaking scheme to address the meeting on the proposal but, unlike an ordinary member of the public, you will then have to withdraw from the room whilst the meeting considers the proposal.
  - 3.5.2 **DO** notify the Monitoring Officer in writing of your own application **or where you are acting as an agent for the applicant** and note that:-

- 3.5.2.1 Notification to the Monitoring Officer should be made no later than submission of the application;
- 3.5.2.2 The proposal will always be reported to the Development Control Committee as a main item and not dealt with by officers under delegated powers; and
- 3.5.2.3 ***For your own application*** it is advisable that you employ an agent to act on your behalf of the proposal in dealing with the officers and public speaking at Committee.
- 3.5.2.4 ***Where you act as an agent you will be able to use the public speaking scheme to address the meeting but you must withdraw from the meeting once you have made representations to the Committee.***

### 3.6 Other Interests

#### 3.6.1 **In addition to the Disclosable Pecuniary Interests, the Members Code of Conduct requires Councillors to disclose certain “other” interests in the following circumstances:**

- 3.6.1.1 If a decision in relation to a matter might reasonably be regarded as affecting the wellbeing or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax Payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council’s administrative area; or
- 3.6.1.2 It relates to or is likely to affect any of the Disclosable Pecuniary Interests, but in respect of a member of your family (other than a relevant person referred to on the form) or a person with whom you have a close association.

#### 3.6.2 ***You should withdraw from the meeting in circumstances where your impartiality might be called into question. If in doubt, always seek advice from the Monitoring Officer.***

### **3.7 PRE-DETERMINATION IN THE PLANNING PROCESS**

- 3.7.1 The allowance made for Councillors to be predisposed to a particular view is a practical recognition of:-
- 3.7.1.1 the role played by party politics in Local Government;
  - 3.7.1.2 the need for Councillors to inform constituents of at least an initial view on a matter as part of their public role;
  - 3.7.1.3 the structure of local government which ultimately requires the same Councillors to make decisions.
- 3.7.2 It is, therefore, particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on planning matters.
- 3.7.3 Section 25 of the Localism Act, 2011 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, whether the decision-maker(s) had or appeared to have a closed mind (to any extent) when making the decision.
- 3.7.4 The provisions in the Localism Act do not involve a change in the law. It puts the common law position of bias or pre-determination on a statutory basis.
- 3.7.5 The Act provides that a decision-maker is not to be taken to have had (or to have appeared to have had) a closed mind when making the decision just because:-
- 3.7.5.1 they had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
  - 3.7.5.2 the matter was relevant to the decision.
- 3.7.6 With this provision the Government expect Councillors to be able to publicise their views on issues, indicate their voting intentions and to engage fully with their local communities without this affecting their participation in the Council's formal decision making. In addition, Councillors should be able to engage with planning applicants to educate themselves about their proposals.
- 3.7.7 Thus, if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will be able to participate in discussion of that issue in the Council and to vote on it if it arises in an item of Council business requiring a decision.
- 3.7.8 However, Councillors will still need to be open minded at the point of decision in the sense of listening to all of the arguments and weighing them against their preferred outcome, before actually voting.

- 3.7.9 The difference is that the fact that Councillors may have campaigned against a proposal will not be taken as proof that they are not open-minded.

**Examples:**

In a situation where a member said something like “over my dead body” in respect of voting on a particular issue, the view must be that whilst the provision on pre-determination in the Localism Act might be useful in giving Councillors confidence about making their views on particular issues known, it has not changed the legal position that if a Member could be shown to have approached a decision with a closed mind, that could affect the validity of the decision.

- 3.7.10 Equally, if a Member had expressed views on a particular issue but could show that when taking the decision they had approached this with an open mind and taken account of all the relevant information, they could reasonably participate in a valid decision.

**3.8 Important points to bear in mind:**

- 3.8.1 If you give an indication of your viewpoint, when debating an application at DC Committee you must, at the outset, ensure that you indicate that you will take all relevant considerations into account and that the decision will be based firmly on planning grounds and that they will ensure views are fully heard and taken into account by the Council.

- 3.8.2 It is a good idea to record your involvement.

**3.9 Lobbying by Councillors**

- 3.9.1 **DO NOT** become a member of, lead or represent, an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a disclosable pecuniary interest and have to withdraw.

**3.9.2 In practice:**

3.9.2.1 A Councillor may campaign for or against a planning application, and still vote at Planning Committee, so long as they go into the meeting with an open mind to hear all the facts and evidence.

3.9.2.2 A Councillor quoted in a newspaper having said, “over my dead body will that planning application be approved. I will never support it under any circumstances”, could be said to have pre-determined the decision. These extreme statements should still be avoided.

- 3.9.3 It is important to note that if a member has expressed particularly extreme views, it will be more difficult in practice to be able to get away from the impression that they would approach the decision with a closed mind.

- 3.10 **Fettering your discretion** and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings, on the grounds of

there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- 3.11 **DO** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body, provided:-

3.11.1 The proposal does not substantially effect the well-being or financial standing of the consultee body;

3.11.2 You make it clear to the consultee body that:-

3.11.2.1 your views are expressed on the limited information before you only;

3.11.2.2 you must reserve judgment and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, or ward, as and when it comes before the Committee and you hear all of the relevant information; and

3.11.2.3 you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Development Control Committee; and

- 3.12 You disclose the interest regarding your membership or role when the Development Control Committee comes to consider the proposal.
- 3.13 **DO NOT** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- 3.14 **DO** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the Minutes.

#### **4. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

- 4.1 Local Authorities are encouraged to enter into pre-application discussions with potential applicants.
- 4.2 The Council encourages member involvement provided Members' roles in such discussions are clearly understood by Members, Officers, developers and the public. In particular, Members of Development Control Committee need to be aware of the distinction between the giving and receiving of information and engaging in negotiations. Without this Protocol Member involvement may inadvertently open a decision to challenge on the ground of apparent pre-determination. **Members should also be aware that presentations by developers** are, in effect, a form of lobbying and that the principles set out in paragraph 5 are relevant.

- 4.3 **DO** take advice from the Monitoring Officer if you are invited to attend meetings with applicants, developers or groups of objectors if you are a Member of the Development Control Committee and, therefore, likely to be part of the decision-making process. You will then be in a position to make a decision about your attendance having taken proper account of the issues relating to pre-determination.
- 4.4 **DO** refer those who approach you for planning, procedural or technical advice to officers.
- 4.5 **DO NOT** agree to any formal meeting with applicants, developers or groups of objectors. Where you feel that a formal meeting would be useful in clarifying the issues, such presentation or discussion with an applicant, developer or objector should be part of a structured arrangement organised by officers. You should never seek to arrange the meeting yourself but you should request the Director of Regeneration and Enterprise or his/her Officers to organise it. The Officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- 4.6 **DO NOT** attend a planning presentation unless a Planning Officer is present and/or it has been organised by officers.
- 4.7 **DO** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the Development Control Committee.
- 4.8 **DO** be aware that a presentation is a form of lobbying and if you express a view, you will need to carefully consider if you have pre-determined the matter prior to the vote.
- 4.9 **DO** otherwise:-
- 4.9.1 follow the rules on lobbying;
- 4.9.2 consider whether or not it would be prudent in the circumstances to make notes when contacted.
- 4.9.3 report to the Director of Regeneration and Enterprise any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them and ensure that this is recorded on the planning file.

## 5. LOBBYING OF MEMBERS

- 5.1      5.1.1    It is acknowledged that lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity and impartiality being called in question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents as well as unrepresented applicants/landowners and community action groups.
- 5.1.2    **DO** remember that your overriding duty is to the whole community and not just the people in your own particular ward.
- 5.1.3    **DO** explain to those lobbying or attempting to lobby you that whilst you can listen to what is being said it prejudices your impartiality and may affect your ability to participate in the Committee's decision making to express an intention to vote one way or another.
- 5.1.4    **DO NOT** accept any gifts or hospitality from any person or group involved in or affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, Members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible (and remember to register the gift or hospitality when it is over £25).
- 5.2      Members must enter hospitality in accordance with the rules on gifts and hospitality
- 5.2.1    **DO** copy or pass on any lobbying correspondence you receive to the Director of Regeneration and Enterprise and Head of Planning at the earliest opportunity as this will enable proper officer advice to be given in the report and avoid the situation where Officers are asked to respond to new information at the meeting itself, leading to deferral or decisions made on partial advice.
- 5.2.2    **DO** immediately refer any offers to the Director of Regeneration and Enterprise and Head of Planning made to you of planning gain or a constraint of development through a proposed s106 obligation or otherwise.
- 5.2.3    **DO** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) that may require an investigation.
- 5.2.4    **DO** note that unless you have a disclosable pecuniary interest you will not have pre-determined a matter or breached this Code if:-
- 5.2.4.1    you have listened or have received views from residents or other interested parties;
- 5.2.4.2    you have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and you have made it clear that you are keeping an open mind;

5.2.4.3 you have sought information through appropriate channels; or

5.2.4.4 you are being a vehicle for the expression of opinion or speaking at the meeting as a Ward/Local Member, provided that you explain your actions at the beginning of the meeting or item and make it clear that, having expressed the opinion or ward/local view, that you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## **6. LOBBYING BY DEVELOPMENT CONTROL COMMITTEE MEMBERS**

6.1 The Local Government Association report recognises that a Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duties to be an active ward representative and the overriding duty as a Councillor to the whole community. In these circumstances:-

- 6.1.1 **DO** join general interest, resident or amenity groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals. Examples of such groups are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members must, however, disclose any interest in accordance with the adopted Code of Conduct when that group has made representations on a particular matter and such members should make it clear to that group and to the Development Control Committee that you have reserved judgment and the independent to make up your own mind on each and every proposal.
- 6.1.2 **DO NOT** excessively lobby fellow members regarding your concerns or views and nor attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.
- 6.1.3 **DO NOT** decide and do not discuss at any political group meeting how to vote on a planning matter or lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.



## 7. SITE VISITS BY MEMBERS

- 7.1 Sites inspection by Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision as outlined below. Any Member of the Development Control Committee may request a site visit and state the reasons for the request.
- 7.2 **DO** try to attend site visits organised by the Council where the relevant Development Control Committee has resolved that a visit is required. If you do not attend a formally arranged site visit, you will be unable to participate in the debate or vote on the relevant item when it is formally considered for decisions by the Committee.
- 7.3 **DO NOT** request a site visit unless you feel it is strictly necessary and where:-
  - 7.3.1 Particular site factors are significant in the terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of site inspection; or
  - 7.3.2 There are significant policy or precedent implications and site factors need to be carefully addressed and which justify the delay in the decision being made.
- 7.4 **DO** ensure that you treat the site visit only as an opportunity of seeking information and to observe the site.
- 7.5 **DO** ask the officers questions and seek clarification from them on matters, which are relevant to the site inspection.
- 7.6 **DO NOT** hear representations from any other party at the site visit. If you are approached by the applicant, ward member or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.
- 7.7 **DO NOT** express opinions or views to anyone at a site visit.
- 7.8 **DO NOT** enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression of bias.
- 7.9 **DO NOT** enter any land adjoining the site which is subject to a proposal without the specific consent of the owner of that land.
- 7.10 Occasionally officers will arrange informal site visits prior to a matter being considered at a Development Control Committee. Whilst Members should make every effort to attend such informal site visits, a Member's non-attendance at such informal visits will not of itself prevent that member from taking part in the decision-making process.

## 8. PUBLIC SPEAKING AT MEETINGS

- 8.1 **DO NOT** under any circumstances allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 8.2 **DO** ensure that you comply with the Council's procedures in respect of public speaking, **as set out below**.
- 8.3 **Public Speaking at Development Control Committee**
- 8.3.1 In accordance with best practice, the Council has resolved to provide the public with a right to speak at meetings of the Development Control Committee. The intention is to give members of the public and ward members the opportunity to express their views directly to the Committee regarding the planning merits or otherwise of individual planning applications. This right to speak also applies to applicants or their agents.
- 8.3.2 One person be allowed to speak on behalf of objectors, if any, and one person on behalf of the applicant. The speaker on behalf of objectors should be reached by collective agreement between parties, or if no agreement on representation can be reached on a "first come" basis. Priority will be given to persons who reside or have a business interest in the Borough. In the event of such a circumstance, the final decision will be made by the Director of Regeneration and Enterprise in consultation with the Chair of the Committee.
- 8.3.3 Where objectors, *or a ward Member who objects to the application*, have given notice that they wish to speak, the applicant and a Ward Member who supports the application will be offered the same opportunity.
- 8.3.4 If the applicant declines the opportunity to speak, an objector or *Ward Member* and a Ward Member who wishes to support the application will still be allowed to address Committee.
- 8.3.5 If no objector (*including a Ward Member*) wishes to speak, then the applicant will still be given the opportunity of addressing the Committee, but only where the application is recommended for refusal.
- 8.3.6 That each speaker be allowed a single opportunity to a maximum of three minutes to present their case and will not be allowed a second chance to address Committee.
- 8.3.7 The playing of audio or visual material is not permitted, and any materials for circulation such as photographs or plans must be provided to Officers preferably 24 hours (and in any event a reasonable time period) prior to the start of the meeting.
- 8.3.8 If the speaker in their presentation makes comments considered to be inappropriate (such as remarks that could be construed to be inflammatory, derisory or inciting violence), their opportunity to speak will cease immediately irrespective of the time remaining.

- 8.3.9 That the Director of Regeneration and Enterprise presents his/her report to Committee prior to public speaking on each individual planning application.
- 8.3.10 That no questioning of Members or Officers by speakers, or of speakers by Members or Officers, be allowed.
- 8.3.11 Any applicant (or their agent), any objector or Ward Member who wishes to speak at a meeting of the Development Control Committee, must notify the Development Control Section by 10.00 a.m. on the Friday prior to the meeting, to enable sufficient time for the Council to contact the other relevant parties. Late requests cannot in the interests of fairness be allowed.

