

# Public Document Pack



**Service Director – Legal, Governance and  
Commissioning**

**Julie Muscroft**

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Thursday 18 April 2019

## Notice of Meeting

Dear Member

### **Corporate Governance and Audit Committee**

The **Corporate Governance and Audit Committee** will meet in the **Meeting Room 1 - Town Hall, Huddersfield** at **10.00 am** on **Friday 26 April 2019**.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

**Julie Muscroft**

**Service Director – Legal, Governance and Commissioning**

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

## **The Corporate Governance and Audit Committee members are:-**

### **Member**

Councillor Hilary Richards (Chair)  
Councillor Carole Pattison  
Councillor Kath Pinnock  
Councillor Ken Sims  
Councillor Julie Stewart-Turner  
Councillor John Taylor  
Councillor Gemma Wilson

When a Corporate Governance and Audit Committee member cannot be at the meeting another member can attend in their place from the list below:-

### **Substitutes Panel**

#### **Conservative**

B Armer  
D Bellamy  
V Lees-Hamilton  
N Patrick  
M Thompson

#### **Green**

K Allison  
A Cooper

#### **Independent**

C Greaves  
T Lyons

#### **Labour**

S Hall  
N Mather  
M Sokhal  
R Walker

#### **Liberal Democrat**

R Eastwood  
C Iredale  
A Munro  
A Pinnock

### **Ex Officio Members**

Councillor Eric Firth  
Councillor Graham Turner – Cabinet Member (Resources)

# Agenda

## Reports or Explanatory Notes Attached

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**Pages**

**1: Membership of the Committee**

This is where Councillors who are attending as substitutes will say for whom they are attending.

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**2: Minutes of Previous Meeting**

1 - 2

To receive and approve the Minutes of the previous meeting held on 8 March 2019.

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**3: Interests**

3 - 4

The Councillors will be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the items or participating in any vote upon the items, or any other interests.

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**4: Admission of the Public**

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

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**5: Deputations/Petitions**

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10 (2), Members of the Public should provide at least 24 hours' notice of presenting a deputation.

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- 6: Proposed Amendments to the Constitution** 5 - 150
- To consider the report.
- Contact: Julie Muscroft, Legal, Governance and Commissioning
- 
- 7: Proposed Changes to the Code of Conduct** 151 - 216
- To consider the report.
- Contact: Julie Muscroft, Legal, Governance and Commissioning.
- 
- 8: Proposed Amendments to Health and Wellbeing Board - Terms of Reference** 217 - 222
- To consider the report.
- Contact: Julie Muscroft, Legal, Governance and Commissioning
- 
- 9: Proposed Dates Of Council - Municipal Year 2019/2020** 223 - 226
- To consider the report.
- Contact: Andrea Woodside, Governance.
- 
- 10: Proposed Amendments to Contract Procedure Rules** 227 - 298
- To consider the report.
- Contact: James Anderson, Finance and Accountancy
- 
- 11: Proposed Amendments to Financial Procedure Rules** 299 - 348
- To consider the report.
- Contact: Martin Dearnley, Head of Audit and Risk
-

**12: Annual Report of Internal Audit 2018/2019** 349 - 398

To consider the report.

Contact: Martin Dearnley, Head of Audit and Risk

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**13: Annual Governance Statement 2018/2019** 399 - 418

To receive the report.

Contact: Simon Straker, Audit Manager

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**14: Quarterly Report Of Internal Audit 2018/2019 (Quarter 4)** 419 - 422

To receive the report.

Contact: Martin Dearnley, Head of Audit and Risk

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**15: Exclusion of the Public**

To resolve that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act.

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**16: Quarterly Report Of Internal Audit 2019/2020 (Quarter 4)** 423 - 444

Exempt information within Part 1 of Schedule 12A of the Local Government Act 1972 namely that the report contains information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption outweighs the public interest in disclosing the information and providing greater openness in the Council's decision making.

Exempt appendix in relation to Agenda Item 14.

Contact: Martin Dearnley, Head of Audit and Risk

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Contact Officer: Andrea Woodside

## KIRKLEES COUNCIL

### CORPORATE GOVERNANCE AND AUDIT COMMITTEE

**Friday 8th March 2019**

Present: Councillor Hilary Richards (Chair)  
Councillor Carole Pattison  
Councillor Kath Pinnock  
Councillor Ken Sims  
Councillor Julie Stewart-Turner

Apologies: Councillor John Taylor

**1 Membership of the Committee**

Apologies for absence were received on behalf of Councillor J Taylor.

**2 Minutes of Previous Meeting**

**RESOLVED** – That the Minutes of the Meeting held on 25 January 2019 be approved as a correct record.

**3 Interests**

No interests were declared.

**4 Admission of the Public**

It was noted that all Agenda Items would be considered in public session.

**5 Deputations/Petitions**

None received.

**6 Public Question Time**

No questions were asked.

**7 Report of the Members Allowances Independent Review Panel 2019/20**

The Committee gave consideration to a report which set out the recommendations of the Members Allowances Independent Review Panel for the 2019/2020 municipal year.

The report advised that the Panel had met on 30 November 2018 and had agreed the following recommendations; (i) that the current basic allowance for Elected Members be increased in line with the amount awarded to Council staff (2%) with effect from 1 April 2019 (ii) that Special Responsibility Allowances be increased in line with the amount awarded to Council staff (2%) from 1 April 2019 (iii) that the Chair of Standards Committee be paid at Band E, with effect from 1 April 2019, subject to review in 12 months and (iv) that the Special Responsibility Allowance paid to Group Business Managers of small groups (3-6 Elected Members) be paid at Band E, with effect from 1 April 2019.

## Corporate Governance and Audit Committee - 8 March 2019

The draft Members Allowances Scheme for 2019/2020, was appended to the considered report.

The Committee gave consideration to the recommendations of the Panel and agreed that they be endorsed and submitted to Council with a recommendation of approval. It was agreed that details regarding the membership of the Independent Members Allowances Panel would be circulated to the Committee for information.

### **RESOLVED -**

- 1) That the recommendations of the Members Allowances Independent Review Panel (Appendix A) be received and noted.
  
- 2) That the report be submitted to the meeting of Council on 20 March 2019 with a recommendation that the Members Allowances Scheme 2019/2020 (Appendix B) be approved and adopted with effect from 1 April 2019.

## **8 External Audit Plan**

The Committee received the External Audit Plan for year end march 2019, as submitted by Grant Thornton, External Audit. The report set out the planned scope and timing of the audit review and it was noted that the main audit visit would take place in summer 2019, following the interim visit earlier in the year. The report advised that the audit would form and express and form an opinion on the Council's financial statements and value for money arrangements.

The Committee were provided with an overview of (i) key matters impacting upon the audit (ii) audit scope and risk assessment (iii) significant and other identified risks (iv) materiality (v) value for money arrangements and (vi) audit logistics.

**RESOLVED -** That the External Audit Plan be received and noted.



<b>KIRKLEES COUNCIL</b>				
<b>COUNCIL/CABINET/COMMITTEE MEETINGS ETC</b>				
<b>DECLARATION OF INTERESTS</b>				
Corporate Governance and Audit Committee				
Name of Councillor				
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an "Other Interest")	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest	

Signed: ..... Dated: .....

## NOTES

### Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

- (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
- (b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

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 you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

**Name of meeting: Corporate, Governance and Audit Committee**

**Date: 26<sup>th</sup> April 2019**

**Title of report: Proposed changes to the Council's Constitution**

**Purpose of report**

To set out proposed changes to the Council's constitution as described in paragraph 2 and as set out in more detail in the attached Appendices, which show the proposed amendments.

To note changes to the Constitution that have been made during the year.

To seek approval and/or comments and/or recommendations from Committee in relation to these proposed changes to make to Annual Council on 22 May 2019.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)</a> ?	Not applicable
The Decision - Is it eligible for "call in" by Scrutiny?	Not applicable
Date signed off by Director & name	
Is it also signed off by the Service Director for Finance, Information and Transactional Service?	No financial implications  Julie Muscroft
Is it also signed off by the Service Director – Legal, Governance and Commissioning Support?	
Cabinet member portfolio	Graham Turner

**Electoral wards affected: N/A**

**Ward councillors consulted: N/A**

**Public or private: Public**

**Have you considered GDPR? Yes**

**1. Summary**

1.1 To set out proposed changes in relation to different parts of the constitution and seek approval by members of those proposed changes set out at paragraph 2. Each affected section of the Constitution is set out below with information setting out details of any proposed changes for which approval and/or comment is sought.

- 1.2 The Constitution has been reviewed throughout the year in relation to a number of areas. This is an on-going process to ensure it is correct and up to date and reflects any changes to re-structure, procedures and legislation. The outcome of that review is set out in this report.
- 1.3 There have been some minor changes using the delegated authority granted to the Monitoring Officer by Council on 20 May 2015 to reflect changes of officer titles, typing or grammatical errors, old references and new legislation. These are listed at Appendix 1, along with the changes to the Constitution that were proposed to Annual Council and agreed on the 23<sup>rd</sup> of May 2018.

## **2. Information required to take a decision**

### **PART 1 – Summary and Explanation**

- 2.01 This provides a summary and explanation of what is included in the constitution. There are no current requests for approval for any changes.

### **PART 2 – ARTICLES**

- 2.02 There are 17 articles that set out how the council operates. There has been one amendment made by the Monitoring Officer to reflect minor changes and errors, these are shown in Appendix 1 There are no current requests for approval for any changes but members should be made aware that the Policy Framework in Article 4 is currently being reviewed and a report will be presented to a future meeting of this Committee and Council .

### **PART 3 – RESPONSIBILITY FOR FUNCTIONS**

- 2.03 This part details the Council's Cabinet, committees' and other groups' responsibilities, terms of references, delegations and contains each individual Cabinet Member's specific responsibilities. There have been two amendments made by the Monitoring Officer to reflect minor changes and errors, which are detailed in Appendix 1.
- 2.04 There are proposed changes to the terms of reference for the Corporate Governance and Audit Committee (CGA). It is proposed to expand Section 7, so that it will read as follows:

7. To review the adequacy of the council's Corporate Governance arrangements. This will include (but not be limited to) the following:

- 7.1 internal control and risk management;
- 7.2 oversight of whistleblowing and the Council's whistleblowing policy;
- 7.3 oversight of the complaints process and the role of the Local Government Ombudsman;

7.4 oversight of Information Governance and the role of the ICO

7.5 to review and approve the annual statement of Corporate Governance.

These are clarificatory amendments.

- 2.05 The committee is asked to note that there will be some proposed changes to the terms of reference of the Personnel Committee, which will be the subject of a further report in due course.

## **PART 4 – RULES OF PROCEDURE**

- 2.06 This section contains eight documents which describe how Councillors and Officers conduct themselves in meetings and make decisions about certain matters. There have been two amendments made by the Monitoring Officer to reflect minor changes and errors, which are detailed in Appendix 1.

### Council Procedure Rules

- 2.07 **CPR 5** does not currently list '*Public Question Time*' under the 'PROCEDURAL' heading.

**Members are asked to consider formally adding this to CPR 5.**

- 2.08 **CPR 9a** currently states '*if a validated petition contains more than 3000 signatures, the Petition Organiser will be permitted five minutes to present their petition to Council and the subject matter will then be debated by Council for a maximum of 15 minutes.*'

It is suggested that the CPR is amended to add the words '*(or their representative)*' after '*Petition Organiser*'. **Members are asked to approve the amendment.**

The amended CPR would therefore be;

*'if a validated petition contains more than 3000 signatures, the Petition Organiser (or their representative) will be permitted five minutes to present their petition to Council and the subject matter will then be debated by Council for a maximum of 15 minutes.'*

- 2.09 Following on from the debate at the Council meeting on 20 March 2019 at which it was agreed that Council Procedure Rules be reviewed with a view to improving Council meetings the following principles have been developed to be used to inform the changes to be made to the format of meetings:

- i. Enhancing the representational role of Councillors at Council Meetings

- ii. More time for consideration of motions and strategic discussions on matters of public interest
- iii. Create more opportunities for Council to influence policy formulation
- iv. Improvement to the quality of discussion on written questions

- 2.10 It is proposed that work be undertaken to develop a proposal that will allow for designated time in Council Meetings for the consideration of motions and strategic issues of public interest. It is intended that this work will be done in conjunction with Councillors and the Council's Democracy Commission and will be reported for consideration at the meeting of Council to take place on 17 July 2019.
- 2.11 It is recommended that, in the short term, changes be made to Council Procedure Rules at Annual Council to ensure that written answers are provided in instances where written questions are not dealt with at meetings due to time constraints (CPR 12). It is also recommended that, in relation to CPR 18(17)(a) regarding the closure of a debate, that this be amended to require the Mayor to take account of the number of outstanding speakers who have indicated a wish to speak in a debate when considering if the matter under consideration has been sufficiently discussed.
- 2.12 The proposed changes in the paragraph above have been incorporated into the proposed changes that are recommended to be adopted in the attached Council Procedure Rules at Annual Council.
- 2.13 Members will note that, a number of typos and formatting errors have also been corrected in the Council Procedure Rules as well.

**Members are asked to give consideration to the suggestions above and provide comments and/or recommendation of the suggested amendments to Council. A copy of the Council Procedure Rules showing the proposed amendments is attached at Appendix 2.**

#### Access to Information Procedure Rules

- 2.14 There have been amendments to the *Access to Information Procedure Rules*, made in accordance with a previous delegation, and a copy of it is attached at Appendix 1B.
- 2.15 The amendments incorporate the requirements of the *Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012* and the *Openness of Local Government Bodies Regulations 2014*.
- 2.16 They also clarify the exclusion of the public at meetings and exempt information.

#### Financial Procedure Rules

- 2.17 There are proposed amendments and these are the subject of a separate report to this committee.

#### Contract Procedure Rules

- 2.18 There are proposed amendments and these are the subject of a separate report to this committee.

#### Officer Employment Procedure Rules

- 2.19 There are no proposed amendments.

### **Part 5 – CODES AND PROTOCOLS**

- 2.20 This section sets out the council's Codes and Protocols in relation to a number of areas. There has been one change made by the Monitoring Officer to the *Protocol for Public Speaking at Planning Committees and Sub-Committees* to reflect minor changes and errors, detailed in Appendix 1.

#### Members' Code of Conduct

- 2.21 There are proposed amendments and these are the subject of a separate report to this committee.

#### Monitoring Officer Protocol

- 2.22 There are no proposed amendments.

#### Protocol for Planning Committees and Sub-Committees

- 2.23 There are no proposed amendments.

#### Decision Making on Ward Issues - Procedural Advice to Cabinet Members

- 2.24 Further review will be undertaken during 2019/20 and initially referred back to Standards Committee for any proposed changes for consideration. Any recommended changes will then be presented in a further report to CGA.

#### Protocol on the role of Representatives and Key Outside Bodies in representing the interests of the Council

- 2.25 This will be reviewed during 2019/20, once the review of the relationship with outside bodies has concluded and any proposed changes will be presented in a further report to CGA.

#### Officers' Code of Conduct

- 2.26 This requires more comprehensive updating and will be subject to further report during 2019/20.

## Protocol for Public Speaking at Planning Committees and Sub-Committees

- 2.27 This has been reviewed and updated using the Monitoring Officer delegation to reflect minor changes, as detailed in Appendix 1A. There are no proposed further amendments.

## Licensing Committee Protocol

- 2.28 There are no proposed amendments.

## Councillors and Officers in Kirklees – A Protocol for Working Effectively

- 2.29 This protocol is to be the subject of some work involving the Democracy Commission. Any proposed changes will be referred to the Committee if appropriate.

## Safeguarding Protocol

- 2.30 This has been reviewed and no changes are necessary.

### **3. Implications for the Council**

It is essential that the Council's Constitution is regularly reviewed and updated to ensure that it remains fit for purpose and to enable Council meetings to be conducted in a fair, business like and effective manner. It is also essential that the Constitution complies with current legislation. Failure to do so could lead to legal challenges, unnecessary procedural delays and less transparency in the Council's democratic process.

#### **3.1 Working with People**

N/A

#### **3.2 Working with Partners**

N/A

#### **3.3 Place Based Working**

N/A

#### **3.4 Improving Outcomes for Children**

N/A

#### **3.5 Other (e.g. Legal/Financial or Human Resources)**

N/A

### **4. Consultees and their opinions**

- 4.1 Chief Executive and various officers in Legal, Governance and Commissioning have been consulted.

### **5. Next steps**



- 5.1 This will be considered by Annual Council on 22 May 2019. Any feedback and comments or recommendations from CGA will be included in that report.
- 5.2 Any amendments agreed by Council will be made to the Constitution.

## **6. Officer recommendations and reasons**

### **That CGA:**

- 6.1 Consider the proposed changes set out in 2.03, 2.04, 2.07 to 2.08, 2.11 to 2.12, and Appendices 2-4 and make any recommendations/ comments /observations before the changes are considered by Council.
- 6.2 Note the changes made under delegated authority referred to in Appendices 1 A and 1B.
- 6.3 Recommend to Council that the Service Director Legal Governance and Commissioning be delegated with authority to make appropriate amendments to the constitution which are agreed by the Council as well as any consequential amendments to the constitution to reflect the changes agreed.

## **7. Cabinet portfolio holder recommendation**

N/A

## **8. Contact officer**

Julie Muscroft, Service Director – Legal, Governance and Commissioning

David Stickley, Senior Legal Officer

## **9. Background Papers and History of Decisions**

## **10. Service Director responsible**

Julie Muscroft, Service Director – Legal, Governance and Commissioning Support, 3<sup>rd</sup> floor, Civic Centre 1. Telephone: 01484 221000. Email [Julie.muscroft@kirklees.gov.uk](mailto:Julie.muscroft@kirklees.gov.uk)

### **Appendices**

Appendix 1A – Amendments made under delegated authority and following 2018 Annual Council

Appendix 1B - Copy of the Access to Information Procedure Rules.

Appendix 2 – Track change copy of the Council Procedure Rules, showing proposed changes

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### Constitutional amendments 2018-2019

Changes made to the Constitution authorised by Council or by the Monitoring Officer under the delegation provided to her are set out in the table below.

Amendment	Authorisation	Date amended
<b>PART 2 Articles of the Constitution</b>		
Article 9. Minor amendment re Standards Committee	Monitoring Officer Delegation	17 <sup>th</sup> May 2018
Article 13 amended.	Approved at Annual Council	3 <sup>rd</sup> July 2018
<b>PART 3 Responsibility for Functions</b>		
Part 3.4 Section C amended	Approved at Annual Council	3 <sup>rd</sup> July 2018
Part 3.4 Section C addition	Monitoring Officer Delegation	12 <sup>th</sup> December 2018
Part 3.7 Scheme of Delegation renumbering	Monitoring officer Delegation	17 <sup>th</sup> May 2018
<b>PART 4 Rules of Procedure</b>		
Part 4.1 Council Procedure Rules amended	Approved at Annual Council	3 <sup>rd</sup> July 2018
Part 4.6 Financial Procedure Rules amended	Approved at Annual Council	31 <sup>st</sup> May 2018
Part 4.7 Contract Procedure Rules minor amendments	Monitoring Officer Delegation	1 <sup>st</sup> May 2018
Part 4.8 Officer Employment Procedure Rules amended	Monitoring Officer Delegation	16 <sup>th</sup> May 2018
<b>PART 5 Codes and Protocols</b>		
Part 5.7 Protocol for Public Speaking at Planning Committees and sub-committees amended to remove wording	Monitoring Officer Delegation	18 <sup>th</sup> September 2018

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**ACCESS TO INFORMATION  
PROCEDURE RULES**

# **Access to Information Procedure Rules**

## **1. Scope of These Rules**

These rules apply to all meetings of the Council, the Overview and Scrutiny Management Committee and Scrutiny Panels, the Standards Committee and regulatory and other Council committees (together called meetings). Rule 14 provides for their application to meetings of the Cabinet, Cabinet committees and of individual Cabinet members with officers for decision-making.

The Council is governed by the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 as amended and the Openness of Local Government Bodies Regulations 2014.

## **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 such meetings subject only to the exceptions in these rules.

## **4. Notices of Meeting**

The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Town Hall, Ramsden Street, Huddersfield. Except in the case of a Council meeting, this requirement may be reduced when a meeting is called on shorter notice in cases of urgency. The notice will specify the business proposed to be transacted at the meeting.

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

Unless a meeting is called on shorter notice in cases of urgency, the Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda.

Where reports are prepared after the summons has been sent out, the Head of Democracy shall make each such report available to the public as soon as the report is completed and sent to councillors.

Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless by reason of special circumstances, which shall be specified in the minutes, the chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

## **6. Supply of Copies**

Copies of those documents and notices which are published on the Council's website in accordance with these rules and also in accordance with the Executive Procedure Rules, will be made available on inspection by the public on request during office hours at the authority's offices at Town Hall, Ramsden Street, Huddersfield.

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) any other documents supplied to councillors in connection with an item to any person on payment of a charge for postage and any other costs, if the Head of Democracy thinks fit.

The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.

## **7. Access to Records of Decisions**

### **7.1 Records of Decisions Taken at Meetings**

For six years after a meeting, the Council will make available for inspection, and following a request made on behalf of a newspaper, and on payment being made of postage, copying or any other necessary charge, the Head of Democracy will arrange to supply copies of the following:

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

### **7.2 Records of Decisions Taken By Officers<sup>1</sup>**

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<sup>1</sup> In accordance with The Openness of Local Government Bodies Regulations 2014, a written record of the decision and the reasons for it, together with the date of the decision, produced in accordance with any other statutory requirement, will be sufficient to satisfy the requirement to produce a written record set out in this rule,

As soon as reasonably practicable after a significant operational decision taken by an officer in relation to a Council Function, the officer will produce a written record of the decision and arrange for its publication on the Council's website together with the report in relation to the decision made. The record will include;

- A record of the decision including the date it was made,
- A statement of the reasons for it,
- Details of any alternative options considered and rejected by the officer at the time of making the decision, and
- A record of any interest declared by any Executive Member consulted by the officer who made the decision together with a note of any dispensation granted in respect of that interest.

The written record will be retained and made available for inspection by the public for a period of six years beginning with the date of the decision to which it relates.

Following a request and on payment being made of postage, copying or any other necessary charge, the Head of Democracy will arrange to supply a copy of the delegated decision notice and report in relation to an officer decision

## **8. Background Papers**

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

The Head of Democracy will ensure that there is set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report.

This requirement does not include published works or those which disclose exempt or confidential information or in the case of Cabinet reports, the advice of a political advisor, if any, or any draft report or document.

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

- (a) A copy of each of the documents listed will be:-
  - (i) published on the Council's website at the same time as the report is available for public inspection, and
  - (ii) made available to a member of the public during office hours at the authorities offices at the Town Hall, Ramsden Street on payment of the Council's reasonable fee.
- (b) The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.



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

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Town Hall, Ramsden Street, Huddersfield. These Rules constitute that written summary.

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

- 10.1 The Head of Democracy will exclude access by the public to reports which in his/her opinion contain confidential information, (as defined in Rule 11).
- 10.2 If the Head of Democracy thinks fit, access by the public may also be excluded in respect of reports which in his/her opinion relate to items during which, in accordance with exempt information rules, the meeting is likely not to be open to the public.
- 10.3 Such reports will be marked 'Not for publication' together with 'confidential information' or the exemption relied upon
- 10.4 Where an exemption is relied upon, any such report must contain the reasons why, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## **11 Confidential Information – Requirement to Exclude Public Access**

The public<sup>2</sup> 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. Likewise, public access to reports, background papers, and minutes will also be excluded.

Confidential information means<sup>3</sup>

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information which cannot be publicly disclosed by Court Order or another Act. Generally, personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

## **12 Exempt Information – Discretion to Exclude Public Access**

- 12.1 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 provided:

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<sup>2</sup> Members of the Council and officers attending the meeting in the course of their employment shall not be considered to be members of the public

<sup>3</sup> Care should be taken to ensure that partners are aware of this definition of Confidential Information which will apply to information which they choose to share with the Council

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and
- (b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 12.5 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

12.2 In these circumstances, public access to reports, background papers and minutes will also be excluded

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

12.4 Exempt information means<sup>4</sup> information falling within the following categories, (subject to any relevant conditions specified below).

NB the numbering of the categories reflects that which is set out in schedule 12A to the Local Government Act 1972, as currently amended.

### 12.5 Categories

Category	Condition
1.Information relating to any individual	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information which is likely to reveal the identity of an individual	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information  Information within paragraph 3 is not exempt if it must be registered under

<sup>4</sup> Care should be taken to ensure that partners are aware of this definition of Exempt Information which will apply to information which they choose to share with the Council

	<p>various statutes, such as the Companies Acts or the Charities Act 2011.</p> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities</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>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>“Labour relations matters” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>6. (a) Information which reveals that the authority proposes -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>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>

## Conditions

Information falling within categories 1-7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

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

If the Head of Democracy thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 12, 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 and, where relevant, an explanation of why this is considered to be in the public interest.

### **14. Application of Rules to the Cabinet and Key Decisions**

**14.1** Rules 15 – 25 apply to the Cabinet and its committees and, unless otherwise stated, to executive decisions taken by individual Cabinet Members and Officers. Unless the Council otherwise agrees, Rules 1-13 will also apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 – 13 unless Rule 16 (general exception) or Rule 17 (special urgency) apply. A key decision is an executive decision which is likely:

- to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards.

These expressions are further explained in Rules 14.2, 14.3 and 14.4 below.

**14.2** For this purpose, expenditure or savings with a gross full year effect of over £250,000 in any one case will be regarded as significant. This figure applies to any service or function. However, this does not include:-

- Bids for funding of £250,000 or greater made by the Council to third parties where a further report will be submitted for approval of the scheme, should the bid be successful;
- Expenditure which is, in the view of the Service Director – Legal, Governance and Commissioning, inevitable for the day to day provision of services (e.g. day to day supplies, payment of energy bills etc.) provided that such expenditure could reasonably be regarded as having been in the contemplation of members when the revenue budget was approved.
- Expenditure incurred as a result of decisions made by the Director of Finance in accordance with the approved Treasury Management Policy.