## 9. THE DECISION MAKING PROCESS

- 9.1 9.1.1 The Local Government Association report on Probity in Planning: the Role of Councillors and Officers - revised guidance note dated April 2013 on good planning practice for Councillors and Officers dealing with planning matters, advises that a decision on a planning application cannot be made at the Committee meeting until all of the available information is to hand and has been duly considered and any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote. Accordingly any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups.
- 9.1.2 All applications considered by Development Control Committee or by way of a delegated decision shall be the subject of written reports and clear recommendations. If the recommendations are contrary to the provisions of the Development Plan the material considerations, which justify this, shall be clearly stated. If in the view of the Officer the matter is finely balanced the report will say so. The recommendations put forward by Officers and the decision by Members are separate parts of the same process, which should be justified by the report and debate respectively.

## 9.2 MEMBERS RELATIONSHIP WITH OFFICERS

- 9.2.1 **DO NOT** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Director of Regeneration and Enterprise and such views may be incorporated into any Committee report. If you wish to speak to an officer regarding any proposal then you should speak to the Case Officer as that Officer would know the current position regarding a matter. Alternatively, you can contact the Director of Regeneration and Enterprise.
- 9.2.2 DO recognise and respect that Officers in the processing and determining of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional Codes of Conduct. You should, therefore, appreciate that Officers' views, opinions and recommendations will be based on their overriding obligation of professional independence, which may on

occasion be at odds with the views, opinions and decisions of a Committee or its Members.

- 9.2.3 DO consider the Council's Protocol for Member/Officer relationships, which governs the working relationship you have with Officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.
- 9.2.4 DO recognise that planning and other professional Officers are part of a management structure and only discuss a proposal outside of any arranged meeting with a Director or those officers who are authorised by their Director to deal with the proposal at a Member level.

### **9.3 Committee Reports**

- 9.3.1 When planning applications are reported to the Development Control Committee, reports should be formulated to ensure that all relevant matters are identified and addressed.
- 9.3.2 Reports should be accurate and cover all relevant points, as recommended by the Ombudsman. Relevant points will include a clear exposition of the Development Plan, in particular, the Black Country Core Strategy, the Unitary Development Plan, and any other development plan document site or related history, and any other material considerations. Where necessary, reports should contain a technical appraisal which clearly justifies the recommendation.
- 9.3.3 All reports should have a written recommendation (either to approve or refuse). Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur. If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 9.3.4 Reports should include details of any planning obligation required of the applicant, and of any other requirements/legal actions necessary to allow a decision to be implemented.
- 9.3.5 It is particularly important that this process is adhered to. Not only is this a matter of good practice, but failure to do so may constitute maladministration and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 38(6) of the Planning and Compulsory Purchase Act, 2004.
- 9.3.6 Corrections, amendments and the provision of additional information known as Pre-Committee Notes (which becomes available subsequent to the Committee agenda being finalised), should be circulated at the Development Control Committee meeting as an addendum to the formal agenda, or when necessary, reported orally to the meeting. It is important that Members take

full account of these Pre-Committee Notes when considering the application and, subsequently, making the decision.

## **9.4 DECISION MAKING BY MEMBERS**

- 9.4.1 **DO** ensure that if you request a proposal to go before the Development Control Committee (rather than be determined through Officer delegation) that your reasons are recorded and repeated in the report to the Committee.
- 9.4.2 **DO** come to a meeting with an open mind on a matter and do demonstrate that you are open-minded.
- 9.4.3 **DO** comply with the Sections 38(1) and 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan and in particular the Black Country Core Strategy, the Unitary Development Plan and any other development plan documents unless material considerations indicate otherwise.
- 9.4.4 **DO** come to your decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If you feel that there is insufficient time to consider new information or there is insufficient information before you then you should request that further information and, if necessary, defer or, if substantiated, refuse the application.
- 9.4.5 **DO NOT** vote or take part in a discussion at a meeting unless you have been present for the entire meeting or for the whole of the matter in question (and this includes the public speaking and the officers' introduction to the matter). If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.
- 9.4.6 **DO** have recorded the reasons for Committee's decision to defer any proposal.
- 9.4.7 **DO** make sure that if you are proposing, seconding or supporting a decision **contrary to** Officer recommendation or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons, like all reasons in such matters, **must** be given prior to the vote and be recorded. Members should also be aware that you might have to justify their decision by giving evidence in the event of any appeal or challenge. Failure to do this not only increases the chances of a successful appeal but also exposes the Council to a significant danger of costs being awarded against the Council.
- 9.4.8 **DO** ensure that the reasons you give for a decision **must** be your reasons. You cannot ask an officer to give the reasons for you. An Officer may assist in the drafting of your reasons.
- 9.4.9 **DO** remember that Development Control Committees are important hearings. You should, therefore, act and dress accordingly, (i.e. you give a matter due consideration and should not talk between yourselves or use mobile telephones or other mobile devices when a matter is being considered).

## **10. TRAINING OF MEMBERS**

- 10.1 All Members serving on the Development Control Committee and/or who have any decision making role on planning matters including substitute Members in accordance with the Council's Constitution shall be trained in planning procedures prior to serving on the Committee.
- 10.2 **DO NOT** take part in the decision making process at Committee meetings unless you have attended the mandatory planning training prescribed by the Council's Constitution.
- 10.3 **DO** attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, procedures, Regulations, Codes of Practice and the Development Plan. The training will be devised to assist you in carrying out your role properly and effectively.
- 10.4 **DO** participate in reviews of a sample of planning decisions referred to in Section 12 below to ensure that Members' Judgments have been based on proper planning considerations.

## **11. THE ROLE OF OFFICERS IN PLANNING MATTERS**

- 11.1 Officers **must** when making decisions on applications:-
  - 11.1.1 Act fairly and openly at all times;
  - 11.1.2 Consider each and every application with an open mind;
  - 11.1.3 Consider all the material planning considerations attaching the appropriate weight to each one;
  - 11.1.4 Avoid any inappropriate contact with the applicants, members and any other interested parties;
  - 11.1.5 Ensure that the reasons for any decision are clearly recorded;
  - 11.1.6 Ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance in accordance with Article 31 of the Town and Country Planning Development Management Procedure (England) Order 2010 (SI 010/2184), regarding reasons for [approval] and refusal;
- 11.2 When reporting to a Committee on a planning matter officers **will**:
  - 11.2.1 Provide professional and impartial advice at all times;
  - 11.2.2 Ensure that all the information necessary for a decision by Members is made available to those members;

- 11.2.3 Ensure that a report includes the substance of all the objections and the views of the consultees;
- 11.2.4 Produce a clear, accurate and objective written analysis of the issues;
- 11.2.5 Make a clear recommendation.
- 11.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that matter's history. Particular care should be taken with files relating to delegated decisions, which should be as carefully maintained as those files relating to decisions taken by Members.
- 11.4 Any material planning information received after the writing of the report and up to midday of the day of the Committee meeting will be presented orally by officers or be included on an amendment sheet.
- 11.5 The Director of Regeneration and Enterprise may, after consulting the Chair of the Development Control Committee, withdraw any item from the agenda of that Committee before that item is discussed by that Committee if the circumstances of an application have changed after the report has been prepared.
- 11.6 Officers have a duty to carry out the decisions of Members even when Members decide a matter against Officer recommendations.

## **12. DISCUSSIONS REGARDING PLANNING APPLICATIONS**

- 12.1 Officers should have regard to the relevant parts of this Code regarding Members' involvement in pre-application or post submission discussions with applicants, supporters or objectors.
- 12.2 In particular, all Officers taking part in such discussions should inform all those present at such discussions that the decision on the particular application will either be taken by elected Members in a Committee or in specified circumstances by the Director of Regeneration and Enterprise by a duly authorised officer of his or her department.
- 12.3 **An Officer must** always take a note of all such meetings. All meeting notes and follow-up correspondence must be placed on the relevant file.

## **13. OFFICERS' DISCLOSURES OF INTEREST**

- 13.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

## **14. HOSPITALITY - OFFICERS**

- 14.1 Officers **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officer **must**

ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

## **15. DELEGATION OF DECISION-MAKING**

15.1 The Development Control Committee is appointed by the Council and the Committee is authorised by its terms of reference to determine all matters which fall within the following categories:-

15.1.1 As a Local Planning Authority.

15.1.2 The highway functions contained in Sections 249, 250, 257, 258 and 259 of the Town and Country Planning Act, 1990

15.1.3 In respect of all matters relating to the Building Regulations.

15.1.4 The implementation of the Council's existing Equal Opportunities' Policy in relation to the Committee's functions.

15.1.5 Authorise the institution of proceedings under Sections 1, 10 and 11 of the Planning and Compensation Act, 1991.

### **15.2 Other than**

15.2.1 The acquisition, disposal or appropriation of land to or from such purposes.

15.2.2 Those aspect of development plans which fall within the terms of reference of other Committees.

15.3 With the terms of reference and subject to the provisions of the Council's Standing Orders and Financial Regulations, the Director of Regeneration and Enterprise is delegated to exercise specific powers and duties, as set out and approved by the Council, provided that such exercise does not conflict with a decision taken by the Council or the Committee. The Director of Regeneration and Enterprise may refer any matter to the Committee for consideration whether or not it falls within any power which he is authorised to exercise. The Council's Lead for Law and Governance similarly has delegated powers to deal with a specified range of legal matters relating to planning procedures.

15.4 All decisions taken by the Director of Regeneration and Enterprise in respect of planning applications and associated matters are recorded and open to audit and inspection.

15.5 The Council has also approved that additional planning applications, not included in the delegated powers given to the Director of Regeneration and Enterprise referred to above, be delegated for determination to the Director of Regeneration and Enterprise in consultation with the Chair (or Vice Chair as substitute) of the Development Control Committee. This extended delegation provision includes all planning applications other than the following which remain to be determined by the Development Control Committee:-



- 15.5.1 any proposed development which would be an advertised departure from the Development Plan and, in particular, the Black Country Core Strategy, the Unitary Development Plan and any other development plan documents adopted Unitary Development Plan or approved Supplementary Planning Guidance, where the recommendation of the Director of Regeneration and Enterprise is to grant planning permission.
  - 15.5.2 any proposed development which would have a significant impact outside of its immediate vicinity, e.g. it would generate significant volumes of traffic, noise or atmospheric pollution: or it would have a significant impact on the pattern of trading: or it would be prominent in the landscape, etc.
  - 15.5.3 any proposed development which has given rise to a substantial weight of public concern.
  - 15.5.4 notwithstanding paragraphs (a), (b) and (c) above, all applications requiring a legal agreement under Section 106 of the Town and Country Planning Act, 1990, and all development that affects the stopping-up, diversion or the creation of highways, where planning permission is required.
- 15.6 These extended delegations are subject to the following procedural arrangements to ensure that the public interest is safeguarded:-
- 15.6.1 all applications submitted for delegated decision by the Director of Regeneration and Enterprise and the Chair of the Development Control Committee, will be the subject of a full and detailed written report.
  - 15.6.2 there is provision for the Director of Regeneration and Enterprise in consultation with the Chair, to refer any planning application submitted for delegated decision, to the Development Control Committee for its determination.
  - 15.6.3 any member of the Council may request that any planning application be referred to the Development Control Committee for determination, with reasons given for such request.
  - 15.6.4 all decisions taken in respect of planning applications submitted for delegated decision by the Director of Regeneration and Enterprise in consultation with the Chair, must be recorded and made available for public inspection.

## **16. REVIEW OF COMMITTEE DECISIONS**

- 16.1 The public is becoming increasingly aware and concerned about the impact that planning decisions have on the environment and their amenities. However, planning is not an exact science and it relies upon informed judgment by officers and members within a firm policy context.

- 16.2 The quality and consistency of decision-making is, therefore, a very important element of the planning process. It should be regularly monitored and reviewed and amended when and where necessary.
- 16.3 The Development Control Committee will undertake, regularly, a sample review of decisions taken. This should include major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases.
- 16.4 On an annual basis, the Director of Regeneration and Enterprise will report to the Development Control Committee on:-
  - 16.4.1 the outcome of applications referred by adjoining planning authorities;
  - 16.4.2 the outcome of authorised enforcement actions;
  - 16.4.3 appeal decisions;
  - 16.4.4 planning obligations (Section 106 Agreements).

## **17. ACTION TO BE TAKEN BY OFFICERS REGARDING DECISIONS TAKEN CONTRARY TO PROFESSIONAL ADVICE**

- 17.1 In matters where Members have refused an application against an Officer recommendation for approval:
  - 17.1.1 Officers will give their full support to Members and any external witnesses in the preparation of the evidence for any planning inquiry;
  - 17.1.2 Officers will only give evidence themselves in the exceptional circumstances where their Code of Professional Conduct has not been breached or where a hearing is to be held, with no cross examination (and, in this later example, the officer concerned has not been involved with formulating the original recommendation);
  - 17.1.3 Officers will give their full support to Member decisions that are appealed under the written representations procedure.

## **18. SANCTIONS**

- 18.1 The purpose of this Code is to provide guidance to Members in relation to the performance of the Council's planning function. The application of and adherence to the Code is intended to build public confidence in the Council's planning system and to produce a strong platform for planning decision-making. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.
- 18.2 A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning

Committee. Beyond the normal democratic process a number of specific consequences can be identified, namely:-

**18.2.1 The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the balance of argument in any planning decisions she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress, which may take the form of compensation.