- 14.3** A decision will be significant in terms of its effects on a community if it is likely to have a significant impact, whether positive or negative, (e.g. in environmental, physical, social or economic terms) on people living or working in that community. However, matters will not be key decisions simply because the result would be, for instance, that work would be carried out in two or more wards irrespective of the impact. A decision-maker may seek advice from the Chief Executive or the Service Director – Legal, Governance and Commissioning on whether any proposed decision should be regarded as significant for these purposes.
- 14.4** A decision will not be a key decision if it is a direct consequence of implementing a key decision. So, for example, once the details of a capital scheme of £250,000 have been approved, the submission of a report to approve a select list of tenderers for that scheme will not be a key decision.
- 14.5** If the Cabinet or its committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the document by which it is to be decided, then it must also comply with Rules 1 – 13 unless Rule 16 (general exception) or Rule 17 (special urgency) apply. This requirement does not include meetings whose sole purpose in respect of that particular decision is for officers to brief members and for members to seek further advice and information from officers to assist them in making a decision at the appropriate time.
- 14.6** Decisions having a particularly significant effect on a single ward may also be treated as if they were key decisions.
- 14.7** It should be noted that the requirements relating to key decisions being taken in public do not apply when such decisions are taken by officers.

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

Subject to Rule 16 (general exception) and Rule 17 (special urgency), a key decision may not be taken unless:

a document has been published in accordance with the requirements below, which state:

- That a key decision is to be made on behalf of the Council
- The matter in respect of which the decision is to be made
- Where the decision maker is a decision making body, its name and a list of its members and, where the decision maker is an individual, that individual's name, and title if any.
- The date on which, or the period within which, the decision is to be made

- A list of the documents submitted to the decision maker for consideration in relation to the matter on which the decision is to be made
- Details of any principal groups whom the decision maker intends to consult in relation to the intended decision

At least 28 clear days before a key decision is to be made, the document referred to in paragraph 15 will be made available for inspection by public notice.

## **16. General Exception**

If a matter which is likely to be a key decision has not been included in the document, then subject to Rule 17 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until for a period of 28 days to allow a notice of the intention to take a key decision in accordance with Rule 15;
- (b) the Head of Democracy has informed the chair of the Overview and Scrutiny Management Committee, or the relevant panel (or if there is no such person able to act, each member of that committee or panel) in writing, by notice, of the matter to which the decision is to be made;
- (c) the Head of Democracy has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Head of Democracy complied with (a) and (b).

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

## **17. Special Urgency**

If by virtue of the date by which a decision must be taken Rule 16 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the chair of the Overview and Scrutiny Management Committee or the relevant panel that the taking of the decision cannot be reasonably deferred. If there is no such chair, or if the chair is unable to act, then the agreement of the Mayor or in his/her absence the Deputy Mayor will suffice.

## **18. Report to Council**

### **18.1 When the Overview and Scrutiny Management Committee or Panel can require a report**

If the Overview and Scrutiny Management Committee or the relevant panel thinks that a key decision has been taken which was not:

- (a) included in the document; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with the Overview and Scrutiny Management Committee or panel chair, or the Mayor/Deputy Mayor under Rule 17;

the Committee or panel may require the executive to submit a report to the Council within such reasonable time as the committee or panel specifies. The power to require a report rests with the committee or panel, but is also delegated to the Head of Democracy, who shall require such a report on behalf of the committee or panel when so requested by the Chair.

Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Management Committee or panel.

Such a requirement should not be made without the advice of the Chief Executive and/or the Service Director – Legal, Governance and Commissioning having first been sought.

## **18.2 Cabinet's report to Council**

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the leader is of the opinion that it was not a key decision the reasons for that opinion.

If the Council takes the view that a decision was a key decision and that the appropriate procedure has not been followed, the validity of that decision will nevertheless not be affected.

## **19. Record of Decisions**

After any meeting of the Cabinet or any of its committees, whether held in public or private, the Head of Democracy will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **20. Cabinet Meetings Relating To Matters Which Are Not Key Decisions**

Cabinet meetings relating to matters that are not key decisions will be held in public..

## **21. Notice of Private Meeting of the Cabinet**

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

## **22. Attendance at Private Meetings of the Cabinet**

The Council may determine rules for the attendance of other Council members at permitted private meetings.

## **23. Executive Briefing**

Rule 3 of the Cabinet Procedure Rules provides for executive briefing meetings. Rule 14.6 of these Rules, insofar as it relates to the discussion of a key decision, will apply to such meetings, but otherwise these Rules shall not apply.

## **24. Decisions by Individual Members of the Executive**

### **24.1 Cabinet Member Decision Meetings**

An individual member of the Cabinet may take decisions on matters which have been delegated to him/her only at a meeting between that member and relevant Council officers at which he/she can receive and consider reports and advice. Such meetings will be treated in the same way as if they were meetings of the Cabinet or its committees and these Rules will therefore apply to such decision making as specified in Rule 14. No such decision may be made by an individual Cabinet member at any other time. Nor should any individual Cabinet member make any prior commitment to make any particular decision.

### **24.2 Record of individual decision**

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, he/she will prepare, or instruct the Head of Democracy to prepare, a record of the decision, a statement of the reasons for it, any alternative options considered and rejected, any conflict of interest declared and a note of any dispensation granted by the local authority's standards committee. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant. Records of such decisions will also be reported to the next appropriate meeting of the Cabinet.

### **24.3 Access to reports before decisions made**



Where an individual member of the Cabinet or an officer receives a report which he/she intends to take into consideration when he/she makes a key decision, he/she shall not make that decision until the report has been available for public inspection for at least five clear days.

## **25. Overview and Scrutiny Management Committee - Access To Documents**

### **25.1 Rights to copies**

Subject to Rule 25.2 below, the Overview and Scrutiny Management Committee or an Overview and Scrutiny Panel will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to any business transacted at a meeting of the Cabinet.

### **25.2 Limit on rights**

The Overview and Scrutiny Management Committee or panel 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

The decision as to who is entitled to any Committee document is the responsibility of the Monitoring Officer.

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

### **26.1 Material relating to previous business**

Any member may, for the purposes of his/her duty as a councillor, inspect any document which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting unless either (a) (b) or (c) below applies:

- (a) it contains exempt information other than information within category 6 set out in Rule 12 of these Rules, or within category 3 except information relating to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract; or
- (b) it contains the advice of a political adviser; or

- (c) the member has a prejudicial interest in the matter to which the document relates, as defined in the Council's Code of Conduct for Councillors (see Part 5 of this Constitution).

## **26.2 Material relating to key decisions**

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or control of the Cabinet which relates to any key decision unless;

- (a) It contains exempt information falling within paragraphs 1, 2, 4, 5 and 7 of the categories of exempt information; or
- (b) It contains the advice of a political adviser

The decision as to who is entitled to any Committee document is the responsibility of the Monitoring Officer.

## **26.3 Nature of rights**

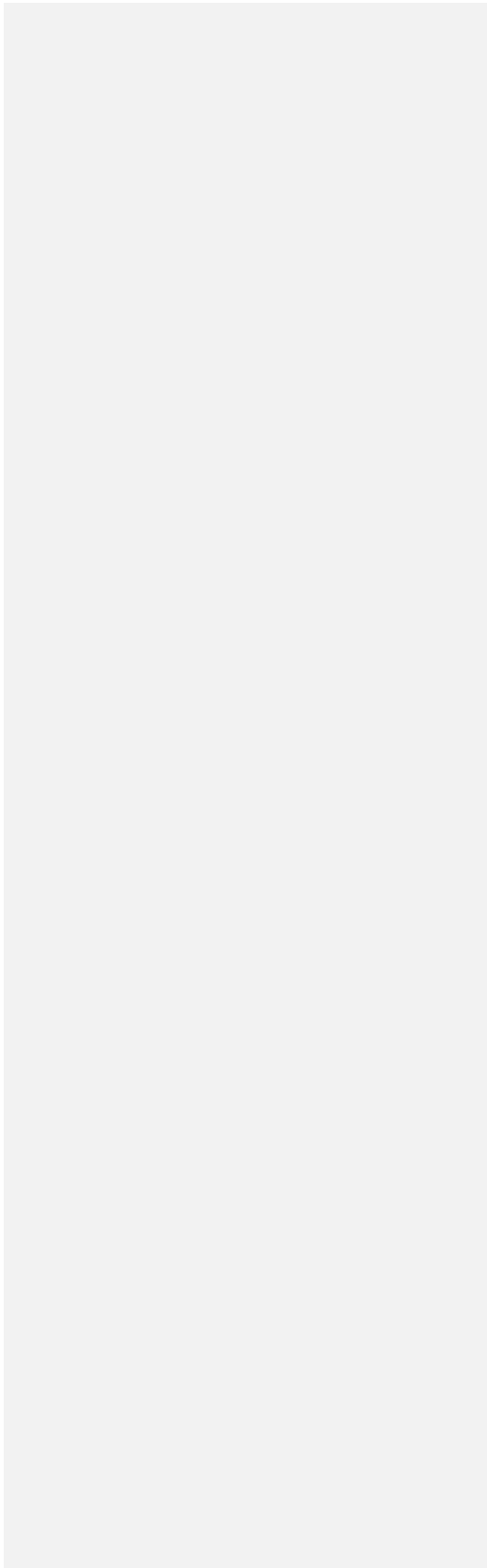
These rights of a member are additional to any other right he/she may have.

## **26.4 Officer attendance at political group meetings**

Officers may be called upon to attend and report to meetings of political groups. Their input should be limited to providing information and advice on Council business. They should not be involved in advising on political business and should not be expected to be present at meetings or parts of meetings when matters of political business are to be discussed.

**COUNCIL PROCEDURE RULES**

(Approved by Council on ~~23 May 2018~~)



## **(A) Meetings of the Council**

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

#### **(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 May. Within those limits the date, time and venue may be proposed by the Corporate Governance and Audit Committee and will be determined by the Council.

At the Annual Meeting the agenda will be as follows:

#### **CIVIC AND PROCEDURAL**

- (a) choose a person to preside if the Mayor and Deputy Mayor are absent;
- (b) elect the Mayor;
- (c) appoint the Deputy Mayor;
- (d) approve as a correct record the Minutes of the previous meeting of the Council;
- (e) receive any announcements from the Mayor and the Chief Executive
- (f) following a local election (other than a by-election) receive the report of the Chief Executive upon:
  - a) The result of the elections of Councillors to the Wards of the Council
  - b) The acceptance of office of Councillors elected

#### **ELECTION OF THE EXECUTIVE**

- (g) elect the Leader of the Council and determine his/her term of office (as necessary);

#### **CONSTITUTIONAL BUSINESS**

- (h) appoint, in accordance with paragraph (2) of this Rule the Overview and Scrutiny Management Committee, the Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3, of this Constitution);
- (i) agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree (as set out in Part 3 of this Constitution);
- (j) approve a programme of ordinary meetings of the Council for the year;

- (k) consider any other business set out in the notice convening the meeting; and
- (l) no other business will be considered at the Annual Meeting other than in exceptional circumstances to be determined by the Mayor in consultation with the Chief Executive.

**(2) Selection of Councillors on Committees**

At the Annual Meeting, the Council will:

- (i) decide the size and terms of reference for those Committees to be established for the municipal year;
- (ii) decide, when relevant, the allocation of seats and substitutes to political groups in accordance with the political balance rules;
- (iii) receive nominations from Group Business Managers of Councillors to serve on each Committee;
- (iv) determine representation on outside bodies and where appropriate political ratios;
- (v) elect Chairs and appoint Deputy Chairs (where appropriate) of the Council's Committees for the ensuing municipal year. If the Council does not make these appointments, Committees may appoint their own Chair and Deputy Chair (where appropriate) subject to confirmation at the next meeting of the Council;
- (vi) appoint to those Committees and outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet.

**2. Ordinary and Additional Meetings of Council, Notice of and Summons to Meetings**

*Dates of Council Meetings*

- (1) All meetings of the Council, with the exception of:
  - any called as Extraordinary Meetings; or
  - changes made to meeting dates as proposed by the Corporate Governance and Audit Committee and agreed by Council during the municipal year,

shall be held on dates fixed by the Council at the Annual Meeting on the recommendation of the Corporate Governance and Audit Committee.

*Extraordinary Meetings*

- (2) Those listed below may request the Service Director - Legal, Governance and Commissioning to call Council meetings in addition to ordinary meetings:
  - (a) the Council by resolution;

- (b) the Mayor, following consultation with the Chief Executive or following a written requisition signed by five Members of the Council;
- (c) the Chief Executive, the monitoring officer and section 151 officer; or
- (d) 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;

*Venue and Start Time*

- (3) All ordinary meetings of the Council will be held at 5.30 p.m. in the Town Hall, Huddersfield, or at such other times and places as may be agreed in respect of particular meetings by the Mayor and the Leader of the Council or on the recommendation of the Corporate Governance and Audit Committee.

*Council Summons*

- (4) The date, time and venue for each Council meeting will be shown in the summons for the meeting which will be issued by the Service Director - Legal, Governance and Commissioning at least 5 clear days before a meeting. The summons will specify the business to be transacted and will be accompanied by reports where appropriate.

*Chair of Meeting*

- (5) Any power or duty of the Mayor in relation to the conduct of a meeting shall be exercised by the Deputy Mayor or in their absence the person elected to preside at the meeting.

**3. Budget Meeting**

The Council may specify that one meeting will solely be the Council's budget meeting. At that meeting the only items will be to agree the budget, the capital programme and the level of Council tax for the following financial year, together with any issues connected with the budget and anything else which the Mayor in consultation with the Chief Executive considers appropriate for inclusion.

**4. Quorum of Council**

- (1) The quorum for a Council meeting shall be one quarter of the total number of the Members of the Council, **founded up to the nearest whole number.**
- (2) If there is not a quorum at a meeting, then consideration of any items of business not dealt with shall be adjourned to a date and time to be chosen by the Mayor at the time when the meeting is adjourned **or** to the next meeting of the Council.

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## 5. Order of Business

- (1) There shall be two types of ordinary meeting of the Council,
- one which focuses on **Holding the Executive to Account** and
  - one which focuses on **Key Discussions**.

The designation of each Council meeting shall be set (and published) at the start of the municipal year by the Chief Executive in consultation with the Group Leaders, but may be changed during the course of the year by the Chief Executive in consultation with the Group Leaders if it is considered necessary for the efficient operation of the Council, provided that no less than four ordinary meetings are designated as **Holding the Executive to Account**.

The content and running order of the business to be transacted at each ordinary meeting of Council may be altered in advance by the Chief Executive in consultation with the Mayor and Group Leaders if it is considered necessary or appropriate for the efficient operation of the Council.

The following items shall be included in all ordinary meetings of the Council in the order shown:

### PROCEDURAL

- a) To choose a person to preside if the Mayor and Deputy Mayor are absent.
- b) Announcements by the Mayor or the Chief Executive.
- c) To receive apologies.
- d) To approve as a correct record and sign the Minutes of the previous meeting of the Council.
- e) To receive declarations of interest.
- f) To receive petitions submitted by Members of the Council.
- g) To receive any petitions/hear deputations from Members of the Public.
- g)h) ~~Public question time~~ To receive any public questions.
- i) To receive and consider any petitions referred in accordance with the Council's Petitions Scheme.
- i)j) To receive Minutes of meetings of the West Yorkshire Combined Authority.

### DECISION MAKING

- j)k) To deal with any matters expressly referred by Cabinet or a Committee to Council for approval.

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## WRITTEN QUESTIONS

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l) To deal with written questions by Members to the following under Rule 12:

- The Leader, Deputy Leader and Cabinet Members
- Chairs of Committees, Sub Committees and Panels
- Spokespersons of Joint Authorities and External Bodies (as defined at Rule 13)

Spokespersons of Joint Authorities and External Bodies (as defined at Rule 13)

(2) In addition to those items at (1) of this Rule, the following items shall be included in meetings designated as **Holding the Executive to Account** meetings (provided that there is sufficient such business at any one meeting), and such business shall follow on from that set out in (1) of this Rule as follows:

### **CABINET AND COMMITTEES**

~~k)a) To deal with written questions by Members to the following under Rule 12:~~

~~a)~~

- ~~• a) The Leader, Deputy Leader and Cabinet Members~~
- ~~• a) Chairs of Committees, Sub Committees and Panels~~
- ~~• Spokespersons of Joint Authorities and External Bodies (as defined at Rule 13)~~

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~~h)m) To receive reports from Cabinet members in accordance with Rule 13.~~

~~m)n) To deal with questions to Cabinet members generally, or in relation to minutes of Cabinet put to Council for information or to hear statements from Cabinet members in accordance with Rule 13.~~

### **MEMBER MOTIONS**

~~o) To receive responses to Motions agreed at previous meetings of Council~~

~~n)p) To consider motions issued under Rule 14, if any, in the order which they have been received by the Service Director – Legal, Governance and Commissioning.~~

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~~e) To consider motions issued under Rule 14, if any, in the order which they have been received by the Service Director – Legal, Governance and Commissioning.~~

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### **GENERAL**

~~p) Other matters for consideration by Council including reports back on resolutions from previous Council meetings.~~

~~q) To deal with any business expressly required by statute to be dealt with by the Council~~

(3) In addition to those items at (1) of this Rule, the following items shall be included in meetings designated as **Key Discussion Meetings** (provided that there is sufficient such business at any one meeting) and such business shall follow on from that set out in (1) of this Rule as follows:



## KEY ISSUES

- fs) To receive presentations and/or reports on key issues and debate the same in accordance with Rule 18 (23).

## OVERVIEW & SCRUTINY

- st) To receive reports from Overview & Scrutiny Management Committee and its panels and to hold a debate in accordance with Rule (18 (22)) (Move before key discussion).

## MEMBER MOTIONS

- tu) To receive responses to Motions agreed at previous meetings of Council.
- uv) To consider motions issued under Rule 14, if any, in the order which they have been received by the Service Director – Legal, Governance and Commissioning.

## GENERAL

~~v) Other matters for consideration by Council including reports back on resolutions from previous Council meetings.~~

w) Other matters for consideration by Council including reports back on resolutions from previous Council meetings.  
~~To deal with any business expressly required by statute to be dealt with by the Council.~~

x) To deal with any business expressly required by statute to be dealt with by the Council.

- (4) The order of items (jk) to (lm) or (mo) (as appropriate) or (jk) to (fs) or (st) (as appropriate in the case of Key Discussion Meetings) may be changed or any of the items omitted at any one meeting:
  - a) by the meeting by means of a motion passed without discussion;
  - b) by the Chief Executive in consultation with the Mayor.
- (5) Any discussion falling within (fs) above shall begin no later than 7:00 pm irrespective of whether the business before it on the agenda has concluded, such other business shall resume once the key discussion issue is complete.

## 6. Limitation of Business

The items of business for consideration at the Council meeting will be limited to those set out in the agenda for the meeting, with the exception of:-

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- (a) items of business required by these Rules to be dealt with at the meeting or
- (b) items of urgent business for which the Mayor and Chief Executive shall have prior notice and which the Mayor in consultation with the Chief Executive considers appropriate for discussion at the meeting.

## **7. Minutes**

### *Correct Record*

- (1) The Mayor shall put the motion "that the Minutes of the previous meeting or meetings be approved and signed as a correct record."

### *Accuracy*

- (2) No discussion shall take place on those Minutes except on their accuracy, and any questions on their accuracy shall be raised by motion. After any questions on the Minutes have been dealt with the Mayor shall sign the Minutes.

### *Submission to Council*

- (3) The Minutes of each Council meeting (including Extraordinary Council meetings convened in accordance with paragraph 3 of Schedule 12 to the Local Government Act 1972) shall be presented to the next scheduled Council meeting for approval.

## **8. Announcements by the Mayor, Leader of the Council, Cabinet Members and Chief Executive**

- (1) No discussion shall take place on any announcement made by the Mayor or Chief Executive.
- (2) Any Member may propose that the subject matter of any announcement be referred to Cabinet or an appropriate Committee, Sub-Committee, or Panel and such a motion, on being seconded, shall be put to the vote immediately.

## **9. Presentation of Petitions by Members of the Council and Members of the Public**

### *Presentation of Petitions*

- (1) Petitions on issues on which the Council has powers or duties or which affect the area of Kirklees may be presented by a Member or any member of the public to any meeting of the Council (except the meetings of Annual, Budget or Extra-ordinary Council) or an appropriate Committee, Sub-Committee or Panel meeting.
- (2) When a petition is received at a Council meeting no discussion shall take place on the item.

### *Referral of Subject Matter*

- (3) The Mayor may direct that the subject matter of a petition be referred to an appropriate Service Director for investigation and report to Cabinet or an appropriate Committee.

#### 9a. Council's Petition Scheme – Council Debates

In accordance with the Council's Petition Scheme (as approved by Cabinet on 6 June 2012), if a validated petition contains more than 3000 signatures, the Petition —Organiser **(or their representative)** will be permitted five minutes to present their petition to Council and the —subject matter will then be debated by Council for a maximum of 15 minutes.

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#### 10. Deputations

##### *Receiving of Deputations*

- (1) Deputations on issues on which the Council has powers or duties or which affect the area of Kirklees may be received at any meeting of the Council (except the meetings of Annual, Budget or Extra-Ordinary Council) or at any meeting of an appropriate Committee, or Sub-Committee. The Mayor/Chair in consultation with the Chief Executive shall have discretion to decide whether or not to hear the deputation.
- (2) All deputations should be submitted at least 24 hours prior to the meeting.

##### *Deputations which will not be received*

- (23) A deputation will not be received if the Chief Executive considers that it includes references to the following:
- (a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.
  - (b) Information relating to complaints made under statutory provisions which have not been finally dealt with.
  - (c) Information concerning the merit of applications or other matters currently before the Council, Cabinet or a Committee, Sub-committee, Panel or Officers for determination in respect of which the Council is under a duty to act quasi judicially.
  - (d) Information of a personal nature or which is defamatory, offensive, frivolous, repetitive or vexatious.
- (34) Deputations with the sole or predominant purpose of promoting any company's or individual's own business interests or financial position will not be permitted.

##### *Size of Deputation and Speech*

- (45) The deputation shall not exceed five persons and the speech shall not exceed five minutes.
- (56) When a deputation is received at a Council meeting, no discussion shall take place on the item but the relevant Cabinet Member shall respond to the deputation. The Cabinet Member's response shall not exceed five minutes.

(67) The Mayor shall have the discretion to allow any other Member of the Council to respond to a deputation in exceptional circumstances. For example, in order to respond to personal attacks made during the course of a deputation. Such response shall not exceed five minutes.

*Referral of Subject Matter*

(78) The Mayor may direct that the subject matter of a deputation be referred to an appropriate Service Director for investigation and report to Cabinet or an appropriate Committee.

**11. Questions by Members of the Public at Council, Committee, Sub-Committee and Panel meetings**

*Who Can Ask A Question?*

(1) ~~\_\_\_\_\_~~ (1)(a) Any Member of the public resident in Kirklees may, subject to the provisions of this Rule, ask the Leader, or any Members of Cabinet, a question on any issue which comes within that individual's area of responsibility and which affects the area of Kirklees.

~~\_\_\_\_\_~~ (b) ~~\_\_\_\_\_~~ The Cabinet Member may, subject to the provisions of this Rule, ask that a question be referred to the Mayor or any Chairs of a Committee or any joint authority spokesperson and the Mayor, Chair or joint authority spokesperson shall respond within a reasonable period of time to such question.

At any Committee, Sub-Committee or Panel meeting, any such Member of the public may similarly ask the Chair of that body a question on any issue over which that body has any powers or duties.

*When Questions Cannot Be Asked*

(2) Questions may not be asked at;

- (a) the Annual Council Meeting
- (b) the Budget Council Meeting;

or during the period from:

- (c) the announcement of a General Election to polling day (inclusive) or
- (d) the publication of the notice of ordinary elections for the Council to polling day (inclusive).

*Questions Which Will Not Be Answered*

(3) Questions will not be answered if the Chief Executive considers that they include references to the following:-

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- (a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.
- (b) Questions relating to complaints made under statutory provisions which have not been finally dealt with.
- (c) Questions about the merit of applications or other matters currently before the Council, Cabinet or a Committee, Sub-Committee, Panel or Officers for determination in respect of which the Council is under a duty to act quasi judicially.
- (d) Questions of a personal nature or which are defamatory, offensive, frivolous, repetitive or vexatious.

*Questions To Be Within Terms of Reference*

- (4) The Chair or Leader may decline to answer a proposed question if in his or her opinion it is not within the terms of reference of the Cabinet, Committee, Sub-Committee or Panel concerned or is not relevant to the functions of the Cabinet, Committee, Sub-Committee or Panel concerned.

*Time Allowed for Questions*

- (5) The period allowed for the asking and answering of public questions at any one meeting shall not exceed 15 minutes. Any Member of the Cabinet, Committee or Panel may move an extension of this period should there be questions unanswered. Such a motion shall be moved and seconded and be put without discussion. At any one meeting no person may ask more than two questions and no more than two questions may be asked on behalf of one organisation. A questioner may also put one supplementary question to the Member for each original question asked. Any question which cannot be dealt with during public question time will be dealt with by a written answer.

*Answers to Questions*

- (6) The Member to whom the question has been put may nominate another Member to answer (if that Member agrees).

The Member to whom the question has been put may not refuse to answer the question.

An answer may take the form of:

- (a) a direct oral answer; or
- (b) a reference to a publication, where the desired information is contained in a publication of the Council, the Cabinet or a Committee, Sub-Committee or Panel; or
- (c) a written answer where the reply to the question cannot conveniently be given orally.

### *Recording in Minutes*

- (7) The Service Director - Legal, Governance and Commissioning shall record in the Minutes of the meeting the question(s) and the name of the respondent.

### *Questions Ruled Out of Order*

- (8) If the Chair is of the opinion that the question is of a personal nature, or that in the interests of the Council it is undesirable or is otherwise out of order, he or she shall not allow the question to be put. This right of refusal also applies to the Chair at a Committee, Sub-Committee or Panel meeting.

### *Referral of Subject Matter*

- (9) In the case of public questions presented to Council meetings, there shall be no discussion on the question or the answer but a Member may propose that the subject matter of the question be placed on the Agenda for the next ordinary meeting of Cabinet or an appropriate Committee, Sub-Committee or Panel. Such a motion shall be moved and seconded and put without discussion.

## **12. Written Questions by Members**

-The exemptions as set out at CPR 11 (3) also apply to this Rule (CPR 12).

The following provisions shall apply to written questions by Members which must be received by the Service Director - Legal, Governance and Commissioning by 10.00 a.m. on the working day before the Council meeting.