**18.2.2 Appeals to the Secretary of State**

An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable the appellant's costs may be awarded against the Council. Examples of "unreasonable behaviour" are: failing to follow the Council's policies; no evidence of significant harm; and giving too much weight to local opposition to proposals.

**18.2.3 Judicial review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory duties to carry out all necessary procedures, did not base their decision on the development plan and or did not take into account all relevant representations they may apply for Judicial Review of the decision which might result in the decision being quashed. In such circumstances, it would be normal for the costs of the applicant to be awarded against Council.

**18.2.4 Powers of the Secretary of State**

The Secretary of State possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with national and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the Secretary of State following a Public Inquiry. Where permissions have already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council.

**18.2.5 District Auditor**

Each of the above courses of action could result in significant extraordinary costs to the Council. The District Auditor will closely examine these costs. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Council's accounts by the wilful misconduct of any person she/he is required to certify that the loss or deficiency is due to that person and it may, therefore, lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

18.3 These are in addition to possible sanctions against individual Members for breach of the Code of Conduct which could include:-

- 18.3.1 To report on findings to Full Council, i.e. “naming and shaming”;
- 18.3.2 To recommend to a Group Leader that the Member concerned be removed from any Committee or Sub-Committee;
- 18.3.3 To recommend, in relation to any Members of the Executive that the Member concerned be removed from the Executive;
- 18.3.4 To recommend the Monitoring Officer to arrange appropriate training for the Member concerned;
- 18.3.5 To recommend removal of any Member concerned from any outside body appointments;
- 18.3.6 To require the withdrawal of Council facilities, e.g. use of computer or internet;
- 18.3.7 To exclude a Member from the Council’s offices or other premises except for the purpose of attending formal meetings.

## 19. ADDENDUM

R (on the application of Kevin Paul Lewis) v Persimmon Homes Teesside Ltd [2008] EWCA Civ 746 (Court of Appeal) recognises *“that Councillors are not in a judicial or quasi-judicial position but are elected to provide and pursue policies. Members of a Planning Committee would be entitled and indeed expected to have and to have expressed views on planning issues”* Pill LJ at paragraph 69.

*“... there is no escaping the fact that a decision-maker in the planning context is not acting in a judicial or quasi-judicial role but in a situation of democratic accountability. He or she will be subject to the full range of judicial review, but in terms of the concepts of independence and impartiality, which are at the root of the constitutional doctrine of bias, whether under the European Convention of Human Rights or at common law, there can be no pretence that such democratically accountable decision-makers are intended to be independent and impartial just as if they were judges or quasi-judges. They will have political allegiances, and their politics will involve policies and these will be known”.* Rix LJ at paragraph 94.

**1. OVERTURN FROM OFFICER RECOMMENDATION OF REFUSAL TO APPROVAL**

- 1.1 Members should clearly identify and understand the planning reasons leading to this conclusion and should specify the planning reasons for approval during the debate.
- 1.2 At the time the motion for approval is moved, Members should specify the planning reasons upon which the motion for approval is based to ensure that all Members are clear as to the basis for their vote.
- 1.3 The decision by Members is an 'in principle' only decision at this time. For example, Members support the application subject to conditions:-
  - 1.3.1 that delegated authority is resolved to be given to officers to prepare conditions and (where necessary) Section 106 obligations and issue the decision notice **OR**
  - 1.3.2 delegated authority is given to Officers to draft conditions to be considered by the next available Development Control Committee **OR**
  - 1.3.3 the Committee approves the delegation to draft conditions in consultation with the Chair of the Committee.

**2. OVERTURN FROM OFFICER RECOMMENDATION OF APPROVAL TO REFUSAL**

- 2.1 The Member moving the motion for refusal must clearly state the reasons for refusal as part of the debate. These reasons must be planning reasons.
- 2.2 The Planning Officer to advise on whether or not these are relevant planning refusal reasons prior to the vote.
- 2.3 The Planning Officer can (if required) summarise the reasons for refusal before the vote is taken to ensure that all Members are clear as to the basis for their vote.
- 2.4 On being put to the vote, the Member moving the motion should re-state the reasons for refusal.
- 2.5 If the vote is successful the reasons given by the Committee shall form the basis of the refusal notice issued.

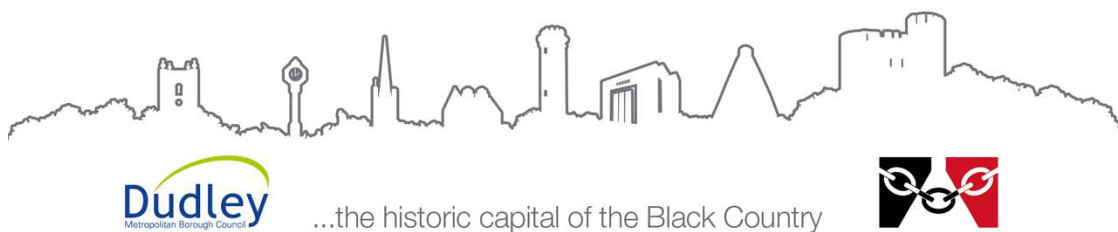
### **3. DEVELOPER SELECTION PROTOCOL**

- 3.1 This Protocol applies where the Council is not funding the project but is seeking a partner for a major initiative in the Borough area in terms of scale and/or importance which is intended to deliver on one or more of the Council's policies or plans.
- 3.2 It should be noted that major projects such as these are unique and require an individual approach.
- 3.3 In all cases procurement should follow the procedure contained in Contract Standing Orders for a contract with an estimated contract value of over £100,000. The method of selection should be appropriate to the nature and size of the project but would normally be Public Advertisement following by the Select List Method.
- 3.4 At the commencement of the project the appropriate Director shall carry out a full assessment of the resources required and whether any external consultants are required. In particular, the Director shall satisfy himself that adequate project management arrangements are in place.
- 3.5 The Director shall involve the Head of Purchasing and Procurement in all project where the estimated value of the project (irrespective of the source of funding) exceeds £2 million.
- 3.6 Before bids are invited the Director should prepare a comprehensive development brief containing SMART targets and including details of the Council's aspirations for the project and a detailed statement of the range of outcomes that the Council require. The project brief should also expand upon the Council's aspirations for the outcomes of the project by detailing the type and scale of the project. The project brief shall be approved by the Council and have member involvement in its production.
- 3.7 Also, at the outset, the Director shall produce evaluation criteria to be clearly set out in two matrices relating to the suitability/benefits of the proposal with specific regard to the Council's objectives as set out in the project brief, and the capability of the partner. The criteria shall be properly weighted and lodged with the Chief Executive.
- 3.8 There must be a clear timetable to be set for submission of schemes, submission of questions and replies, the holding of interviews and the evaluation of bids. All questions shall be submitted in writing to a nominated officer and copies of all questions and replies sent to all prospective partners.
- 3.9 It shall be a requirement that each prospective partner shall submit detailed information in order to demonstrate financial viability and indicate any requirements for external and Local Authority resources that may be targeted.
- 3.10 Each prospective partner must also provide a credible and sound business plan to deliver the project within a stipulated timescale.

- 3.11 The evaluation panel shall comprise officers only, of a suitable seniority and experience, who may be supported by any external consultants and/or stakeholders, as appropriate.
- 3.12 There shall be a detailed and comprehensive evaluation of each submission in accordance with the evaluation criteria when selecting a preferred bidder. The selection panel shall consider whether a reserve preferred bidder shall be nominated.

# Code of Corporate Governance

**August 2020**





## **Introduction**

The latest framework for good governance was produced by the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Society of Local Authority Chief Executives (SOLACE) in 2016. Dudley issues its own Code of Corporate Governance based around the CIPFA/SOLACE model.

Corporate Governance is defined by CIPFA/SOLACE as comprising the arrangements (including political, economic, social, environmental, administrative, legal and other administrative arrangements) put in place to ensure that the intended outcomes for stakeholders are defined and achieved.

The framework aims to help local government take responsibility for developing and shaping an informed approach to governance; to achieve the highest standards in a measured and proportionate way. The overall aim is to ensure that:

- Resources are directed in accordance with agreed policy and according to priorities,
- There is sound and inclusive decision making,
- There is clear accountability for the use of those resources in order to achieve desired outcomes for services users and communities.

The governance framework is based around seven core principles of good governance. The seven core principles are listed below with an outline of how Dudley is addressing these principles.

## **CORE PRINCIPLE 1: Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law**

Local government organisations are accountable not only for how much they spend, but also for how they use the resources under their stewardship. This includes accountability for outputs, both positive and negative, and for the outcomes they have achieved. In addition, they have an overarching responsibility to serve the public interest in adhering to the requirements of legislation and government policies. It is essential that, as a whole, they can demonstrate the appropriateness of all their actions across all activities and have mechanisms in place to encourage and enforce adherence to ethical values and to respect the rule of law.

### **Sub-principle: Behaving with Integrity**

#### **Evidenced by:**

- The council's constitution contains Codes of Conduct for both Members and Officers to ensure that high standards of conduct are maintained. The Codes of Conduct include requirements relating to the declaration of interest and the receipt of gifts and hospitality.
- The Employees Code of Conduct is brought to the attention of all new starters to the council and forms part of the induction process. All employees are now required to electronically accept the Code and declare any interests on the HR and Payroll System.
- It is a mandatory requirement that all Members of the council receive training from the Monitoring Officer on the Code of Conduct. This includes Member conduct, declaring interests and equality duties.
- Those Members who attend regulatory committees are required to attend mandatory training on a biennial basis.
- Each Director maintains a gifts and hospitality register for their staff.
- Member declared interests are shown on the council's website.
- Protocol on Member/Officer Relations forms part of the council's constitution and has recently been reviewed and has been produced in a one page format.
- Code of Practice for Members and Officers dealing with planning matters including a Developer Selection Protocol forms part of the council's constitution.
- The constitution sets out the council's decision making framework, clearly detailing decisions to be taken by full Council, Cabinet, Committees, Cabinet Members and Senior Officers.
- Each committee agenda asks for any declarations of interest under the Members' Code of Conduct and any declarations would be recorded within the minutes. The agendas and minutes are available on the council's website.

### **Sub-principle: Demonstrating strong commitment to ethical values**

#### **Evidenced by:**

- The council has developed a "Values and Behaviour Framework" to demonstrate how behaviour and decision making can help achieve its vision.
- The values and behaviours framework has been embedded in the Member and Officer Charter, Employee Survey, My Annual Review as well as driving workforce change initiatives such as engagement and the new staff suggestion scheme. Leadership Forum events have incorporated a values led theme and a staff recognition and celebration segment to recognise values in action.
- Training sessions have been delivered to Managers on the values and behaviours framework. Managers have been told to cascade the framework to their teams.

**CORE PRINCIPLE 1: Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law**

- Proper standards of behaviour are set out within Contracts Standing Orders and Financial Regulations which ensure that systems and processes for financial administration, financial control and the safeguarding of resources are in place. These are monitored by Internal Audit and reported upon as part of audit work.
- The council has an Equality Strategy 2016-19, which is currently under review. To support the delivery of the strategy the Workplace Wellbeing and Equality Steering Group have produced and monitor an action plan. An annual report on equality is presented to Strategic Executive Board and Cabinet and reports on progress in implementing the strategy and includes employment monitoring data for protected characteristics including race, disability and sex. Employment data is also benchmarked against other local authorities e.g. the gender pay data - which has resulted in some actions being identified to help close the council's gender pay gap.
- All staff are required to undertake an Equality and Diversity on-line training course.
- Leaflet produced on "Good governance is everyone's business" and promoted to Officers and Members.
- The council's Whistleblowing Policy is reviewed on an annual basis and a report on referrals is presented to Audit and Standards Committee.
- Posters are displayed throughout the council promoting the Whistleblowing Policy and who to contact. A clause on whistleblowing is included in the council's standard terms and conditions.
- National reports issued on standards in public life are discussed at Audit and Standards Committee.
- The Leader and Leaders of the opposition groups are required by the constitution to set an example to all Members and employees of the council in their conduct and the performance of their function. They will promote the Codes of Conduct, the Protocol for Member and Officer Relationships and encourage attendance at training courses.
- The Nolan principles are discussed in the Financial Regulations on-line training course.
- The council's Contract Standing Orders and Corporate Procurement Manual are underpinned by ethical considerations.
- A Suppliers Code of Practice has been produced and approved by the Leader of the council and distributed to all suppliers for which the council had an email address and the top 350 irrespective of whether an email address is held. The top 350 were asked to confirm their adherence to the Code.
- Clauses on fraud and corruption and the Bribery Act appear in the council's standard terms and conditions.
- Ethical procurement information, the Suppliers Code of Practice and the Whistleblowing Policy are included on the council's website.
- A Modern Slavery and Human Trafficking Statement and Policy has been produced and promoted via the council's website. An action plan has been developed as part of this Statement and Policy, the implementation and effectiveness of which is monitored by the Community Cohesion Strategic Group. Over 1000 staff have received initial awareness training on modern slavery and a number of other staff have received in depth training. The council's procurement and tender activity requires all relevant supplier contracts to confirm compliance with the Modern Slavery Act (2015) during the procurement process and an appropriate clause has been included in the General Terms and Conditions.

**CORE PRINCIPLE 1: Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law**

- The Prevent Delivery Group oversee the development and implementation of the Borough's Prevent Delivery Plan. The Group meets on a quarterly basis and receive updates from the Counter Terrorism Unit to inform their work.

**Sub-principle: Respecting the rule of law**

**Evidenced by:**

- Officer job descriptions include the requirement to follow statutory provisions and guidance, where appropriate.
- The constitution clearly details the responsibility for Members and Officers to follow statutory provisions.
- Statutory responsibility is covered by the Members' Code of Conduct and associated training/guidance to Members from the Monitoring Officer.
- The Director of Finance and Legal complies with CIPFA's Statement on the Role of the Chief Financial Officer in Local Government (CIPFA, 2015).
- The Section 151 Officer and Monitoring Officer are permanent members of Strategic Executive Board and have access to all information and have the right to attend any meetings.
- Members receive training to assist with decision making, particularly for quasi-judicial committees.
- The council maintains records of legal advice provided by officers.
- The council has an Anti-Fraud and Corruption Strategy that is regularly reviewed. There are also fraud resources contained on the council's intranet site including online training.
- The council has a Corporate Fraud Manager who has the ability to undertake in depth investigations and prepare cases for criminal prosecution.
- A fraud hotline is available to Officers, Members, Contractors and members of the public.
- An Annual Fraud Report is presented to Audit and Standards Committee, which details work undertaken in relation to fraud.
- Fraud and corruption assessments against good practice guidance are presented to Audit and Standards Committee.

## **CORE PRINCIPLE 2: Ensuring openness and comprehensive stakeholder engagement**

Local government is run for the public good, organisations therefore should ensure openness in their activities. Clear, trusted channels of communication and consultation should be used to engage effectively with all groups of stakeholders, such as individual citizens and service users, as well as institutional stakeholders.

### **Sub-principle: Openness**

#### **Evidenced by:**

- An engagement exercise involving a group of 33 people of different ages, genders and ethnicity was facilitated by the Democratic Society to understand how digital services and the council website can be made easier to use and best meet people's needs. A number of recommendations were made, which are currently being explored.
- A Freedom of Information Act publication scheme is maintained on the council's website.
- All committee reports and decision sheets/memorandums unless exempt can be accessed by the public through the council's website.
- The public are entitled to attend all committee meetings unless an exempt report is being discussed.
- A "forward plan" of items for which a decision is due to be made is published.
- A timetable of dates for submitting and distributing reports is maintained.
- Publish an annual Statement of Accounts and narrative report on the council's website demonstrating the Authority's financial position and performance.
- Regular meetings are held with relevant Lead Members to brief them on developments in their service area and issues of concern.
- The council has a Social Media Policy and social media is used extensively to communicate with residents and stakeholders.
- A council e-bulletin is issued via email to a significant number of residents.
- Facebook forums are used to engage with borough residents.
- The council's 'Your borough YOUR HOME' magazine features news and information and is distributed to all borough households.
- A digital platform has been launched which allows residents to raise their service requests online.
- The constitution demonstrates the council's commitment to an open and accessible style of operation by Members and Officers in all dealings.
- The constitution is reviewed on an annual basis. The constitution sets out how council decisions are made and the appropriate conduct at meetings.
- The constitution includes relevant guidance on the roles and responsibilities of the Section 151 Officer and the Monitoring Officer.
- Employee and Member Codes of Conduct detail the requirement to adhere to statutory provisions and guidance.
- An employee survey is undertaken on a biennial basis and it is planned to supplement this with pulse surveys to test the temperature of the workforce on key initiatives.
- Internal communication has been reviewed and now there are a number of mechanisms to relay information to council staff: Chief Executive's blog, "Keep it Brief" and "Directions" publications, Express Briefings and Leadership Forum.

### **Sub-principle: Engaging comprehensively with institutional stakeholders**

#### **Evidenced by:**

- The voluntary sector meets with the Director of Social Care on a regular basis.

## **CORE PRINCIPLE 2: Ensuring openness and comprehensive stakeholder engagement**

- There is strong partnership working with the NHS through the Health and Well-Being Board. The council are working with Dudley Clinical Commissioning Group (CCG) to develop a Multi-Speciality Community Provider (MCP) model. This is a new model of care which joins up the NHS, public health, social care and community support around the patient.
- The council is the accountable body for the following statutory partnerships: Community Safety, Dudley Safeguarding People Partnership Board, Health and Wellbeing Board and ensures appropriate governance is in place.
- There is a Dudley Business Champions Group made up of business leaders and council officers, focusing on delivering the five pillars of the Industrial Strategy and also aligning activities to the priorities in the Borough Vision 2030.
- The Dudley Town Centre Area Programme Board oversees projects in Dudley Town Centre.
- A Town Deal Board has been established since Dudley Town Centre was invited to bid for a share of the £3.6billion town fund. The Town Board will prioritise and drive investment and seek long term economic and productivity growth through investment in connectivity, land use, skills and enterprise infrastructure.
- Dudley MBC is part of West Midlands Combined Authority.

### **Sub-principle: Engaging stakeholders effectively including individual citizens and service users**

#### **Evidenced by:**

- A Corporate Communications Plan 2019-2022 is in place. The responsibility for delivering the plan applies to all elected Members, leaders and managers in line with our value of accountability. This is supported by a Communications Toolkit.
- The council has established a corporate identity and brand that is to be used on all appropriate communications. It is hoped that this will portray the council as professional and progressive.
- Planning Services have reviewed their Statement of Community Involvement to ensure it is reflective of current thinking and practice.
- Young people are actively engaged through the Youth Council and the Children in Care Council as well as through a range of groups coordinated through the Children and Young People's Alliance.
- The council has established ten Community Forums to give local citizens a greater say in council affairs. These cover the groupings of electoral wards. Their main purpose is to provide an opportunity for local issues to be discussed locally. They involve the ward Councillors for each particular ward and are held in public.
- All significant decisions are subject to consultation with the public.
- The "Big Question" is an annual survey of borough residents to obtain their views on budget setting.
- The council attends or facilitates many groups involving residents or service users.
- During 2019/20, the council was selected as one of only three councils nationally to take part in the Government's Innovation in Democracy programme to trial citizens' assemblies. Dudley's assembly, the Dudley People's Panel, met over two weekends in November and December 2019 and looked at the future of Dudley and Brierley Hill town centres. Members of the Panel have presented their recommendations to Cabinet and these are being used to shape the regeneration plans for the two town centres

### **CORE PRINCIPLE 3: Defining outcomes in terms of sustainable economic, social and environmental benefits.**

The long-term nature and impact of many of local government's responsibilities mean that it should define and plan outcomes and that these should be sustainable. Decisions should further the organisation's purpose, contribute to intended benefits and outcomes, and remain within the limits of authority and resources. Input from all groups of stakeholders, including citizens, service users, and institutional stakeholders, is vital to the success of this process and in balancing competing demands when determining priorities for the finite resources available.

#### **Sub-principle: Defining Outcomes**

##### **Evidenced by:**

- The Council Plan 2019 to 2022 has three priorities, which will be supported by its work as One Council, building a dynamic and sustainable organisation:
  - Stronger and safer communities,
  - A cleaner greener place,
  - Growing the economy and creating jobs.
- Future Dudley 2030 (Council Strategy) sets out an ambitious transformation programme over the next 10 years. The programme is currently being scoped. It is proposed that Future Dudley 2030 will be split into five work streams:
  - Future Communities
  - Future Economy
  - Future Workforce
  - Future Technology
  - Future Facilities
- A Borough Vision 2030 'Forging a Future for All' has been produced in conjunction with partners. An Action Plan to deliver on the Vision is currently being produced. In 2030 Dudley borough wants to be:
  - An affordable and attractive place to live with a green network of high quality parks, waterways and nature reserves that are valued by local people and visitors,
  - A place where everybody has the education and skills they need, and where outstanding local schools, colleges and universities secure excellent results for their learners,
  - A place of healthy, resilient, safe communities with high aspirations and the ability to shape their own future,
  - Better connected with high quality and affordable transport, combining road, tram, rail, and new cycling and walking infrastructure,
  - Renowned as home to a host of innovative and prosperous businesses, operating in high quality locations with space to grow, sustainable energy supplies and investing in their workforce,
  - A place to visit and enjoy that drives opportunity, contributing to its ambitious future while celebrating its pioneering past,
  - Full of vibrant towns and neighbourhoods offering a new mix of leisure, faith, cultural, residential and shopping uses.
- Dudley Borough Forging the Future Executive has been established to stimulate, champion and lead programmes of action to contribute to the achievement of Dudley Borough's vision for the future.
- A Commercial Strategy is currently being produced.
- Publish quarterly and annual performance reports on the website.



**CORE PRINCIPLE 3: Defining outcomes in terms of sustainable economic, social and environmental benefits.**

- Publish annual report and account on adult social care services, which provides an assessment of how the council has performed as a provider and commissioner of adult social care as well as identifying areas for further focus.
- The council has established the Dudley Deal, which is a series of informal pledges. The Business Deal is about growing the economy, the Community Deal is about supporting stronger communities and the Green Deal is about focusing on a cleaner, greener borough. Each sets out what the council will commit to and also how residents, businesses and community groups can play their part.

**Sub-principle: Sustaining economic, social and environmental benefits****Evidenced by:**

- The corporate reporting template requires consideration of environmental and sustainability factors.
- The council has a Corporate Energy Management function which has a programme of work to improve council's energy and environmental performance on sustainable development. A Corporate Energy Strategy has been produced.
- A Corporate Estate Strategy (2017-2022) has been produced that includes capital investment and disposals. The Corporate Estate Strategy will ultimately deliver a "core" of operational buildings and sites that are "fit for purpose". It will also realise savings, generate new revenue income and deliver efficiencies through working differently and collaborating with partners in the context of the council's land and property base.
- The Corporate Estate Strategy is delivered via the Corporate Landlord Services Plan.
- The council are developing a 25-year sustainable waste strategy to minimise the borough's waste.



#### **CORE PRINCIPLE 4: Determining the interventions necessary to optimise the achievement of the intended outcomes**

Local government achieves its intended outcomes by providing a mixture of legal, regulatory, and practical interventions (courses of action). Determining the right mix of these courses of action is a critically important strategic choice that local government has to make to ensure intended outcomes are achieved. They need robust decision-making mechanisms to ensure that their defined outcomes can be achieved in a way that provides the best trade-off between the various types of resource inputs while still enabling effective and efficient operations. Decisions made need to be reviewed frequently to ensure that achievement of outcomes is optimised.

#### **Sub-principle: Determining and Planning interventions**

##### **Evidenced by:**

- The Council Plan 2019-2022 includes each directorate's key priorities.
- The Council Plan is supported by Director plans that provide more detailed information on the service actions the council are taking to deliver its priorities. The plans have a three year focus and are reviewed annually in support of the Council Plan, Future Council Programme and Borough Vision.
- There are agreed templates in place for producing committee reports and decision sheets. These templates require the law in relation to the decision to be detailed and the impact on equality. Within the Committee report/decision sheet the benefits of the proposed course of action and the risks in relation to it should also be clearly explained.
- Members are encouraged to discuss with officers the information they require in order to make decisions.
- Democratic Services have provided training to Senior Managers on how committee reports and decision sheets should be completed and have emphasised that the corporate standard must be followed. Training has also been provided on the process to get committee reports and decision sheets agreed and published.
- There are timetables in place for producing the Council Plan, Director Plans and annual budget.

#### **Sub-principle: Optimising achievement of intended outcomes**

##### **Evidenced by:**

- The Medium Term Financial Strategy balances service priorities, affordability and other resource constraints.
- The council is developing a Social Value Charter.
- Training has been provided to Officers on social value.

**PRINCIPLE 5: Developing the entity's capacity, including the capability of its leadership and the individuals within it**

Local government needs appropriate structures and leadership, as well as people with the right skills, appropriate qualifications and mindset, to operate efficiently and effectively and achieve intended outcomes within the specified periods. A local government organisation must ensure that it has both the capacity to fulfil its own mandate and to make certain that there are policies in place to guarantee that its management has the operational capacity for the organisation as a whole. Because both individuals and the environment in which an organisation operates will change over time, there will be a continuous need to develop its capacity as well as the skills and experience of individual staff members. Leadership in local government is strengthened by the participation of people with many different types of backgrounds, reflecting the structure and diversity of communities.

**Sub-principle: Developing the entity's capacity**

**Evidenced by:**

- All officers are required to have a My Annual Review (performance and development review meeting) which takes account of the council's Values and Behaviours Framework.
- All new staff are required to attend a comprehensive corporate induction.
- A Members' induction programme is in place, which is open to all Members to attend.
- Some training is mandatory for all Members to attend.
- Political groups are responsible for undertaking reviews of Members' skills.
- The council have developed a training and development programme for all members, including Cabinet Members, which is subject to review.
- Local Government Association have provided training on scrutiny and chairing meetings.
- A Councillors' Guide has been prepared, that provides the key information a Councillor needs to be aware of.
- Members are encouraged to attend events run by the Local Government Association (LGA).
- Leadership Accountabilities have been determined and discussed at Leadership Forum.
- The council has developed an approach to appreciation and recognition.
- The council has gained accreditation to the Workplace Wellbeing Charter. Health and wellbeing resources are included on the intranet including how to contact Mental Health First Aiders and Staff Counselling Service.

**Sub-principle: Developing the capability of the entity's leadership and other individuals**

**Evidenced by:**

- The Cabinet and Strategic Executive Board review succession planning.
- A new workforce planning model and toolkit was introduced in 2018 and is currently being used to develop directorate workforce plans across the council.
- Workforce planning is integral to the council's business planning process and seeks to maximise capacity through ensuring that the right people, are in the right place, at the right time, with the right skills and qualifications, and where new appointments are made, they demonstrate a commitment to the council's values and behaviours framework.
- Training programmes are run for different tiers of management.