- (1) —Any member of Council may put a written question to the Leader of the Council, a member of the Cabinet, a Chair of a Committee, Sub-Committee or Panel or a spokesperson of a Joint Committee or External Body, as defined at Rule 13 (4). Subject to the Mayor's/Chair's discretion, a 3 minute time limit applies for individual questions to be put.
- (2) The Mayor/Chair in consultation with the Chief Executive may determine that a question shall not be put where the question appears defamatory, vexatious or requires the disclosure of confidential or exempt information.
- (3) Following consideration of any questions arising from Rule 12 (1) above, questions will be timetabled in the order which they are received by the Governance Team.
- (4) If a Member who has submitted a question in accordance with Rule 12 is not present at the meeting at the time when the question(s) submitted is/are due to be put to a Member the question(s) will fall.
- (5) The Member to whom the question has been put shall give an oral answer at the Council meeting or may nominate at any time before or during a meeting another Member to answer if that Member agrees.
- (6) An answer may take the form of:

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- (a) a direct oral answer; or
  - (b) a reference to a publication of the Council which contains the desired information; or
  - (c) a written answer circulated to all Members within 7 days of the Council meeting.
- (7) The period allowed for written questions at any one meeting shall not exceed 30 minutes. A 5 minute time limit shall apply for individual responses to questions. -The same time limit shall also apply to individual responses to supplementary questions, subject in both cases to the Mayor's discretion to increase the time allowed for responses in appropriate circumstances.
- (8) ~~(i) Where written questions are not addressed within the above timescale, then the question will be answered by written reply, and the response shall be copied to all Members of the Council, unless the Member asking the question specifically requests (within 48 hours of the meeting concluding) that the question is referred to the next a future relevant Cabinet / Committee / Sub-Committee / Panel meeting for reply. Any such questions will only be responded to if the Member who put forward the original question to the Council meeting is in attendance at the Cabinet / Committee / Sub-Committee / Panel meeting to ask the question, or if the Member, within 7 days of the Council, Cabinet / Committee/ Sub-Committee /Panel meeting (as appropriate), has requested a written response to his / her question.~~
- ~~(ii) Written questions to spokespersons of Joint Authorities or any Other Bodies not dealt with within the above timescale will be answered by means of a written reply within 7 days of the meeting and be circulated to all Members of the Council.~~
- (9) When an answer to a written question has been given, the Member who asked it may ask one supplementary question relating to the same topic. Such a supplementary question must follow straight on from the Member's answer to the original question. In circumstances where the responding Councillor has elected, pursuant to Rule 12(6)(c), to provide a written answer to a question, no supplementary question will be permitted.
- (10) A written question, as well as any supplementary question, must be relevant to the Terms of Reference or powers or duties of Cabinet or of the relevant Committee / Sub-Committee / Panel /Joint Committee or External Body or affect the area of Kirklees and should not be of a personal nature or one which is defamatory, offensive, frivolous, repetitive or vexatious.
- (11) The Service Director - Legal, Governance and Commissioning shall record in the Minutes of the meeting the question(s) and the name of the respondent. This will not include any supplementary question and the answer thereto. Supplementary questions and answers will be recorded as part of the webcast and held on the public webcast facility for a period of 12 months.

**13. Procedure at Council Meetings in Relation to Reports and/or Minutes of Cabinet and Committees**

~~(1) (1)~~ *Minutes for Information / Reports which require approval*

- (i) Any matter expressly referred to Council by Cabinet or a Committee for determination shall be dealt with first.
- (ii) Minutes of meetings of Cabinet, ~~and~~ Committees, plus minutes of and WYCA meetings shall be presented to Council meetings for information and as a basis for questioning and comment. There shall be no need for any motion or vote to receive them. If the minutes are not considered due to lack of time they shall be deemed to have been presented to Council and will not, therefore, require resubmission.

(2) *Questions / Comments on Cabinet Minutes*

- (i) The Minutes of Cabinet shall be submitted to Ordinary meetings of the Council followed by those of the Cabinet Committee – Local Issues.
- (ii) Prior to the start of questions to Cabinet Members, Portfolio Holders may make a report, not exceeding 10 minutes in length per Cabinet Member, setting out his / her Portfolio Plan for the municipal year, or on progress against that Plan. Comments and statements by Cabinet Members shall not exceed 30 minutes in duration including any questions arising from the information provided. All Cabinet Members will be required to make Council aware of their Portfolio Plan at the start of the municipal year either verbally or in writing circulated to all Members and to report on progress against that Plan at least once in the municipal year.
- (iii) Questions may be asked by any Member of any Cabinet Members whether on a specific matter contained within the minutes or any matter generally which is in the portfolio of the Cabinet Member. There is no restriction on the number of questions Members may ask within the allotted time but each individual Member is only permitted to ask one question together with one supplementary question at any one time.

~~(iv)~~ Any member may, in addition to or instead of exercising their rights under Rule 13(2)(iii), comment once for a maximum of five minutes on any item within the Cabinet minutes presented to the meeting.

~~(v)~~ The portfolios will appear in alphabetical order on the Agenda and questions will be addressed to the Cabinet Member whose portfolio is at the top of the list. Once questions to that Cabinet Member have been completed, his or her portfolio will fall to the bottom of the list and questions will be addressed to the second, third etc., until the allotted time is completed whereupon the portfolio of the Cabinet Member being questioned will fall to the bottom of the list. At the next meeting the list will begin where it ended at the previous meeting, subject to the portfolio which is the subject of a progress report to the meeting being at the top of the list. During this item Members will have the opportunity

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to question Cabinet Members (and other Members appearing on the schedule) on meetings/discussions with external organisations. Any such question will be answered immediately in the manner provided for in Rule 13(4).

~~(vi)~~ Subject to 5(i) of this Rule, Cabinet members will have a right of reply before questions are put to the Cabinet member next in alphabetical order.

~~(iv)(vii)~~ In circumstances where the Leader has no specific portfolio allocated to him/her the Agenda will provide that he/she heads the list of Cabinet Members for the purposes of Rule 13(2)(v). Once questions to the Leader have been completed he/she will fall to the bottom of the list and questions to Cabinet Members with specific portfolios will proceed in accordance with the provisions of Rule 13(2)(v).

~~(v)~~ The portfolios will appear in alphabetical order on the Agenda and questions will be addressed to the Cabinet Member whose portfolio is at the top of the list. Once questions to that Cabinet Member have been completed, his or her portfolio will fall to the bottom of the list and questions will be addressed to the second, third etc., until the allotted time is completed whereupon the portfolio of the Cabinet Member being questioned will fall to the bottom of the list. At the next meeting the list will begin where it ended at the previous meeting, subject to the portfolio which is the subject of a progress report to the meeting being at the top of the list. During this item Members will have the opportunity to question Cabinet Members (and other Members appearing on the schedule) on meetings/discussions with external organisations. Any such question will be answered immediately in the manner provided for in Rule 13(4).

~~(v)~~ Subject to 5(i) of this Rule, Cabinet members will have a right of reply before questions are put to the Cabinet member next in alphabetical order.

~~(vi)~~ In circumstances where the Leader has no specific portfolio allocated to him/her the Agenda will provide that he/she heads the list of Cabinet Members for the purposes of Rule 13(2)(v). Once questions to the Leader have been completed he/she will fall to the bottom of the list and questions to Cabinet Members with specific portfolios will proceed in accordance with the provisions of Rule 13(2)(v).

(3) Questions / Comments on Committee Minutes

- (i) The Minutes of other Committees submitted to Ordinary meetings of the Council shall be set out in alphabetical order.
- (ii) Any Member may comment on any item within the Committee minutes presented to the meeting
- (iii) Any Member may ask the chair of the relevant Committee a question upon any item within that Committee's Terms of Reference.

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- (iv) The Chair of Cabinet, a Cabinet Committee or Cabinet Member or the Chair of a Committee may make a statement at the time that the report/Minutes is/are considered on any matter within the Terms of Reference or which is relevant to the function of Cabinet or that Committee, or which is a matter of importance.

(4) *Questions to Chairs of Committees/Sub-Committees/Panels, Lead Members of Standing Scrutiny Panels and Spokespersons of Joint Committees and External Bodies*

(The exemptions as set out at CPR 11 (3) also apply to this Rule (CPR 13)

- (i) Any Member may ask the Chair of the relevant Committee/Sub-Committee/Panel or the Lead Member of a Standing Scrutiny Panel a question upon any item within the Terms of Reference of that Committee/Sub-Committee/ Panel or Standing Scrutiny Panel (as applicable). Any Member may also ask a question of the relevant spokesperson for any of the Joint Committees or external bodies (including regional and sub-regional bodies) identified in Rule 13(4)(ii).
- (ii) For the purposes of this Rule, questions may be asked of spokespersons or representatives of the following Joint Committees or External Bodies:
  - (a) Kirklees Neighbourhood Housing
  - (b) Kirklees Active Leisure
  - (c) West Yorkshire Combined Authority (and its Committees)
  - (d) West Yorkshire Fire and Rescue Authority
  - (e) West Yorkshire Police and Crime Panel
  - (f) West Yorkshire Joint Services Committee

(The Council's Monitoring Officer may update the above list as appropriate).

- (iii) The list to persons (by virtue of position) to whom questions can be asked will be set out in the agenda in alphabetical order and questions will be addressed in the order listed. At the next meeting, the list will begin where it ended at the previous meeting.

(5) *Time Permitted*

- (i) Subject to the time limit for speaking set out in CPR 13 (2) the maximum time permitted for consideration of matters in CPR (1) – (3) including comments and questions on Minutes to Cabinet Members shall be a maximum of 60 minutes, and the time permitted for comments and questions to Chairs of Committees/Sub Committees/Panels and representatives on outside bodies shall be a maximum of 30 minutes, provided that there is provision under Rule 5 for consideration of issues under CPR 13.

**14. Notices of Motion**

*Submission of Motions*

- (1) Every notice of motion (with the exception of those proposed in accordance with Rules 15, 18(16) and 19) shall be submitted in writing and delivered to the Service Director - Legal, Governance and Commissioning by 9.00 a.m. on the sixth working day before the date of the Council meeting. Each motion must be signed by not less than two Members of the Council. Motions (including re-submitted Motions pursuant to CPR 16(5)) will only be accepted for the next scheduled Council meeting (except Annual and Budget Councils) from 10.00am onwards following the day of the previous Council meeting. Any motions re-submitted will be listed on the agenda in the same order as they were listed for the previous meeting. Any further (new) motions will be listed after re-submitted Motions. The Chief Executive, in consultation with the Mayor, shall have authority to re-order the Motions as appropriate. The Chief Executive will inform Group Leaders when such action is being taken.

#### *Recording of Motions*

- (2) The Service Director - Legal, Governance and Commissioning will record the date and time of receipt of each motion in a register. This register shall be open to inspection to every Member of the Council.

#### *Motions Which Have Revenue Effects*

- (3) No Motion may have the effect of increasing the expenditure or reducing the revenue of the Council other than in the form of a reference to Cabinet or the appropriate Committee for consideration. (This provision does not apply for the setting of the Council Tax).

#### *Relevance*

- (4) Every motion shall be relevant to some matter in relation to which the Council has powers or duties and which affects the area of Kirklees.

#### *Motions Not Accepted*

- (5) If notice is given of any motion which, in the opinion of the Chief Executive is out of order, illegal, irregular or improper, the Chief Executive in consultation with the Mayor shall determine whether to accept its inclusion on the agenda. If a motion is not deemed acceptable the Chief Executive shall inform the Members who gave notice of the item.

#### *Withdrawal*

- (6) A Member who has given notice of motion may subsequently withdraw by writing to the Service Director - Legal, Governance and Commissioning.

#### *Inclusion on Council Agenda*

- (7) The Service Director - Legal, Governance and Commissioning shall set out in the agenda for each Council meeting the motions received and accepted in the order they were received.

#### *Moving of Motions*

- (8) If a motion set out in the summons is not moved either by the Member who gave notice or by another Member on their behalf, it shall be treated as withdrawn and shall not be considered again without fresh notice. Alternatively, the Council may consent to postpone consideration of a motion to the next meeting.

#### *Receipt of Amendments*

- (9) Any proposed amendment to a motion which has been included in the summons for a meeting, shall be delivered to the Service Director - Legal, Governance and Commissioning in accordance with the following timescales:-
- (a) by 10.00am on the day of Council if the meeting is to start at 5.30 p.m. or
  - (b) by 2.00 p.m. on the day before a Council meeting which is to start in a morning.

#### *Motions on Identical Subjects*

- (10) Where motions have been submitted to Council by different groups which relate to the same subject matter, then the movers shall be given the opportunity to agree a composite motion by 2.00 p.m. on the second working day before the date of the Council meeting. Notice of the composite shall be given to the Service Director - Legal, Governance and Commissioning who will notify the groups or individual Members to allow them to consider the proposals.

#### *Alterations to Motions and Amendments*

- (11) Alterations to the wording of any motion or amendment (made in accordance with Council Procedure Rule 18(11) may be made with the agreement of the Members moving and seconding the motion or amendment and with the meeting's consent' provided that when such alterations are agreed copies shall be made available. Only alterations which could be made as an amendment may be made.

#### *Need for Debate*

- (12) With the exception of those moved under (5) of this Rule, no motion made under this Rule may be voted on unless there has been a debate.

### **15. Motions and Amendments Which May Be Moved Without Notice**

The following motions and amendments may be moved without notice:

- (1) Appointment of a Chair of the meeting at which the motion is moved.

- (2) Questioning the accuracy of the Minutes of the previous meeting of the Council.
- (3) To change the order of business in the Agenda.
- (4) Reference to Cabinet a Committee, Sub-Committee or Panel for further consideration.
- (5) Appointment of Leader or a Committee, or Member thereof arising from an item on the Agenda for the meeting.
- (6) That leave be given to withdraw a motion.
- (7) Motions and amendments in respect of urgent business under Rule 6.
- (8) That the Council proceed to the next business.
- (9) Motions under Rule 11(5) and 11(9) as to questions by electors at Council Meetings.
- (10) Amendments to any motion to approve the recommendations of Cabinet or a Committee.
- (11) That the question be now put.
- (12) Amendments to any Motion except amendments to notices of motion pursuant to Rule 14(8) and (9) or where notice is required under Rule 19.
- (13) That the debate be now adjourned.
- (14) That the Council do now adjourn.
- (15) Adoption of reports of Officers and any consequent resolutions.
- (16) Suspending these Rules in accordance with Rule 47.
- (17) Motion to exclude the public.
- (18) That a Member named under Rule 21 be not heard further or leave the meeting.
- (19) Giving consent or leave of the Council where the consent or leave of the Council is required by these Rules.
- (20) That the subject matter of an announcement made by the Mayor, or the Chief Executive under Rule 8 be referred to Cabinet or the appropriate Committee, Sub-Committee or Panel.
- (21) Motions under Rule 16 to continue a Council meeting after 9.00 p.m.
- (22) That the Council do now adjourn for discussion in smaller groups or in some other form.

## **16. Termination and Adjournment of Meeting**

- (1) The Mayor, in consultation with the Chief Executive, may adjourn the meeting at any time and may incorporate a scheduled break of the meeting as required.
- (2) A meeting of the Council (except the Annual Meeting) shall terminate at 9.00 p.m. unless a Member moves, prior to 9.00pm, a motion that the meeting shall continue until (i) a later time (to be specified in the motion) or (ii) the conclusion of the business of the meeting. If the motion is seconded it shall be put to the meeting without comment.
- (3) If the motion is passed the meeting shall continue until the time specified or until the conclusion of the business of the meeting.
- (4) At 9.00 p.m. or such later time as the Council has agreed, the Mayor shall have discretion to grant an additional period of time to allow the item under consideration at that time to be concluded. Otherwise, the Mayor shall
  - a) allow no further points of order to be raised by any other Member.
  - b) interrupt the discussion of the item being considered by the meeting.
  - c) allow the proposer of the motion then under consideration a maximum of five minutes to reply to the debate unless he/she seeks leave to withdraw the motion.
  - d) put (without discussion) all of the questions necessary to dispose of that motion, unless the motion is withdrawn.
  - e) put (without discussion) all of the questions necessary to complete the consideration of any reports of Cabinet or any Committee, which are on the Agenda for the meeting, unless the Member appointed to preside in any such body (or a person on his/her behalf) indicates a wish to the contrary.
- (5) Any Motion given under Rule 14 not considered at an Ordinary Council meeting due to time constraints shall automatically be deemed withdrawn unless the Service Director – Legal, Governance and Commissioning receives written confirmation (from the Member or Group who submitted the Motion) by 5pm on the fifth working day following that Council meeting that the Motion should be rolled over for consideration at the next Ordinary Council meeting.
- (6) Where proceedings are in progress either at 9.00 p.m. or at a later time (specifically agreed by the Council in accordance with a motion to that effect), the provisions of Rule 24(3) as to recorded votes shall not apply.
- (7) Following any processes outlined above, the Mayor shall finally close the meeting.

## **17. Opposition Priority Business**

- (1) This Rule applies where there is a majority group of members of the Council.
- (2) A minority group may require that any one item of business placed on the Agenda for any Council meeting be treated as opposition priority business. Such a requirement will only be considered if the Leader of that Group has submitted it in writing to the Chief Executive at least seven days before the Council meeting.
- (3) Where the Chief Executive receives more than one such request for a meeting, he/she shall decide which shall be selected so as to ensure that as far as is possible each minority group's share of opposition priority business reflects the relative size of those groups in the period from the last Annual Meeting of the Council.
- (4) Service Director - Legal, Governance and Commissioning shall indicate on the Agenda which item of business (if any) is to be treated as opposition priority business.
- (5) If consideration of an item of opposition priority business has not begun two hours after the start of the meeting it will be brought forward and considered immediately after the conclusion of the item of business then under discussion.

## **18. Rules of Debate**

### *Motions and Amendments*

- (1) A motion or amendment shall not be discussed unless it has been proposed and seconded. Unless notice of the motion or amendment has already been submitted in accordance with Rules 14 and 19, the Mayor may also require that it be written out and handed to him/her before it is discussed further or put to the meeting.
- (2) Members when seconding a motion or amendment may, if they then declare their intention to do so, reserve their right to speak until a later period in the debate on the motion or any amendment.

### *Seconders Speech*

- (3) The Member seconding the motion or amendment and reserving the right to speak shall further indicate to the Mayor during the debate when he/she wishes to speak.

### *List of Names of Those Wishing to Speak*

- (4) During the debate Members should indicate their wish to speak by use of their individual voting console. The Mayor shall have absolute discretion to alter the order of those wishing to speak and may close the list at any time. This provision does not apply to:
  - the Mayor
  - the mover of the original motion

- the seconder of the original motion who has reserved the right to speak
- Members rising on a point of order or to provide a personal explanation
- persons moving motions and amendments under Rule 15

*Addressing the Mayor*

- (5) Unless the Mayor indicates otherwise, a Member must stand and address the Mayor while speaking. If two or more Members rise, the Mayor shall request one to speak and the other(s) to be seated. While a Member is speaking the other Members shall remain seated and be silent, unless rising on a point of order or in personal explanation.

*Content and Length of Speeches*

- (6) No speech of a Member of the Council in moving a motion to adopt the report of Cabinet or a Committee, or a motion under Rule 14 shall exceed 10 minutes and no other speech on any item before Council shall exceed 5 minutes, except:-
- (a) by consent of the Council, or
  - (b) The Leader, or the Leader's nominee's annual budget speech on the setting of the amounts of Council Tax.

*Additional Time For Speeches*

- (7) If the Mayor is of the opinion that the subject matter is of special importance or the Member requests additional time, the Mayor may permit the Member to continue for as long as he/she allows.

*When a Member May Speak Again - Adoption of Reports*

- (8) On a motion to adopt the report of Cabinet or a Committee, a Member may speak once in general regarding the report. In addition, he/she may move or second or speak to one amendment only on each item in the report requiring a decision by the Council.

*When a Member May Speak Again - Other Motions*

- (9) On any other motion a Member shall speak only once whilst the motion is the subject of debate. A Member may also move, second or speak to one amendment. If consideration of an amendment begins before a Member has had the opportunity to speak on the motion he/she may still exercise the right to speak on the motion.

*Exceptions to Speaking Only Once*

- (10) The requirement that a Member shall only speak once shall not prevent a



Member from speaking:

- (i) in exercise of a right to reply,
- (ii) on a point of order,
- (iii) by way of personal explanation.

#### *Amendments to Motions*

- (11) An amendment shall be relevant to the motion and shall be either:
- (a) to refer a subject of debate to Cabinet or a Committee, for consideration or reconsideration;
  - (b) to leave out words;
  - (c) to leave out words and insert or add others;
  - (d) to insert or add words;

The omission, insertion or addition of words must not have the effect of blocking the motion which is under consideration by the Council. In addition the amendment must not have the effect of increasing the expenditure or reducing the revenue of the Council other than in the form of a referral to Cabinet or the relevant Committee for consideration. (This provision does not apply for the setting of the Council Tax).

#### *Discussion of Amendments*

- (12) Except where the voting procedure in Rule 24(6) applies only one amendment may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of. However, the Mayor may permit two or more amendments to be discussed together if he/she considers that this would be helpful in the circumstances. Where two or more amendments are discussed together they shall be voted upon in the order in which they were moved.

#### *Motion as Amended*

- (13) If an amendment is lost, other amendments may be moved on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.

#### *Withdrawal of Motion/Amendment*

- (14) A motion or an amendment may be withdrawn by the proposer with the consent of the seconder and of the Council (which shall be decided upon without debate). No Member may speak on it after the proposer has been granted permission for its withdrawal.

#### *Right of Reply*

- (15) The proposer of a motion shall have the right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the proposer of the original motion shall have also the right to reply at the close of such debate on the amendment, and shall not otherwise speak on the amendment. Such a reply shall be confined to matters raised in the debate on the motion or amendment, as the case may be. The proposer of an amendment shall have no right to reply to the debate on the amendment. However where an amendment is carried the proposer of that amendment (now the substantive motion) shall have a right of reply at the close of the debate and on any subsequent amendment.

*Motions which may be moved during debate*

- (16) When a motion is under debate no other motion shall be moved except the following:-
- (a) to amend or withdraw the motion;
  - (b) to adjourn the meeting;
  - (c) to adjourn the debate;
  - (d) to proceed to the next business
  - (e) that the question be now put;
  - (f) that a Member be not further heard on the item of business before the Council;
  - (g) by the Mayor under Rule 21(2);
  - (h) to exclude the public;
  - (i) to withdraw or amend proceedings in accordance with paragraph (14) of this Rule.

*Closure Motion*

- (17) A Member may move without comment at the conclusion of a speech of another Member "That the question be now put", "That the debate be now adjourned" or "That the Council do now adjourn". If such a motion is seconded, the Mayor shall proceed as follows:-
- (a) On a motion "that the question be now put", the Mayor shall put this motion to the vote, unless he or she is of the opinion that the matter before the meeting has not been discussed sufficiently. [In coming to that opinion, the Mayor shall give consideration to the number of outstanding speakers who have indicated that they wish to contribute to the debate.](#) If the motion 'that the question be now put' is voted on and carried, the Mayor will allow the proposer of the original motion the right to reply under paragraph (15) above before putting the motion under discussion to the vote.
  - (b) On a motion "to adjourn the debate or meeting". The Mayor shall put the motion for an adjournment to the vote without giving the mover of the original motion the right to reply, if he or she is of the opinion that the matter before the meeting has not been sufficiently discussed and cannot reasonably be discussed at that meeting.

*Point of Order and Personal Explanation*

(18) A Member may rise on a point of order or in personal explanation, and shall be entitled to be heard immediately. A point of order shall relate only to an alleged breach of one of these Rules or the law and the Member shall specify the Rule or the law and the way in which it has been broken. A personal explanation shall be confined to some material part of a speech by the Member in the Council meeting which may appear to have been misunderstood in the present debate. A personal explanation may not be made in any other circumstances and in particular reference in a speech to another Member does not give that Member any right of personal explanation except in circumstances specified above.

(19) The ruling of the Mayor on a point of order or on the admissibility of a personal explanation will be final.

*Relaxation by the Mayor of Rules of Debate*

(20) Before the start of the debate on any item or motion the Mayor may determine, after consultation with the Chief Executive, that any of the requirements of this Rule shall be relaxed or waived during the debate on that item or motion.

*Mayor's Authority*

(21) Whenever the Mayor rises during a debate, a Member who is standing and speaking shall sit down and the Council shall be silent. Afterwards, a Member may continue his or her speech unless the Mayor determines otherwise.

(22) The time permitted for consideration of scrutiny reports under Rule 5 (3) (n) shall be a maximum of 60 minutes.

(23) The time permitted for consideration of key issues shall be a maximum of 60 minutes

(24) The time permitted under (22) and (23) of this Rule may be extended at the discretion of the Mayor in consultation with the Chief Executive.

*Mayor's Casting Vote*

(25) The Mayor, or in their absence, the person presiding at the Council meeting, shall have a second or casting vote in the case of an equality of votes.

**19. Motion to Make Statutory Calculations and to set Amounts of Council Tax**

*Motion referred from Cabinet*

(1) At least 14 days before the date fixed for calculating the amounts required under Sections 32 to 36 of the Local Government Finance Act, 1992, and setting the amounts of Council Tax, the Chief Executive shall distribute to all Members of the Council the motion which has been proposed by the Cabinet for the Council, together with the draft Revenue Budget.

*Motion distributed by the Leader*

- (2) If the Cabinet is not able to recommend a motion to the Council meeting, the Leader shall distribute to all Members of the Council at least 14 days in advance a motion to be presented to the Council meeting together with the draft Revenue Budget. This motion must be presented in the names of the Chair of the Cabinet and be supported by at least two other Members of the Council.

#### *Amendments*

- (3) An amendment to a motion proposed under paragraph (1) above, cannot be moved unless it has been submitted and deemed to be financially sound and sustainable by the Chief Executive no later than 7 days prior to the date of the Budget Meeting. The Notice of such an amendment must be delivered to the Chief Executive and must specify the terms of the proposed amendment and the effect which it will have on the draft Revenue Budget.

Amendments to the Budget Motion cannot be accepted unless the Chief Executive is satisfied, upon the advice of the Service Director - Finance, ~~Information and Transactional Services~~, that the proposed amendment is financially sound and sustainable.

#### *Notification of Amendments*

- (4) The Chief Executive shall inform all Members of the Council of any amendments received and the order of receipt. The amendments shall be considered at the meeting in the same order that they have been received by the Chief Executive.

#### *Debating the Motion and Amendments*

- (5) (i) The Mover of any Amendment to the Budget Motion shall speak for no longer than ten minutes, or for the same time taken by the Mover of the Budget Motion, whichever is the longer.  
  
(ii) If a motion or an amendment described in paragraph (1), (2) and (3) above is not carried at the Council meeting, further motions and amendments may be moved and seconded without notice for consideration and determination. Copies of these additional motions or amendments must be made available to each Member of the Council by the mover or seconder before any debate begins.  
  
(iii) In the event that an amendment is approved, thereby becoming the substantive motion, this resolution shall become the Council's budget and no further amendments shall be debated or voted upon.  
  