**PRINCIPLE 5: Developing the entity's capacity, including the capability of its leadership and the individuals within it**

- Leadership Forum meetings of the council's senior managers take place four times a year and is a forum for cascading key information.
- The role of the Chief Executive and Leader have been clearly defined within the council's constitution.
- Citizen rights are set out in Article 3 of the constitution. Some of these are legal rights, whilst others depend on the council's own processes.
- A Local Government Association Corporate Peer Review took place in January 2020. The final report has been delayed due to Covid-19.
- The council has a Recruitment and Selection Policy and a suite of HR policies and procedures.
- The council has approved a Pay Policy Statement to clarify the council's strategic stance on pay in order to provide direction for Members and Officers making detailed decisions on pay and to provide the citizens of Dudley with a clear statement of the principles underpinning decisions on the use of public funds. The Pay Policy Statement sits alongside the Pay Arrangements Policy which sets out the council's approach to pay and reward, including temporary payments for additional responsibilities and temporary market forces supplement payments.

## **CORE PRINCIPLE 6: Managing risks and performance through robust internal control and strong public financial management**

Local government needs to ensure that the organisations and governance structures that it oversees have implemented, and can sustain, an effective performance management system that facilitates effective and efficient delivery of planned services. Risk management and internal control are important and integral parts of a performance management system and are crucial to the achievement of outcomes. Risk should be considered and addressed as part of all decision making activities.

A strong system of financial management is essential for the implementation of policies and the achievement of intended outcomes, as it will enforce financial discipline, strategic allocation of resources, efficient service delivery and accountability.

It is also essential that a culture and structure for scrutiny are in place as a key part of accountable decision making, policy making and review. A positive working culture that accepts, promotes and encourages constructive challenge is critical to successful scrutiny and successful service delivery. Importantly, this culture does not happen automatically, it requires repeated public commitment from those in authority.

### **Sub-principle: Managing Risks**

#### **Evidenced by:**

- A Risk Management Strategy is in place that is reviewed and approved by the Audit and Standards Committee.
- The Risk Management Strategy states that risk identification and analysis should be undertaken at the earliest opportunity in the business processes and should be forward thinking as well as reflective.
- The Risk Management Strategy emphasises the importance of assigning ownership of risks and mitigating actions.
- Corporate Risks are reported to Strategic Executive Board and Audit and Standards Committee three times a year.
- Audit and Standards Committee select risks for detailed scrutiny.
- Directors are required to complete a quarterly risk assurance protocol to confirm that risks are being identified and managed.
- Key risks in relation to proposed decisions should be detailed in all Committee reports, where appropriate.
- Training is provided to Members and Officers on risk management on request.
- Each directorate has a designated Risk Management Champions and the Champions' meet as a group three times a year.

### **Sub-principle: Managing Performance**

#### **Evidenced by:**

- Corporate Performance is monitored by Management, Strategic Executive Board and Scrutiny Committee each quarter. Each Directorate will have a number of actions and performance indicators that they monitor.
- Scrutiny Committee select performance indicators for detailed scrutiny.
- Unacceptable performance is challenged.
- Benchmarking is used to evaluate performance and for the setting of targets.
- A specialist project management system (Verto) is used that provides more structure, consistency and governance over the council's projects.
- The council has a Corporate Customer Feedback Procedure that covers Compliments, Comments and Complaints.
- A Corporate Customer Feedback Group is held to monitor customer feedback and ensure learning takes place.

## **CORE PRINCIPLE 6: Managing risks and performance through robust internal control and strong public financial management**

- The Local Government and Social Care Ombudsman's Annual Review Letter is presented to Cabinet.
- A Corporate Workforce Analytics Report is presented to Strategic Executive Board on a quarterly basis. This provides information on the workforce and whether key Human Resource indicators are being achieved.
- A Health and Safety Annual Report is presented to Strategic Executive Board.
- Heads of Services are reminded on a monthly basis to complete key personnel procedures e.g. My Annual Review, Return to Work Interviews.

### **Sub-principle: Robust Internal Control**

#### **Evidenced by:**

- The council operates Scrutiny Committees which undertake "in depth scrutiny investigations/enquiries and contribute to policy development in respect of issues/items falling within their terms of reference". The terms of reference of the four Scrutiny Committees cover all of the council's executive functions.
- Scrutiny Committees approve and monitor the Annual Scrutiny Programme and co-ordinate scrutiny work. Scrutiny Committees have considerable flexibility to amend the Annual Scrutiny Programme to reflect developments during the year.
- Individual Scrutiny Committees will carry out investigations into any decisions of the Cabinet, Cabinet Members, the Chief Executive or Directors that are called in for scrutiny in accordance with the Scrutiny Committee Procedure Rules set out in Part 4 of the constitution.
- The Overview and Scrutiny Committees report annually to the full Council with details of Scrutiny Committee activities and annual work programme. Minutes of the Scrutiny Committees are submitted to full Council to increase transparency. The Overview and Scrutiny Annual Report is available on the council's website and sets out the key issues considered and the outcomes of scrutiny work during the year.
- Scrutiny Chairs and Vice-Chairs periodically review scrutiny arrangements to ensure they remain "fit for purpose".
- The Local Government Association and the Centre for Professional Scrutiny have assisted the council with scrutiny development work.
- The council has appointed the Democratic Services Manager as "Scrutiny Officer" pursuant to Section 9FB of the Local Government Act 2000. The role of this Officer is to promote the role of the Authority's Overview and Scrutiny Committees, to provide support to the Authority's Overview and Scrutiny Committees and to provide support and guidance to Members and Officers in relation to the functions of the Authority's Overview and Scrutiny Committees.
- All Scrutiny Committee agendas include a "Public Forum" to encourage greater public involvement in the council's work.
- Meetings of the Scrutiny Committees are programmed in the council calendar to broadly coincide with the dates of Cabinet meetings. This enables the Committees to monitor key executive decisions contained in the Forward Plan.
- Reports issued by the Committee on Standards in Public Life are discussed by Audit and Standards Committee.

### **Sub-principle: Managing Data**

#### **Evidenced by:**

- The Director of Finance and Legal is the Senior Information Risk Officer.

## **CORE PRINCIPLE 6: Managing risks and performance through robust internal control and strong public financial management**

- The council has appointed a Data Protection Officer and reviewed his reporting lines in order to provide the required independence that his position requires.
- The council has an Information Governance Board that is attended by senior representatives (Information Risk Officers) from each directorate.
- All Officers are required to undertake mandatory information governance training.
- Members are provided with training on information governance.
- The council has a suite of Information Governance policies and procedures including data sharing and data quality.
- The Information Governance Team maintains a data sharing register (data processing agreements/data exchange agreements/third party access agreements).
- Privacy Notices have been completed for all key services and are displayed on the council's website.
- The council is currently working towards Cyber Essentials Plus and ISO27001 accreditations.

### **Sub-principle: Strong Public Financial Management**

#### **Evidenced by:**

- The council has established a robust financial management regime. Reports on budgetary management are provided to all levels of Management and discussed at a number of Member Committees.
- Regular financial monitoring reports to Cabinet and full Council to assist in decision making and effective stewardship of public funds.
- The council has a rolling Capital Programme which sets out detailed capital investment plans for each Directorate funded from a number of sources. This is supported by a Capital Investment and Disposal Guide.
- The constitution sets out the Financial Management Regime, which includes Contract Standing Orders and Financial Regulations.
- The council complies with CIPFA's Prudential Code for Capital Finance and reports to Members, where necessary.
- Adopted CIPFA's Code of Practice for Treasury Management as integral part of the Treasury Strategy, which is approved by Members. Regular reports on treasury management are presented to Audit and Standards Committee and full Council.
- The Medium Term Financial Strategy takes account of the full cost of delivering services over the medium term.
- The council consults extensively on its budget proposals.
- Financial Regulations are currently being reviewed to ensure they remain "fit for purpose".
- Financial Regulations are supported by online training that is available for Members and Officers to complete.
- An employee suggestion scheme has been established to try and identify innovative change proposals and to deliver savings and efficiencies.
- Contract Standing Orders have been updated and awareness training delivered.
- A contracts register has been developed.
- The council co-ordinates and has mechanisms in place for the effective engagement of clients/service users in all commissioning activity.
- Standard contract terms and conditions are in place.
- Each Directorate has a schedule of authorised officers for making contract related decisions.

**CORE PRINCIPLE 6: Managing risks and performance through robust internal control and strong public financial management**

- A Procurement Management Group has been established to discuss procurement options.
- A Commercial Opportunities Group has been established to discuss commercial/investment ideas and to discuss ways of generating income for the authority.



## **CORE PRINCIPLE 7 : Implementing good practices in transparency, reporting, and audit to deliver effective accountability**

Accountability is about ensuring that those making decisions and delivering services are answerable for them. Effective accountability is concerned not only with reporting on actions completed, but also ensuring that stakeholders are able to understand and respond as the organisation plans and carries out its activities in a transparent manner. Both external and internal audit contribute to effective accountability.

### **Sub-principle: Implementing good practices in transparency and reporting**

#### **Evidenced by:**

- All individual items of expenditure over £500 are displayed on the council's website.
- The council are working towards complying with the Local Government Transparency Code 2015.
- An annual Pay Policy Statement is produced for each financial year and approved by a resolution of full Council. The policy statement is published on the council's website.
- The annual Statement of Accounts is published on the council's website.
- Audit and Standards Committee approve the Certified Statement of Accounts.
- An Annual Governance Statement is compiled in accordance with the CIPFA publication "Delivering Good Governance in Local Government". This is approved by the Audit and Standards Committee and signed by the Chief Executive and the Leader of the council and published as part of the Statement of Accounts.
- The Annual Governance Statement discusses the effectiveness of the council's governance framework and identifies any areas of significant concern.

### **Sub-principle: Assurance and effective accountability**

#### **Evidenced by:**

- The Audit and Standards Committee comprises nine elected members which are appointed by full Council. No Cabinet Members will be appointed to serve on the Committee.
- The Audit and Standards Committee operates to an agreed terms of reference. The terms of reference has been reviewed in light of the CIPFA publication "Audit Committees – Practical Guidance for Local Authorities and Police".
- The Audit and Standards Committee has responsibility for the system of internal control, both financial and otherwise.
- Regular assessments are undertaken of Audit and Standards Committee's effectiveness against good practice guidance.
- The skills of Members that serve on the Audit and Standards Committee are assessed to identify any training needs.
- New Members to the Audit and Standards Committee are offered induction training.
- The effectiveness of internal audit and the adequacy of internal audit resources are monitored by Audit and Standards Committee.
- Recommendations for corrective action made by external audit are reported to Audit and Standards Committee and they ensure that appropriate action is taken.
- Internal Audit risk based plans are approved by Audit and Standards Committee.
- Progress reports on the delivery of the Internal Audit Plan are presented to Audit and Standards Committee.

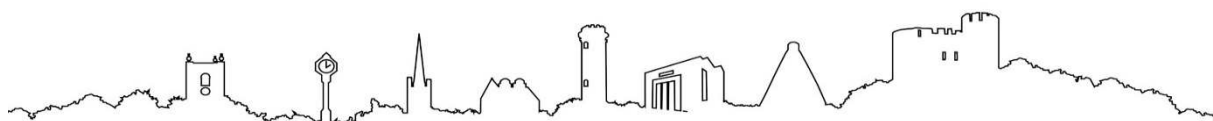


**CORE PRINCIPLE 7 : Implementing good practices in transparency, reporting, and audit to deliver effective accountability**

- The Head of Audit Services provides an opinion on the effectiveness of the council's governance, risk management and internal control, which is then used in the production of the Annual Governance Statement.
- Internal Audit has recently been externally assessed as meeting the Public Sector Internal Audit Standards. The Head of Audit Services complies with the key requirements of CIPFA's Statement on the Role of the Head of Internal Audit.

# **Anti-Fraud and Corruption Strategy**

**April 2021**



**Working as One Council in**  
the historic capital of the Black Country



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# Dudley Metropolitan Borough Council

Dudley MBC ('The Council') is totally committed to create, maintain and promote an environment where fraud and corruption will not be tolerated. The council operates a zero tolerance to fraud and corruption, all instances will be investigated and the perpetrator(s) will be dealt with in accordance with established council policies and using the full extent of the law. Action will be taken to recover any losses incurred by the council, including property, assets or monies, as well as maintaining the council's reputational integrity. In order to prevent and deter others, arrangements will be made to ensure that proven cases receive maximum publicity.

## 1. Foreword

- 1.1 A risk relating to fraud is detailed on the corporate risk register: *"The Council acknowledges that there is a risk of fraud across all areas of its operations and is working both internal and with external partners to prevent and reduce this risk."* The main mitigation against this risk is to ensure that the Fraud Action Plan is delivered and this is the responsibility of the Head of Audit Services.
- 1.2 In line with the objectives of the council, this strategy aims to assist in setting the highest standards of governance, ethical behaviour and ensuring the efficient and effective use of its resources. References to the council throughout this strategy also include Schools where the Local Authority retains responsibility.
- 1.3 The council is committed to protecting the public funds with which it has been entrusted. The aim of this strategy is to mitigate against any losses due to fraud and corruption. The council will ensure that resources are used for their intended purpose of providing vital services to the residents of the Borough. Adherence to this strategy will also ensure public confidence in the integrity and competence of the council is maintained.
- 1.4 This strategy also aims to outline the council's pro-active approach to combating fraud and corruption and will respond accordingly to the guidance issued by national anti-fraud organisations. The governance arrangements within the council include the responsibility for countering the risk of fraud and corruption.
- 1.5 In line with the Seven Principles of Public Life, the council expects all Members, governors and employees to assist with protecting the council's resources and to conduct their affairs with integrity, honesty and transparency. To assist in the fulfilment of these responsibilities the council has a Constitution which sets out the governance arrangements, and includes the

Codes of Conduct for Members and employees, Contract Standing Orders and Financial Regulations.