(iv) In order to engage in a full debate about the Budget and amendments these rules will allow reference to be made by a member in the Budget debate, to the Budget Motion and / or any amendments submitted by a political group related to the budget during their contribution to the debate whether that be when speaking on the Budget Motion or an amendment to it.

#### *Limitations*

- (6) The introduction of a new motion or amendment on the day of the Council meeting by a Political Group represented on the Council will not be permitted unless it gave notice of a motion or an amendment under paragraph (1), (2) and (3) above for inclusion on the summons for the meeting.

*Recording of Votes relating to Council Tax etc.*

- (7) Immediately after any vote is taken at a Budget Decision Meeting of the Council on any decision or amendment relating to the approval of the General Fund, or the statutory calculation for the setting of the Council Tax, there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting,
- (8) For the purposes of Rule 19 (7)
- a) "Budget Decision" means a meeting of the Council at which it:
- (i) makes a calculation (whether originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ of the Local Government Finance Act 1992(b); or
  - (ii) issues a precept under Chapter 4 of the Part 1 of that Act;

and includes a meeting where making the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting.

**20. Motion affecting persons employed by the Council**

If a question arises at a meeting of the Council on the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by the Council, it shall not be considered until the Council has determined whether or not the public and press shall be excluded.

**21. Members Conduct**

*Member not be heard*

- (1) If at a Council meeting any Member of the Council (in the opinion of the Mayor) persistently disregards the ruling of the Mayor or behaves irregularly, improperly, offensively or obstructs the business of the Council, the Mayor or any other Member may move "That the Member named be not heard further on the item of business before the Council". If the motion is seconded it shall be determined without discussion.

*Member to leave the meeting*

- (2) If the named Member continues his or her misconduct after a motion under paragraph (1) above has been carried, the Mayor shall either move "That the Member named do leave the meeting" (in which case the motion shall be put

and determined without seconding or discussion), or adjourn the meeting for as long as he/she considers necessary.

*General Disturbance*

- (3) In the event of general disturbance which in the opinion of the Mayor renders the despatch of business impossible, the Mayor may decide to adjourn the meeting of the Council for as long as he/she considers necessary.

*Mayor's Power to Adjourn*

- (4) The provisions of this Rule do not limit the Mayor's power to adjourn the meeting at any time under Rule 16(1).

**22. Disturbance by the Public**

If members of the public interrupt the proceedings of any meeting, the Mayor shall warn them regarding their conduct. If they continue the interruption, the Mayor shall order their removal from the room. In case of general disturbance in any part of the room open to the public, the Mayor shall order that part to be cleared.

**23. Previous Decisions and Motions**

*Motion to rescind a previous decision*

- (1) No motion to rescind any decision taken within the preceding six months, and no motion or amendment with the same effect as one which has been rejected within the preceding six months, shall be proposed unless notice has been given in accordance with Rule 14 and has been signed by at least 10 Members of the Council. When any such motion or amendment has been disposed of by the Council, no similar motion may be proposed within a further period of six months.

*Motion similar to the one previously rejected - exceptions*

- (2) This Rule shall not apply to motions moved on a recommendation of Cabinet or a Committee, or to motions or amendments moved in accordance with Rule 19.

**24. Voting**

*Show of Hands / Voting Equipment*

- (1) Voting at Council meetings shall be as directed by the Mayor, either by a show of hands or by use of the electronic voting equipment unless a Ballot is agreed under paragraph (4).

*Casting Vote*

- (2) The Mayor, or in his/her absence the Deputy Mayor or the Chair at the time the vote is taken shall have a second or casting vote.

*Recorded Vote*

- (3) Any Member of the Council may request that a recorded vote be taken on an item to record how each Member present at the meeting intended or decided to vote. This request for a recorded vote will only be acceptable if it is supported by at least five other Members and is made before the Mayor has announced the result of the vote.

*Ballots*

- (4) The vote will take place by ballot at the request of any Member supported by at least five other Members. The Mayor/Chair will announce the numerical result of the ballot immediately the result is known.

*Right to require individual votes to be recorded*

- (5) At any meeting of the Council a Member may require that his or her decision in voting for or against or abstaining on an item on the Agenda be recorded in the Minutes of the meeting. This will be effective only if it is proposed by the Member before the Mayor has announced the result of the vote.

*Voting on Appointments (including Mayor and Leader)*

- (6) If there are more than two persons nominated for any appointment to be filled by the Council (including the election of the Mayor and the Leader) and there is no overall majority vote in favour of one person, the following procedure will apply. The name of the person who has received the least number of votes will be struck off the list of nominations and a fresh vote will be taken. This procedure will continue until a majority vote is given in support of one of the persons nominated.

**25. Failure to Attend Meetings**

- (1) In accordance with the Local Government Act 1972, if a Councillor attends no meetings of the Authority for six months the Chief Executive will tell the Council (unless the Member has been granted leave of absence by the Council). The Council will consider whether the absence was caused by some reason approved by them. If they are not satisfied about the cause of the failure, the Member will cease to be a Member of the Council.
- (2) For the purpose of this Rule a meeting of the Authority shall include:-
  - \* the Council, Cabinet or any Committee, Sub-Committee or Panel; or
  - \* any Joint Committee or Joint Board which has Council functions delegated to it;
  - \* any other body at which the Member represents the Council.

**26. Interests of Members which are not Disclosable Pecuniary Interests**

- (1) Any Member who has an interest which is not a Disclosable Pecuniary Interest as described in paragraph 5 of the Council's Code of Conduct in any matter shall comply with the requirements of that Code in respect of that interest ("Other Interest").
- (2) A Member of the Council may declare in a register kept by the Service Director - Legal, Governance and Commissioning his/her membership of any organisation which requires details of its aims, duties or membership to be kept secret. This register will be open to public inspection during office hours.

## 27. Interpretation of these Rules

The ruling of the Mayor, after consultation with the Chief Executive, as to the construction or application of any of these Rules, or as to any proceedings of the Council shall be final.

## (B) Members and Officers Etc.

### 28. Leaders and Business Managers

- (1) Members of the Council may be chosen by each of the political groups on the Council to act as the Leaders, Deputy Leaders and Business Managers of those groups.
- (2) The names of the Leader, Deputy Leader and Business Manager appointed by a political group represented on the Council shall be notified to the Chief Executive. The powers of a Leader shall also be exercisable by the Deputy Leader in the absence of the Leader.

### 29. Inspection of Documents

- (1) A Member of the Council may, for the purposes of his/her duty as a Councillor, on application to the Service Director – Legal, Governance and Commissioning, inspect any document which has been considered by the following subject to the provisions of the Local Government (Access to Information) Act 1985 and the Local Government Act 2000 being met in relation to items determined as exempt information:

Council  
 a Committee  
 a Sub-Committee  
 a Panel

\_\_\_\_\_ For the same purposes a Member may also request that he or she be supplied with a copy of the document. This will be provided if it is practicable.

- (2) Members should not inspect or request a copy of any document relating to a matter in which they have ~~a prejudicial~~ interest, either a disclosable pecuniary interest or an other interest, ~~consider wording – maybe say (whether pecuniary or non-pecuniary))~~ as defined in the Council's Code of Conduct. The Service Director – Legal, Governance and Commissioning may

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decline an application from a Member to inspect a document which would be protected by privilege arising from the relationship of solicitor and client in the event of legal proceedings.

- (3) Copies of all reports and minutes associated with the following meetings shall be kept by the Service Director – Legal, Governance and Commissioning in accordance with the requirements of the Local Government (Access to Information) Act 1985 and the Local Government Act 2000.

Council  
a Committee  
a Sub-Committee  
a Panel

These shall be open to inspection by any Member of the Council during office hours subject to the provisions of those Acts being met in relation to items determined as exempt information.

- ~~(4)~~ ~~(4)~~ The Chief Executive or any Officer of the Council may decline a Member's request to inspect a document, if it contains confidential information. The only exceptions to this rule will be if the Member has a legal right to inspect a document or has obtained the consent of the Cabinet (for matters within its remit) or the Corporate Governance & Audit Committee (for all other matters).

- (5) All requests to inspect documents will be dealt with in accordance with the Council's Access to Information Procedure Rules. Rights in respect of documents under the control of the Cabinet are set out in Rules 24-26 and 25-27 of the Access to Information Procedure Rules.

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### 30. Orders Regarding Works; Inspection of Lands, Premises, etc.

A Member of the Council shall not issue any order regarding any works which are being carried out by or on behalf of the Council. In addition he or she shall not claim, by virtue of being a Member of the Council, any right to inspect or to enter upon any land or premises which the Council has the power or duty to inspect or enter.

### 31. Representation of the Council on Other Bodies

If any Member of the Council is nominated or appointed by or on behalf of the Council to serve as a Member of another body, the appointment shall stand until the next Annual Meeting of the Council or until the first meeting thereafter of the Cabinet or Committee making the nomination or appointment unless:

- (a) the constitution of the other body makes different provisions
- (b) the Council (or the Cabinet, in the case of nominations made by it) at any other time resolves otherwise
- (c) the Member resigns from the outside body by the method required by the body or, if none, by notifying in writing to the Service Director - Legal, Governance and Commissioning.

### **32. Interest of Officers in Contracts**

The Service Director - Legal, Governance and Commissioning shall keep a register to record the details of any Officer of the Council who has given notice of a pecuniary interest in a contract as described by Section 117 of the Local Government Act 1972. This register shall be open to inspection by any Member of the Council during office hours.

### **33. Third Party Recording<sup>1</sup> of Committees, Boards and Panels**

- (1) The Council wants to be open and transparent in the way in which it conducts its decision-making.
- (2) Recording is allowed at all meetings of the authority<sup>2</sup> to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings.
- (3) Filming or other recording of all meetings of the authority, whilst those meetings are to the public, is permitted<sup>3 4</sup>.
- (4) Those wishing to record proceedings should, as a courtesy, inform the chair (or clerk) of the meeting of their intentions to record prior to the commencement of the meeting.
- (5) Recordings may only be taken overtly from the area designated for the public and;
  - a. Recording devices must be in silent mode;
  - b. No flash or additional lighting is permitted;
  - c. Recordings must be taken from one fixed position and must not obstruct others from observing proceedings.
- (6) The Chair of a meeting has the authority to instruct that recordings be stopped where<sup>5</sup>:
  - a. The press and public have been excluded from the meeting due to the nature of (exempt or confidential) business being discussed;
  - b. There is public disturbance or a suspension/ adjournment of a meeting;
  - c. The recording has become disruptive or distracting to the good order and conduct of the meeting;
  - d. Continued recording is against the wishes of an individual<sup>6</sup>.

### **34. Confidentiality of Meetings and Recording of Proceedings**

- (1) The Council's meetings will be held in public unless the Access to Information

<sup>1</sup> This includes both video and audio recording.

<sup>2</sup> Including full Council, committees (boards and panels) established by full Council.

<sup>3</sup> In accordance with any regulations relating to such matters.

<sup>4</sup> All agendas will indicate that records may be made at the meeting by third parties; signage will also be displayed indicating this.

<sup>5</sup> In all cases recording equipment must be switched off.

<sup>6</sup> Where members of the public raise an objection to being recorded, then those individuals will not be filmed. However continued audio recording will be permitted where the contributions are material to the resolutions to be made.

Procedure Rules permit the public to be excluded. Those Rules also deal with public access to documents.

- (2) Any person attending a meeting may take written notes of the proceedings.
- (3) A Member or employee of the Council shall not disclose to any person any document or any matter contained in any document which is marked "Confidential" or "not for publication" except with the permission of the Council, Cabinet, Committee, Sub-Committee, or Panel which considered the item, or if the person concerned has a legal right to inspect the document.

### **(C) Relating To Committees, Sub-Committees, Panels Etc**

#### **35. Appointment of Committees, Sub-Committees and Panels**

- (1) The Council at its Annual Meeting will establish those Committees which are required by law and such other Committees as are deemed necessary to carry out the work of the Council during the municipal year. The Council may at any other time establish new Committees, which are considered necessary to carry out the work of the Council.
- (2) The Council subject to any statutory provision:-
  - (i) shall not appoint any Member of a Committee so as to hold office later than the next Annual Meeting of the Council;
  - (ii) may at any time dissolve a Committee, or alter its membership.
  - (iii) shall not appoint the Leader, the Deputy Leader of the Council or any Members of the Cabinet as members of the Overview and Scrutiny Committee or its Panels;
  - (iv) shall require the post holders of Scrutiny Lead Panel Members – Children (including those who attend Children Homes Regulations 44 visits) and Adoption Panel Members to undertake an Enhanced DBS check in accordance with the DBS policy. The Monitoring Officer may require other members to undertake an enhanced DBS check at her discretion where such checks are justified.

#### Appointment of Sub-Committees, Panels etc.

- (3) At the first meeting of a Committee in the municipal year, it shall establish such Sub-Committees or Panels as are considered necessary. Committees subject to any statutory provision,
  - (i) shall not appoint any Member of a Sub-Committee or Panel so as to hold office later than the next Annual Meeting of the Council.
  - (ii) may at any time dissolve a Sub-Committee or Panel or alter its membership, and
  - (iii) may delegate to any such Sub-Committee or Panel any power or duty delegated to the Committee by the Council.

- (4) A Committee may establish other Sub-Committees or Panels at any time in the municipal year.

Membership of Committees, Sub-Committees, Panels etc.

- (5) The Members on each Committee, or Sub-Committee or Panel shall (so far as legally required) be selected by each of the Political Groups represented on the Council, on the basis of their proportional representation at the date that the Committee, or Sub-Committee, or Panel is appointed.