- 1.6. There is an expectation that all individuals and organisations dealing with the council, such as contractors and their sub-contractors, partners, external stakeholders, suppliers and users of council services will also act with honesty, integrity and transparency. The council expects all of its partners in both the private and public sectors to maintain good governance arrangements and to set high standards of probity, openness and transparency.
- 1.7. Whilst the council has a framework of policies and controls for everyone to follow, there is also a requirement for Members and employees alike to promote a culture in which staff, suppliers, external stakeholders and the public recognise that fraud and corruption has no place in the borough of Dudley and furthermore will not be tolerated by the council.
- 1.8. Within this governance framework, Members, governors and employees all have a role. This strategy seeks to clarify the responsibilities in relation to fraud and corruption within the following areas and roles:
  - Director of Finance and Legal;
  - Chief Executive;
  - Members;
  - Directors, Head Teachers and their management team;
  - Governors;
  - Employees;
  - Audit Services;
  - External Audit;
  - Audit and Standards Committee.
- 1.9. The council already has a well-established Whistleblowing Policy in operation, which is intended to encourage and enable employees and suppliers to raise serious concerns. This reporting policy is supported by a fraud hotline, which is publicised to internal officers, members of the public and suppliers. The reporting of potential concerns can be done via an online form, telephone or email, all of which are in operation 24 hours a day.
- 1.10. As a deterrent to others, the council's general policy is to give maximum publicity to proven cases of fraud and corruption committed either against the council, by council Members or employees in their official capacity. A case would normally be considered proven if a person had been found guilty in criminal or civil proceedings or, an employee had been dismissed for gross misconduct (and where all appeals processes have been exhausted).

## 2. Definitions

2.1 In this policy statement, 'fraud and corruption' is intended to cover any instance whereby an individual(s) by their dishonest actions either attempts to or is successful in either:

- Making a gain for themselves or another, or
- Causing or exposing the risk of loss to the council, or
- Using their position to improperly influence decisions by dishonestly making false representations or failing to disclose to the council information which they are under a legal duty to disclose.

2.2 Fraud typically involves misrepresenting or failing to declare true circumstances on official records, or verbally, and therefore concealing the truth.

Corruption typically involves giving or receiving of bribes for oneself or another with a view to influencing decisions.

2.3 Dealing with fraud effectively and efficiently is vitally important for the council because:

- fraud wastes taxpayers' money, which means more money is spent than needs to be;
- fraud results in public money not going to the places that it is needed most; and
- fraud is a crime and should be treated and dealt with as such.

2.4 The Fraud Act 2006 created several new fraud offences:

- Fraud by false representation;
- Fraud by failing to disclose information;
- Fraud by abuse of position;
- Obtaining services dishonestly;
- Possessing, making and supplying articles for use in frauds.

2.5 The Bribery Act 2010 states:

A person is guilty of an offence if either they:

- offer, promise or give a financial or other advantage to another person AND intends the advantage to induce a person to perform improperly a relevant function or activity, or
- offer, promise or give a financial or other advantage to another person AND knows or believes that the acceptance or advantage would itself constitute the improper performance of a relevant function or activity.

It does not matter whether the person to whom the advantage is offered, promised or given is the same as the person who is to perform, or has performed the function or activity concerned.

- 2.6 Financial Regulations also require employees to notify management of any irregularity involving cash, assets, materials or any other property of the council. In this document anything that fits that description should also be regarded as falling under the definition of 'fraud or corruption'.
- 2.7 Examples of fraudulent or corrupt acts would include, but are not limited to:
- Submitting invoices for work not done, or carrying out sub-standard work;
  - Failing to declare a personal or business relationship with a contractor or their sub-contractor and influencing decisions regarding the council's relationship with them;
  - Theft of cash, assets or materials;
  - Providing false information either verbally or in written form;
  - Failing to declare relevant changes that would have a material affect;
  - Falsifying or withholding information to obtain council discounts, allowances or services;
  - Using council equipment or materials without permission for private purposes;
  - Falsifying hours worked or not working on designated duties;
  - Falsely presenting yourself as sick at work;
  - Accepting gifts or hospitalities in exchange for providing work or receiving work or to improperly change a decision.

### 3. Best Practice Guidance

- 3.1 This strategy adheres to the Chartered Institute of Public Finance and Accountancy (CIPFA) Code of Practice on Managing the Risk of Fraud and Corruption 2014 (the Code). The Code requires leaders of public sector organisations to take responsibility and embed effective standards for countering fraud and corruption in their organisation in order to support good governance, furthermore demonstrate effective financial stewardship and strong public sector financial management. The council has adopted the principles of the Code, of which the main elements are detailed below:

<b>Acknowledge</b>	The responsibility of elected Members and senior officers for countering fraud, bribery and corruption.
<b>Identify</b>	The fraud, bribery and corruption risks
<b>Develop</b>	An appropriate counter-fraud, bribery and anti-corruption strategy
<b>Provide</b>	Resources to implement the strategy
<b>Take Action</b>	In response to fraud, bribery and corruption

- 3.2 The five elements detailed above link to the three themes: Acknowledge, Prevent and Pursue, contained within the Local Government Fraud Strategy: Fighting Fraud Locally.

- 3.3 Audit Services undertake regular assessments against the Code of Practice for Managing the Risk of Fraud and Corruption and the Local Government Fraud Strategy: Fighting Fraud Locally.

#### **4. Director of Finance and Legal**

- 4.1. As the council's 'responsible financial officer' under Section 151 of the Local Government Act 1972, the Director of Finance and Legal has overall responsibility for the proper conduct of the council's financial affairs.
- 4.2 More specifically, under the Accounts and Audit Regulations, the Director of Finance and Legal is required to ensure that the accounting control systems include:
- Measures to enable the prevention and detection of inaccuracies and fraud;
  - Identification of the duties of officers dealing with financial transactions and the division of responsibilities of these officers in relation to significant transactions.

- 4.3 The above responsibilities are discharged through a framework of internal controls including:

- Contract Standing Orders;
- Financial Regulations.

All of which form part of the council's Constitution. In addition, the Director of Finance and Legal may prescribe more specific controls and procedures against fraud and corruption for individual systems, or where additional or heightened risks have been identified.

- 4.4 Although the Director of Finance and Legal is responsible for defining the system of internal controls to prevent and detect fraud and corruption, he is not directly responsible for its implementation, except areas of the council where he/she has direct line management responsibilities.
- 4.5 The primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management. It is important that management with the oversight of those charged with governance place a strong emphasis on fraud prevention and deterrence, as well as reducing opportunities for fraud to take place. This should dissuade individuals from considering or committing fraud because of the increased likelihood of detection and subsequent punishment via disciplinary procedures or through the courts by prosecution.
- 4.6 Under the council's Financial Regulations, the Director of Finance and Legal or the Head of Audit Services must be notified of any known or suspected irregularities in any financial procedure. This encompasses cases of fraud and corruption. They are also responsible for:



- In consultation with Directors or Head Teachers determining which cases should be referred for consideration of action through the Criminal courts (the institution of prosecution proceedings is the responsibility of the Lead for Law and Governance). All cases where it appears a crime has been committed must be reported. In cases whereby Members are suspected of wrongdoing, the Director of Finance and Legal will consult with the Chief Executive, Monitoring Officer and if appropriate, the External Auditors.
  - Submitting an Annual Fraud Report and a Fraud Action Plan to Audit and Standards Committee.
  - Reporting appropriate breaches of Financial Regulations to the Audit and Standards Committee.
- 4.7 The Director of Finance and Legal is also responsible for taking any other appropriate action in order to recover losses, for example reclaiming former employees' superannuation contributions. The general policy of the council is to pursue the recovery of losses as far as realistically and financially possible.
- 4.8 Where, following an investigation into suspected fraud or corruption, a Director decides not to instigate disciplinary proceedings, the Director of Finance and Legal may refer the matter for consideration to the Chair of the Audit and Standards Committee in consultation with the Chief Executive, if he disagrees with the Director's decision.
- 4.9 Under the Accounts and Audit Regulations 2015, the Director of Finance and Legal is responsible for undertaking 'an effective internal audit'. As part of that overall responsibility the Director of Finance and Legal must ensure that Audit Services adequately and effectively reviews the council's controls against fraud and corruption and implement new or additional controls where appropriate.
- 5. Chief Executive**
- 5.1 The Chief Executive must ensure that elected Members receive appropriate training, guidance and advice on their responsibilities in relation to the prevention and detection of fraud and corruption.
- 5.2 The Chief Executive should periodically remind Members and employees of their responsibility to comply with the requirements of the respective Codes of Conduct in the council's Constitution, for example with regard to declaration of interests, potential conflicts of interest, gifts and hospitality etc.
- 5.3 Where the Director of Finance and Legal disagrees with a decision of a Director not to instigate disciplinary proceedings in a case of fraud or corruption, he may refer the matter for consideration to the Chair of the Audit and Standards Committee in consultation with the Chief Executive.

## **6. Members**

- 6.1 Members should ensure that they understand and comply with the requirements of the Members Code of Conduct (which forms part of the council's Constitution). Specific requirements relating to the prevention of fraud and corruption are concerned with:
- Disclosure of interests;
  - Registration of interests;
  - Recording of gifts and hospitality.
- 6.2 Members involved in planning decisions should also familiarise themselves with the Code of Practice for Members and Officers dealing with Planning Matters and comply with its requirements.
- 6.3 Members should ensure that they understand and comply with :
- Those parts of Contract Standing Orders and Financial Regulations which are relevant to their role;
  - All other parts of the council's Constitution which are relevant to their role.
- 6.4 Where Members are uncertain about any of their responsibilities in relation to the prevention and detection of fraud and corruption, either in general or in particular cases, they should seek advice from the Chief Executive or the Director of Finance and Legal.
- 6.5 Under the council's Financial Regulations, Members must inform the Director of Finance and Legal or Head of Audit Services of any known or suspected regularities concerning cash, assets, materials or any other property or resource of the council. This includes any suspected instances of fraud or corruption. If these cases involve other Members, they should also inform the Chair of the Audit and Standards Committee.
- 6.6 Members should not normally refer cases of known or suspected fraud or corruption directly to the Police. Under the council's Financial Regulations, this is the responsibility of the Lead for Law and Governance in consultation with the Director of Finance and Legal and the appropriate Director or Head Teacher.

## **7 Directors or Head Teachers (of LEA schools) and managers to whom they delegate any responsibilities (This section includes the Chief Executive and Director of Finance and Legal)**

- 7.1 Directors and Head Teachers are responsible for preventing and detecting fraud and corruption for the areas they are responsible for by implementing and maintaining effective control systems and ensuring that staff, including casual, temporary, full-time, part-time, consultants or similar adhere to them. They are also responsible for ensuring they have considered the risk of fraud in their activities. Appropriate entries should be made in their respective Risk Registers including mitigating actions to help prevent and detect fraud.

7.2 Specifically, they must ensure that:

- The framework of internal controls set out in the council's Constitution including Contract Standing Orders and Financial Regulations are observed;
- Any other controls required by the Director of Finance and Legal are fully implemented, this includes but is not limited to actions raised by Audit Services, External Audit and the Insurance Team.

7.3 They must ensure that staff are fully conversant with:

- Those parts of Contract Standing Orders and Financial Regulations which are relevant to their jobs and roles.
- The requirements of the Employees' Code of Conduct in the Constitution, for example in relation to declarations of interest.
- Any other relevant parts of the Constitution, statutory or mandatory instructions and known good practice.

They should ensure that staff receive appropriate training in these matters and also particularly in areas of high risk of fraud and corruption, as well as general training in fraud awareness.

7.4 A key preventative measure against fraud and corruption is the appointment of staff of a known good character. Directors and Head Teachers should therefore ensure that:

- References testifying to the honesty and integrity of potential employees are obtained before a person is appointed.
- Check that qualifications are legitimately held.
- In appropriate cases, checks are made with the Disclosure and Barring Service (DBS) and/or Independent Safeguarding Authorities as appropriate.
- Ensure that applicants have the right to work in the United Kingdom.

7.5 Under Financial Regulations, Directors and Head Teachers who suspect that an irregularity involving cash, assets, materials or any other property of the council may have occurred, or suspected cases of fraud and corruption must inform the Director of Finance and Legal or the Head of Audit Services without delay.

7.6 Directors and Head Teachers should **not** directly notify the Police of cases of suspected fraud and corruption. This is the responsibility of the Lead for Law and Governance in consultation with the Director of Finance and Legal and the appropriate Director and/or Head Teacher. The Lead for Law and Governance is also responsible for the instigation of prosecution proceedings undertaken by the council.

NB - There is an exception where the circumstances clearly indicate that losses have resulted from forced entry. In this case, the Police should be

notified directly and the Insurance Team should notify Audit Services if it is considered that there may have been weaknesses in security arrangements.

- 7.7 Directors and Head Teachers should not authorise any investigation of suspected fraud or corruption, or make suspects aware that they are under suspicion, without the prior agreement of the Head of Audit Services (or authorised deputy). In particular they should not undertake any covert surveillance of a suspect unless it has been considered in accordance of the council's RIPA (Regulation of Investigatory Powers Act) guidelines.
- 7.8 Where it is agreed with the Head of Audit Services that an investigation into fraud or corruption should be undertaken by staff in a service area or School, no final decision on whether to proceed with disciplinary or criminal action should be taken until Audit Services has had the opportunity to review the investigation and undertake or request any further work they consider necessary.
- 7.9 Directors are responsible for ensuring that information/matches produced as part of the National Fraud Initiative relating to their respective service areas are thoroughly investigated.
- 7.10 Directors and Head Teachers are responsible for ensuring they have satisfactory arrangements in place for the prevention, detection and investigation of fraud in their respective service areas.

## **8 Governors**

- 8.1 All Governors should familiarise themselves with the Governors' Code of Conduct, and ensure they comply with its requirements.
- 8.2 Governors need to ensure they are aware of their responsibilities in relation to the prevention and detection of fraud and corruption and how to respond should they suspect any irregularity. These duties and responsibilities are outlined in the Governors' handbook.

## **9 Employees**

- 9.1 All employees should familiarise themselves with the Employees' Code of Conduct (which forms part of the council's Constitution) and ensure they comply with its requirements. Specific requirements relating to the prevention and detection of fraud and corruption include but are not limited to:
- Declaration of relationships with a contractor(s) and or external stakeholders where a conflict may be present.
  - Relationships with applicants for employment.
  - Personal interests in conflict with the council's interests.
  - The separation of duties in tendering.
  - Giving/receiving gifts.
  - Giving /receiving hospitality.

In addition, employees are expected to observe any Code of Conduct or requirements stipulated by any professional body to which they belong, accredited by or affiliated to or where membership or standards are necessary or relevant to their role within the council.

If there is any uncertainty whether something may potentially cause a conflict or an issue, members of staff should bring this to the attention of their manager who will check, in the meantime the member of staff should take a common sense but cautious approach to the matter whilst it is being considered.

9.2 All employees should familiarise themselves with :

- Those parts of Contract Standing Orders and Financial Regulations which are relevant to their role.
- Any other relevant parts of the council's Constitution, statutory or mandatory instruction, guidance or known good practice.

Employees should ensure that they comply with all relevant requirements. In case of doubt about which requirements are relevant to them, or how these requirements may apply, they should seek guidance from their managers.

9.3 Under Financial Regulations, an employee who suspects that an irregularity involving cash, assets, materials or any other property of the council may have occurred must inform their Director or Head Teacher, this includes any instances of fraud or corruption. Normally employees should notify the Director of Finance and Legal or Head of Audit Services of such cases through their own management. However, if an employee has concerns about raising the matter with their own Director or Head Teacher, the council's Whistleblowing Policy sets out how it can be reported to a number of other contacts, and anonymously if necessary.

9.4 Employees must also inform their manager of any illegality, impropriety, breach of procedure or serious deficiency in the provision of any service.

## **10 Audit Services**

10.1 Service area management, not Audit Services, are primarily responsible for the prevention and detection of fraud and corruption. Audit Services has two main roles:

- To independently review how effectively management are managing and controlling their risks, including the risks of fraud and corruption.
- To develop and implement a Fraud Action Plan to prevent and detect fraud, together with the investigation and resolution of detected fraud cases.

10.2 The Head of Audit Services must ensure that appropriate Audit Services resources are deployed effectively and efficiently to combat fraud and corruption in conjunction with known risks.

- 10.3 Where Audit Services find that controls against fraud and corruption are inadequate in principle or ineffective in practice, they must report this to management together with actions on how the situation should be improved.
- 10.4 Where cases of known or suspected fraud or corruption have been identified, the Head of Audit Services in consultation with management in the relevant service area is responsible for deciding who should investigate them, whether:
- Audit Services;
  - Staff in the service area;
  - Other;
  - A combination of the above.
- 10.5 Where an investigation into fraud and/or corruption has not been conducted by Audit Services, then Audit Services must have the opportunity to review that investigation before any final decision on disciplinary or criminal proceedings is made, and also to request or conduct any further work which they consider necessary.
- NB - This would not apply to any case which had been reported directly to External Audit or the Police where they have agreed to undertake the investigation themselves.
- 10.6 Audit Services is responsible for co-ordinating and overseeing the council's Anti-Fraud and Corruption Strategy and Fraud Action Plan which will aim to prevent, detect, investigate and resolve fraud and corruption.
- 10.7 Audit Services is responsible for liaising with External Audit on any significant cases of fraud and corruption.
- 10.8 Audit Services will co-ordinate the promotion of fraud awareness and associated control topics across the council using a variety of methods including but not limited to seminars, newsletters and training including on-line awareness courses.
- 10.9 Audit Services will where necessary review the operation of any other Fraud Team as part of its programme of planned audits or by ad-hoc arrangement.
- 10.10 Audit Services will co-ordinate and ensure adherence to the mandatory Cabinet Office data matching exercise, the National Fraud Initiative on behalf of the council.
- 10.11 In any case which involves a member of Strategic Executive Board, the Head of Audit Services will liaise with the Chief Executive or if appropriate, the Leader of the council.

## **11 External Audit**

- 11.1 As part of their statutory responsibilities, External Audit must determine whether the council has adequate arrangements in place for standards of financial conduct and preventing and detecting fraud and corruption.
- 11.2 Where information about known or suspected fraud or corruption at the council is referred to External Audit, they may decide to investigate and report on the matter themselves.

## **12 Audit and Standards Committee**

- 12.1 Under the council's Constitution the Audit and Standards Committee is responsible for overseeing:
  - The proper administration of financial affairs under Section 151 of the Local Government Act 1972 (this includes proper arrangements for the prevention, detection, investigation and resolution of fraud or corruption).
  - Internal and external audit arrangements (again this would include effective arrangements for the audit of controls to prevent, detect, investigate and resolve fraud or corruption).
  - The adoption or revision of the Members' Code of Conduct.
  - Any monitoring of the operation of the Members' Code of Conduct.
  - The Director of Finance and Legal will submit an Annual Fraud Report and a Fraud Action Plan to the Audit and Standards Committee.

## **13 Review**

- 13.1 The strategy will be reviewed on an annual basis to ensure it remains compliant with good practice, public sector standards and continues to meet the needs of the council.

**Reviewed: April 2021**



## **PETITION SCHEME**

### **1. Petitions**

We welcome petitions as one way in which you can let us know your concerns. We set out below how the authority will respond to petitions.

### **2. What is a petition and whom may send them?**

Anyone who lives, works or studies in the area of Dudley Metropolitan Borough Council can sign or organise a petition. For practical purposes, we set a requirement for at least 10 signatories or petitioners before we treat it as a petition.

### **3. What should a petition contain?**

A petition should include –

- A clear statement of your concerns and what you want the Council to do. This must relate to something which is the responsibility of the Council, or over which the Council has some influence. Where a petition relates to a matter which is within the responsibility of another public authority, we will ask the petition organiser whether they would like us to redirect the petition to that other authority. Where a petition relates to a matter over which the Council has no responsibility or influence, we will return the petition to the petition organiser with an explanation for that decision.
- The name, address and contact details of the “petition-organiser” or someone to whom you would like any correspondence about the petition to be sent. Contact details should be a postal address and an Email address if you have one.
- The names and addresses of at least 10 petitioners (which can include the petition organiser). Where the petition is in paper form, this should include a signature and an address from each petitioner. If you want your petition to be debated at a meeting of the Council, a written request must be made to the Monitoring Officer that you want your petition to be debated at a Full Council meeting. Your petition will need to contain at least 3,000 of signatories or petitioners (see ‘Petitions for Debate’ below).
- We recommend that all petitions include a data protection statement, including clarification that:



- the people signing the petition should only provide personal information if they are happy for it to be placed in the public domain.
- personal information should not be included on the petition about another third party.

Most petitions will be accessible to the public. The Council will process the information in accordance with current statutory obligations. We will only use the information for the purpose of dealing with the subject of the petition. We will only hold the information for as long as is reasonably necessary. Correspondence is generally retained for 2 years (or until no longer required for legal or business purposes).

#### **4. Who should you send a petition to?**

Where you submit a petition in response to a specific consultation by the authority, please address it to the return address set out in the consultation invitation. This will ensure that it is reported at the same time when the matter to which it relates is considered.

You can hand in petitions at meetings of your local Community Forum. These will be passed on to the relevant officers for a response.

You can also hand in or address petitions to Dudley Council. Petitions will be referred to the appropriate Council Directorate for a response.

Your petition will be acknowledged. Group Leaders, the relevant Cabinet Member(s) and Ward Members will also be notified that a petition has been received.

#### **5. Types of Petition**

There are different types of petition, as set out below. How the Council deals with a petition depends on which type of petition you submit –

##### **Consultation Petitions**

These are petitions in response to an invitation from the Council for the public to make representations on a particular proposal or application, for example on planning or licensing applications or proposals for parking restrictions or speed limits. Consultation petitions which are received by the response date will be reported to the appropriate Committee, Sub-Committee, Cabinet Member or Officer with delegated power to act, as defined in the Scheme of Delegation in the Council's Constitution.

Where the petition relates to a matter, which is within the delegated powers of an individual Cabinet Member, they may decide not to exercise those delegated powers but to refer the matter to Cabinet for decision. Similarly, an officer may choose to refer a matter to the relevant Cabinet Member.

### Ordinary Petitions

Ordinary petitions will be referred to the relevant Director for consideration and attention.

The relevant Director is responsible for keeping the Petition Organiser, Group Leaders, the appropriate Cabinet Member(s) and Ward Councillors informed of any action that is taken or proposed by the Council.

It should be noted that Petition Organisers may pursue the Council's Corporate Customer Feedback Procedure should they remain dissatisfied with the outcome of the consideration of a petition.

### Statutory Petitions

Particular Acts of Parliament may require the Council to consider petitions and other representations. Petitions that are to be considered under a statutory process will be referred to the appropriate Director for consideration in accordance with that process.

### Petitions for Debate at Full Council

If you want your petition to be reported to and debated at a meeting of the full Council, it must contain at least 3,000 petitioners.

For practical reasons, petitions for Debate must be submitted no later than 14 days before the meeting of the Council at which you want the Petition debated. A written request must be made to the Monitoring Officer that you want your petition to be debated at a Full Council meeting.

Any Petitions for Debate will be reported to the next convenient ordinary meeting of the Council. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of the Council.

Petitions for debate shall be considered at meetings of the Council in the order prescribed in the Council's Procedure Rules or otherwise as may be determined by the Mayor. A maximum of 30 minutes will be allowed at each meeting for considering all petitions for debate. Petitions not dealt with in the time allowed will normally be deferred until the next ordinary meeting of the Council unless the Mayor determines otherwise.

The Mayor will invite the petition organiser to address the Council for up to 3 minutes immediately before the matter is debated. The Council's Procedure Rules shall then apply to the debate on petitions at the Council meeting.

## **6. Public Speaking Rights at Meetings**

Unless the Constitution provides otherwise, the right of any person to speak at any meeting and the manner in which petitions are dealt with shall be at the discretion of the person presiding at the meeting concerned.

## **7. Duplicate, Repeat or Rejected Petitions**

### Duplicate Petitions

Where more than one petition is received in time for a particular meeting, each supporting the same outcome on one matter, each petition organiser will be treated as an independent petition organiser. However, only the petition organiser of the first petition to be received will be afforded speaking rights if these apply at the relevant meeting to which the petition is reported.

### Repeat Petitions

A petition will not normally be considered where they are received within 6 months of another petition being considered by the authority on the same matter.

### Rejected Petitions

Petitions will not be reported if in the opinion of the Monitoring Officer, in consultation with the relevant Cabinet Member and the Chair of the relevant Scrutiny Committee, they are vexatious, abusive or otherwise inappropriate, or do not relate to something which is the responsibility of the authority, or over which the authority has some influence.

## **Protocol for the Disposal of Council Land/Property**

### **Introduction**

This 'Protocol' aims to set out the Council's practice and procedure for the disposal of Council owned land and property which is at less than the best consideration reasonably obtainable and for dealing directly with third parties. Its purpose is to inform Officers, Members and other interested parties of the principles and rules by which the Council will dispose of land and property.

The Council should always seek to achieve best consideration in respect of any disposal, but there may be cases for disposal at an undervalue. Undervalue disposal cases should not be considered as normal practice and should be backed by a robust business case by the officer recommending such a disposal. The Council should not divest itself of valuable public assets unless satisfied that the circumstances warrant such action.

Generally, best consideration will be achieved by an offer for disposal under agreed competitive processes and in accordance with the Council's existing asset strategy.

A disposal is the transfer of a freehold or a leasehold interest for more than 7 years to a third party, or a surrender/assignment of a lease to a third party, for the payment of a premium or a reverse premium.<sup>1</sup>

Disposals may therefore include the following (by way of examples):-

- for profit to market
- as part of service provision (e.g. a Council Depot)
- as part of shared service arrangements (outsourcing of Council functions)
- to a community group ("Community Asset Transfer")
- to a Joint Venture Company

All are subject to corporate asset management disposal policies and guides and this protocol.

### **1. Purpose of the Protocol**

1.1 A clear statement of the terms under which the Council will consider disposal of land and property at an undervalue is important for the following reasons:

- the likely impact on the Council's finances if receipts are lower than they would otherwise be if the asset was disposed of at best consideration, and
- the risk of legal challenge

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<sup>1</sup> Options are also considered to be a disposal

- 1.2 This protocol also aims to provide the Council with a clear and consistent basis for making decisions about using its property assets as a means of obtaining community objectives. Best consideration in terms of asset value on disposal is not always measured in monetary terms. Nevertheless, benefits such as job creation are not relevant to the assessment of best consideration but may form part of the justification for a disposal for the wellbeing of the area.
- 1.3 This Protocol together with the organisation's Constitution and Scheme of Delegation are key documents in the overall management of the Council's land and property. Any request or proposal to sell or to lease land or property at an undervalue will be regarded as an exception to existing policy and regard must be given to this Protocol.
- 2. Principles to be applied when considering disposals of land and property for less than the best consideration reasonably obtainable**
- 2.1 The Council has a general power of disposal, contained in Section 123 of the Local Government Act 1972. This provides that Local Authorities are not permitted to dispose of land, or grant leases in excess of 7 years, for a consideration which is less than the best which is reasonably obtainable, unless they first obtain consent from the Secretary of State.
- 2.2 'Consideration' in section 123(2) is confined to transaction elements which are of commercial or monetary value. The courts will therefore quash a decision to sell property where the authority has taken into account an irrelevant factor, e.g. job creation, when assessing whether it is obtaining the best 'consideration' reasonably obtainable.
- 2.3 The General Disposal Consent (England) 2003, ("GDC") provides a general consent removing the requirement for local authorities to seek specific approval from the Secretary of State for a range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2million and where the disposal authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the whole or any part of the area (the general power of well-being).
- [See this link for a copy of the consent.](#)
- 2.4 Section 123 applies to land and property held for most local authority functions subject to certain exceptions such as a disposal of land held for housing

purposes (which is governed by the Housing Acts)<sup>2</sup> or Open Space Land<sup>3</sup>

- 2.5 It is Government policy that local authorities should dispose of surplus land wherever possible.
- 2.6 When disposing of land at an undervalue, the Council must remain aware of its fiduciary duty to Council tax payers.<sup>4</sup>
- 2.7 It is for the Council to decide whether any particular disposal meets these criteria or requires specific consent under the 1972 Act.
- 2.8 Any request or proposal to sell or lease land or property at an undervalue will be regarded as an exception to existing policy. As part of the protocol, advice from a qualified Valuer must be obtained in the form of a report (in accordance with the current Royal Institution of Chartered Surveyors, Valuation and Appraisal Standards) incorporated in or together with a completed pro forma headed "Disposals at less than best Consideration" attached and signed by the Director for Regeneration and Enterprise or other relevant Head of Service.
- 2.9 Valuation reports should be in accordance with the requirements set out in the General Disposal Consent (GDC) and should form part of the deliberation of any decision to sell at an undervalue.
- 2.10 Legal advice may also be obtained on the question of whether the disposal is capable of falling within the terms of the General Disposal Consent (GDC). In certain cases it may also be prudent to consult with the External Auditor in relation to any proposed action.
- 2.11 The Council must demonstrate that it has acted reasonably in agreeing undervalue transactions in order to be in a position to respond to any potential challenge. Regard must therefore be given to the Council's Constitution, adopted corporate strategies, existing policies, the terms of this Protocol and the Council's fiduciary duty.

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2 Specific rules apply to housing land (including property assets). A 2013 General Consent under section 32 of the Local Government Act 1988, permits a local authority to dispose of such land at market value subject to condition that:  
(a) the disposal the property asset is not subject to a secure, introductory or demoted tenancy to occupy from the local authority to a landlord who is not another local authority;  
(b) the disposal of land where there is Reversionary Interests in Houses and Flats; or  
(c) the disposal of land to a body in which the local authority owns an interest except:  
(i) where the local authority has no housing revenue account; or  
(ii) in the case of a local authority with a housing revenue account, the first 5 disposals in a financial year.  
Secretary of State consent is required if a local authority wishes to dispose of housing land (including any property assets built on that land) at less than best value, including disposal to a local authority housing company.

3 Sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. This is to be undertaken before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

4 The Council is the custodian of public funds provided by the taxpayer. As such there is an overriding duty on the Council to deal with those funds as efficiently as possible. This duty applies to all spheres of Council activity but is of special importance when it is proposed to dispose of property assets at an Undervalue. Whatever legal provisions may be relevant in a particular case they should always be applied with regard to this fiduciary duty. Just because the Council has a power to do something, it should not do it if that would involve breaking this rule.

- 2.12 In considering the legal and financial considerations of any disposal at an undervalue, there must be demonstrable evidence by an appropriate officer that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. The social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue should be in accordance with existing policies.

### **3. Options**

- 3.1 Where the Council wishes to grant an option, or an option holder wishes to exercise their option on land which the Council holds, the Council will need to consider whether the consideration for either the grant or exercise of the option will result in a discount.
- 3.2 In relation to the exercise of an option this will depend on the valuer's assessment of whether, if the option were to be exercised, the terms would be likely to require the Council to accept less than the best price that could reasonably be obtained for that interest at the time of disposal and, if so, whether that would fall within the terms of the General Disposal Consent (GDC).

### **4. Procurement**

- 4.1 If the Council is involved in determining the scope of the future development of its land/property, and the intention is to impose on the Buyer/Lessee certain obligations as to the nature of the development, and/or the standards to which the works must be constructed, then consideration should be given as to whether such an arrangement may be construed as a public works contract and subject to Procurement Rules.
- 4.2 The Council must give due consideration to the possibility of public procurement rules applying to any particular disposal of land and obtain case specific procurement and legal advice before entering into any agreement.

### **5. State Aid/Subsidy Control**

- 5.1 European State Aid law was revoked on 31 December 2020, although any public support granted before the 1 January 2021 will remain subject to state aid law until 31st December 2024.
- 5.2 The UK and therefore Local Authorities are now subject to less rigorous "Subsidy Control" obligations, which may still have an impact on land and property disposals. In addition, the UK has an obligation to create a new regime in order to prevent unlawful competition between the UK and other European Countries, but this may take some time to develop.

- 5.3 In the meantime, it should be assumed that a disposal of land and property at less than best consideration, may still have the effect of subsidising the buyer/ lessee, developer and/or occupier of the land and constitute an unlawful subsidy.
- 5.4 Until the position becomes clearer further legal advice must be sought to consider whether any such proposals are subject to subsidy prohibition or control and if so, which structure best suits the Council's objectives.

## **6. Possible Alternatives**

- 6.1 In all cases, where a disposal is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent disposal, it may include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, deferred payments provision, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption<sup>5</sup>. This is to ensure that the Council eventually obtains best consideration and a purchaser does not profit excessively at the expense of the Council.

## **7. Principles to be applied when dealing directly with third parties**

- 7.1 The Council will normally dispose of land and property in accordance with the existing asset strategy disposal guide, for example on the open market by private treaty, public auction, informal tender or formal tender. The benefits of this are:
- Transparency
  - greater likelihood of the achievement of best consideration/open market value
  - a defence against "late bids" (in most circumstances)
- 7.2 In certain circumstances, the Council may decide not to offer the property for disposal on the open market. This decision will be restricted to cases where there is some specific and quantifiable benefit to be gained from dealing solely with a named party. Examples of such cases are as follows:
- where land to be disposed of is relatively small in size and an adjoining landowner is the only potential and likely purchaser.
  - where the land to be disposed of needs to be sold to an adjoining owner if best consideration is to be obtained.
  - where the Council's land is part of a larger area of land proposed for redevelopment or regeneration and the complexity of the proposed development of the overall site is such that the Council's corporate

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<sup>5</sup> This list is not exhaustive



objectives or best consideration can only be achieved by a disposal to a purchaser with an existing interest in property in the area

- sale to a community group, charitable body or where there are specific legal obligations e.g. Community Right to Bid
- sales to former owners under the 'Crichel Down rules' – sale to a 'special purchaser' where a higher value can be realised from treating directly with a particular buyer
- sale to another body with statutory powers, e.g. Police or utility providers.
- disposals of land and property where the main terms are contained in a separate service or other contract.

7.3 The Council must demonstrate that it has acted reasonably in agreeing to dispose of land/property directly to a third party in order to be in a position to respond to any potential challenge that a better bargain could have been struck elsewhere, or that other parties' ambitions have been thwarted. Regard must be had to any opportunities that could be missed by agreeing to treat directly,

7.4 Regard may also be had to other scenarios when considering such an offer. These may include;-

- a) The provision of detailed information and plans of a proposed development.
- b) Closing date for the offer and the timescale for completion.
- c) The existence of competitive bids.
- d) Detailed funding arrangements and confirmation that these are in place.
- e) Evidence of end user commitment.
- f) Details of the Buyer's financial offer for the property.
- g) Whether a Buyer has a track record with similar developments and/or other local authorities
- h) Details of any conditions precedent to which the proposal is subject.
- i) Any wider/longer term regeneration benefits from the proposal during construction or from the proposed end user.
- j) Whether a proposal aligns with existing Council policies.
- k) Provision of any other off-site benefits or facilities.

l) Capacity of the proposal for bringing other sites forward or opening up other development potential

m) Potential for leverage of private or other public funds and grants

n) Capacity of the proposal to remove or reduce other Council financial objectives in the Corporate Plan.

The list is not exhaustive, and the principles of best consideration must remain paramount at all times.

## **8. The interaction of best consideration, procurement and subsidy control obligations**

8.1 Best consideration, procurement and subsidy control obligations are separate and independent of each other. The fact that the Council may meet its Section 123 obligations for the disposal of land or property does not necessarily mean that its public procurement regulations have also been met.

8.2 Nevertheless, the carrying out of a full procurement exercise probably still demonstrates that its obligations in relation to subsidy control and to obtain best consideration have been met.

8.3 That is not to say, however, in the absence of a procurement process (where such a process is not required) that the Council will not be able to demonstrate subsidy control compliance and/ or compliance with its best consideration obligations. This is still possible through the release of land for sale on the open market and this guidance must be applied in the light of the specific circumstances and the reasons recorded in writing.

8.4 Given the evolving nature of subsidy control, the interaction between best consideration, and subsidy control will need to be assessed on a case-by-case basis.

### **Note**

In October 2018, the government launched a consultation on proposals to extend the freedoms to dispose of surplus land at less than best consideration without seeking consent from the Secretary of State. The consultation proposed:

- that the Secretary of State's power to issue a general consent for the disposal of land held for planning purposes (governed by the Town and Country Planning Act 1990, Section 233 and Part IX) should be switched on
- increasing the existing £2m threshold for disposals of land held for purposes other than planning or housing to £5m, or alternatively £10m, because of increases in the value of land.

To date there has been no amending regulation or instrument enacting these proposals but the situation should continue to be monitored.

23<sup>rd</sup> February 2021

## **PART 7**

# **MEMBERS' ALLOWANCES SCHEME**

## **DUDLEY METROPOLITAN BOROUGH COUNCIL**

### **LOCAL GOVERNMENT AND HOUSING ACT 1989**

### **LOCAL AUTHORITIES (MEMBERS' ALLOWANCES) (ENGLAND) REGULATIONS 2003**

### **LOCAL GOVERNMENT PENSION SCHEME AND DISCRETIONARY COMPENSATION (LOCAL AUTHORITY MEMBERS IN ENGLAND) REGULATIONS 2003**

## **MEMBERS' ALLOWANCES SCHEME**

### **1. Effective Date**

- 1.1 This Scheme shall be effective from 1<sup>st</sup> April, 2021.
- 1.2 Members may elect to forego any part of their entitlement to an allowance under this Scheme by giving notice in writing to the Director of Finance and Legal.

### **2. Basic Allowance**

- 2.1 Each elected member of the Council will receive an annual basic allowance, to be paid in monthly instalments in arrears. The annual basic allowance shall be £10,737.

### **3. Telephone Costs and Travel and Subsistence**

- 3.1 The costs of telephones are incorporated within the basic allowance.
- 3.2 The cost of travel and subsistence in the West Midlands County area is incorporated into the basic allowance.
- 3.3 Regarding travel outside of the West Midlands County area: -
  - (a) Members are required to travel by standard class public transport wherever practicable, the cost of which shall be reimbursed or paid directly.
  - (b) Where the use of public transport is not practicable, the cost of travel will be reimbursed on the basis of casual user car allowances payable to officers.

- (c) Where members are unable to take main meals in their normal place, the reasonable cost of purchasing a meal and beverage or appropriate refreshments shall be reimbursed, subject to receipts being produced where practicable.

#### 4. Special Responsibility Allowances

- 4.1 The Special Responsibility Allowances payable under this Scheme shall be those set out in Appendix 1 attached. They will be paid in monthly instalments in arrears.
- 4.2 The Special Responsibility Allowances payable to Opposition Party Leaders and Deputy Leaders shall be applicable only where their political group is ten or more elected members in number.

#### 5. Multiple Allowances

- 5.1 Where a Member holds more than one office qualifying for a Special Responsibility Allowance, the Member shall be paid the higher or highest allowance only.

#### 6. Inflation increases

- 6.1 The allowances in this Scheme shall be varied each year in line with the agreed cost of living pay increases for Local Authority staff whose pay award is determined by the National Joint Council.

#### 7. Carer's Allowance

- 7.1 Where an elected member is required to pay a carer in order to attend official Council business, reasonable actual costs of that care will be reimbursed.

#### 8. Absence

- 8.1 All the allowances in this Scheme will be withdrawn where an elected member ceases to be a Councillor for any reason. This includes failure to attend any meetings for six months without their absence being approved by the Council in advance.

#### 9. Processing of Claims

- 9.1 The Director of Finance and Legal will maintain a record of all allowances paid showing the name of the recipient, the amount and the nature of the payment. The record will be available for inspection free of charge by any local government elector for the area of the Borough Council at all reasonable times. Copies of any part of the record may be made.

SPECIAL RESPONSIBILITY ALLOWANCES

	Cabinet/Chair	Deputy/Vice
Leader of the Council	£25,213	
Deputy Leader		£19,940
Cabinet Member	£14,355	
Scrutiny Committees (incl. Audit & Standards)	£9,560	£4,609
Development Control Committee	£11,172	£5,234
Other Committees (Appeals, Licensing & Safety and Taxis)	£9,560	£4,609
Opposition Leaders	£11,290 <sup>1</sup>	£8,919 <sup>1</sup>
Opposition Spokespersons	£6,435 <sup>1</sup>	

1. The Special Responsibility Allowances payable to Opposition Party Leaders, Deputy Leaders and Opposition Spokespersons shall be applicable only where their political group is ten or more elected members in number.

## **PART 8**

# **MANAGEMENT STRUCTURE**



# **Dudley MBC** **Management Structure**