Proportional Representation of Political Groups not to apply

- (6) The Council may determine that proportional representation shall not apply to any Committee, and any Committee may make a similar determination with respect to any of its Sub-Committees or Panels subject to compliance with the requirements of Section 17 of the Local Government and Housing Act 1989.

Substitute Members

- (7) At the Annual Meeting of the Council a panel of substitute Members will be established, to be available to replace Members of Committees, and Sub-Committees, (except the Health and Well-being Board, the Overview and Scrutiny Management Committee, the Overview and Scrutiny Panels, District Committees, Employee Relations Sub Committee, the Standards Committee and the Standards Sub-Committee) at each meeting during the municipal year as and when required. The names of those Members included on the panel of substitutes will be placed on every notice for a relevant Committee, or Sub-Committee meeting.

Changes to the Substitute Panel and Members of a Committee, Sub-Committee and Panel

- (8) The Business Manager to each Group shall provide the Service Director - Legal, Governance and Commissioning within six clear working days of notice of
- (i) any change(s) to the names of those Members included on the panel of substitutes approved by the Annual Council Meeting; and
  - (ii) any change(s) to the membership of a Committee or Sub-Committee, which do not involve a member of that substitutes panel.

Notice of Substitutes cannot be revoked

- (9) After notice of a substitution has been given for a Committee, Sub-Committee, or Panel meeting it cannot be revoked. Once a Committee or Sub-Committee, or Panel has begun the Member who has been substituted will only be entitled to attend the meeting as an observer. If a Committee or Sub-Committee or Panel meeting is adjourned the change(s) in membership will stand for the purpose of the reconvened meeting.

Membership of a Sub-Committee or Panel to include persons who are not Members of the parent Committee

- (10) The membership of a Sub-Committee or Panel may include persons who are not Members of the Committee by which the Sub-Committee or Panel was appointed.
- (11) Except in cases required by law, or permitted by law and agreed by the appointing body, no co-opted member of any Committee, Sub-Committee or Panel shall be entitled to vote on any matter considered by it.

**36. Observer Attendance by Councillors at Committees, Sub-Committees or Panels**

- (1) Subject to paragraphs (3) and (4) below a Councillor who is not a Member of a Committee, Sub-Committee, or Panel may attend any meeting as an observer. That Councillor shall have the same speaking rights as any Member of that Committee Sub-Committee or Panel. The Councillor cannot:-
  - (a) attend for any item of business in which he or she has a disclosable pecuniary interest as defined in the Council's Code of Conduct for Members and Co-optees ("the Code") unless an appropriate dispensation has been granted by the Council's Monitoring Officer.
  - (b) attend for any item of business on the Committee, Sub-Committee or Panel agenda which personally relates to them as a Councillor or otherwise.
  - (c) remain in a meeting of the Committee, Sub-Committee, or Panel after receiving advice from the Service Director – Legal, Governance and Commissioning that he or she should be excluded from the meeting.
  - (d) ~~retire~~ remain with a Committee, Sub-Committee, or Panel which is exercising a quasi-judicial or administrative function when it is considering its decision.
- (2) Any Member attending a meeting of a Committee, Sub-Committee, or Panel shall under the Agenda Item of "Membership of Committees, Sub-Committees etc." identify themselves as an observer.
- (3) Councillors who attend a Planning Committee or Sub-Committee but who:
  - (a) Are not members of that Planning Committee or Sub-Committee; or
  - (b) Are members of that Planning Committee or Sub-Committee but who have indicated that they will not be voting on an application because, for example, they believe that they may have predetermined it or wish to make representations rather than participate in the determination of the application.

shall be entitled to speak once for a maximum of five minutes.

**37. Attendance by Members of the Public - Permission to Speak**

Any member of the public attending a Committee, Sub-Committee, or Panel (or any other meeting open to the public) may, with the permission of the Mayor/Chair, speak on any item of business to be transacted at that meeting. This speaking right shall not apply to persons who have presented a deputation on the same subject matter at the same meeting. That person shall not be permitted to remain in the meeting when consideration is being given to confidential or exempt information.

**38. Appointment of Chairs and Deputy Chairs of Committees and Sub-Committees/Panels, Lead Members of Scrutiny Panels and Appointments to Outside Bodies, etc.**

- (1) At the Annual Meeting of the Council, the Council will -
  - (i) appoint the Chairs and if considered appropriate the Deputy Chairs of Committees. In default of such appointments by the Council, every Committee, shall be empowered to make the appointment subject to confirmation by the Council;
  - (ii) appoint the Lead Members of the Standing Overview and Scrutiny Panels;
  - (iii) appoint the Members of Outside Bodies, except where membership is appointable by the Cabinet or a Committee, and
  - (iv) agree the dates of meetings of Committees, Sub-Committees, and Panels for the Municipal Year. The alteration of a date may be determined by the respective Chair in consultation with the Service Director - Legal, Governance and Commissioning provided that 7 days' notice of the revised date can be given.
- (2) The Council may at any other time appoint the Chairs (and if considered appropriate the Deputy Chairs of Committees) and the Lead Members of Scrutiny Panels, for the remainder of the Municipal Year.
- (3) At the first meeting of each Committee in the Municipal Year the Chair and if considered appropriate Deputy Chair of its Sub-Committees or Panels shall be appointed for that year.
- (4) Any Committee shall when appointing a Sub-Committee, or Panel under Rule 35(4), also appoint a Chair and if considered necessary a Deputy Chair.
- (5) In the absence of the Chair and Deputy Chair or Lead Member of the Scrutiny Panel ( where appropriate) from a meeting, a Chair shall be chosen for the duration of that particular meeting or until the official Chair, Deputy or Lead Member (as recognised by Council) arrives. The Chair, Deputy Chair or Lead Member (as appropriate) will then assume the Chair when the item under discussion at the time of his or her arrival has been dealt with.
- (6) The Chair and Deputy Chair of every Committee, Sub-Committee/ Panel and the Lead Member of each Scrutiny Panel shall be a Member of the Council.

- (7) A Member of a Committee, Sub-Committee, or Panel may resign membership and the Chair or Deputy Chair of a Committee, Sub-Committee/Panel/ Sub-Group or the Lead Member of a Scrutiny Panel, may resign office by giving notice in writing to the Chief Executive. Any such resignation shall take effect on the date of receipt of the notice.
- (8) The removal from office of the Chair or Deputy Chair of a Committee may only be agreed by the Council on the recommendation of the Corporate Governance & Audit Committee. The removal from office of the Chair of the Overview and Scrutiny Management Committee or any Lead Member of a Scrutiny Panel may only be agreed by Council on the recommendation of that Committee. Only the Committee which appointed a Sub-Committee or Panel may remove the Chair or Deputy Chair of that Sub-Committee or Panel from office.
- (9) No Member of the Cabinet may be appointed as Chair of Appeals Panel, Corporate Governance and Audit Committee, Licensing and Safety Committee, an Planning Area Sub-Committee, Overview and Scrutiny Management Committee (or as the Chair of Health Scrutiny Panel), or Standards Committee.

#### **39. Quorum of Committees, Management Boards, Sub-Committees and Panels**

- (1) Except where ordered by the Council, or authorised by statute, business shall not be transacted at a meeting of any Committee, unless at least one third of the number of the body are present, rounded up to the next whole number if one third is not a whole number.
- (2) Except where ordered by the Council, or authorised by statute or by the Committee which has appointed it, business shall not be transacted at a meeting of any Sub-Committee or Panel unless at least one third of the number of the Sub-Committee or Panel are present, rounded up to the next whole number if one third is not a whole number.
- (3) If the Chair declares there is not a quorum present then the meeting will adjourn immediately. Remaining business will be considered at a date and time fixed by the Chair. If no such date is fixed the business will be considered at the next meeting.
- (4) Where a Committee or Sub-Committee sits to consider an appeal, only those Members who are eligible to attend shall count for the purpose of a quorum.
- (5) No quorum may be less than two Members.
- (6) Committees, Sub-Committees and Panels shall be entitled to meet and transact business prior to the appointment of Co-opted Members.
- (7) Co-opted Members of a Committee, Sub-Committee or Panel shall only be counted for the purposes of a quorum at a meeting, if the Committee, Sub-Committee or Panel has no delegated powers and can only make recommendations.

#### **40. Meetings of Committees, Sub-Committees and Panels and Agenda Papers**

- (1) Every scheduled meeting of a Committee, Sub-Committee or Panel shall be summoned by the Service Director - Legal, Governance and Commissioning through the issue of a notice for the meeting where practical at least 7 days prior to the meeting. The items of business for consideration at the meeting will be set out in the Agenda for the meeting. No additional items of business will be allowed unless the Chair for the meeting determines that they are urgent.
- (2) The Leader of each Political Group (or in his/her absence the Deputy Leader of each Group) shall notify the Chief Executive, in writing, not less than 14 days before the date of the intended meeting to which the item should be submitted of any item(s) which he/she wishes to include on the Agenda of any Committee, Sub-Committee or Panel of the Council. The notification shall include such information as is necessary to enable the Chief Executive to determine whether the subject matter requires consideration by the Committee, Sub-Committee or Panel. The Chief Executive shall determine the appropriate body to which the item shall be referred and notify the Group Leader (Deputy Group Leader) of the date of that meeting which shall be the next available meeting. Any item which, in the opinion of the Chief Executive is out of order, illegal, irregular or improper shall not be accepted and the decision of the Chief Executive shall be final.
- (3) The Chair (or Deputy Chair) of a Committee, Sub-Committee or Panel with the approval of the Leader of the Council, may instruct the Service Director – Legal, Governance and Commissioning to call a meeting of a Committee, Sub-Committee or Panel at any time.
- (4) An additional meeting of a Committee, Sub-Committee or Panel can be summoned if the Service Director - Legal, Governance and Commissioning receives a request in writing from at least half of the Members of the Committee, Sub-Committee or Panel to do so. Service Director - Legal, Governance and Commissioning in consultation with the Chair may also summon a special meeting upon any emergency. The summons for such meetings shall set out the business for the meeting and no other items of business will be considered.

#### **41. Procedure Rules to apply to Committees, Sub-Committees and Panels**

Procedure Rules 9, 10, 11, 15 and 18 (except those parts which relate to speaking more than once) 20, 21, 22, 25, 26, 27 and 34 shall, with any necessary modifications, apply to meetings of Committees, Sub-Committees and Panels.

#### **42. Voting in Committees, Sub-Committees or Panels**

- (1) Voting at a meeting of a Committee, Sub-Committee or Panel shall be by a show of hands or by use of the electronic voting equipment, where appropriate. Alternatively the Committee, Sub-Committee or Panel may require the Service Director - Legal, Governance and Commissioning to take a vote by ballot on any motion or amendment which is put to the meeting.
- (2) The Chair at a Committee, Sub-Committee or Panel meeting shall have a



second or casting vote in the case of an equality of votes.

- (3) If there are more than two persons nominated for any appointment to be filled and there is no overall majority in favour of one person the following procedure will apply. The name of the person (or persons, if equal) who has received the least number of votes will be struck off the list of nominations and a fresh vote will be taken. This procedure will continue until a majority vote is given in support of one of the persons nominated.
- (4) At any meeting of a Committee, Sub-Committee or Panel (including joint bodies etc.) a Member may require that his or her decision in voting for or against a question (or his or her abstention from voting) be recorded in the Minutes of the meeting. Such a requirement must be proposed by the Member immediately after the vote is taken.
- (5) At any meeting of a Strategic Planning Committee or a Planning Sub-Committee a recorded vote of decisions on Planning Applications shall take place.

#### **43. Working Parties, etc.**

- (1) Any Committee, Sub-Committee or Panel may establish a Working Party or Sub-Group (which may include Officers) to undertake a detailed study of any matter(s). A Working Party or Sub-Group shall not have delegated powers and shall not constitute a formal Sub-Committee.
- (2) The terms of reference for any Working Party or Sub-Group shall state their objectives and dates etc. for reporting on their findings.
- (3) The Chair (and Deputy Chair) of a Committee, Sub-Committee or Panel responsible for establishing a Working Party or Sub-Group if not appointed in their own right, shall be entitled to attend and speak at all meetings.

#### **44. Reports to Council**

- (1) The Chair may request the Service Director - Legal, Governance and Commissioning to include in the report of a Committee, a reference to any particular matters which were considered in the meeting.
- (2) In accordance with the Agenda for the Council meeting.
  - (a) The Chair of a Committee, (or in their absence any other Member of the Committee) shall propose a motion to seek the Council's approval on any matter expressly referred by the Committee, to Council for determination.
  - (b) The Mayor (or in his/her absence the Deputy Mayor or any other Member of the Council) shall propose a motion to seek the Council's approval to the receipt of any report of a meeting of Cabinet or any Committee.

#### **45. Reports of Sub-Committees and Panels**

A report of the proceedings of a Sub-Committee or Panel meeting shall be presented to the next convenient meeting of the parent Committee or Cabinet.

## **(D) Miscellaneous**

### **46. Variation and Revocation of Procedure Rules**

- (1) Any motion to add to, vary or revoke these or any other Procedure Rules shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.
- (2) Paragraph (1) of this Rule shall not apply to any review of Procedure Rules proposed at the Annual Meeting of the Council or to a specific recommendation by the Cabinet or a Committee to the Council to add to, vary or revoke any Procedure Rules.

### **47. Suspension of Procedure Rules**

- (1) At any meeting a motion may be moved to suspend the use of any of the preceding Procedure Rules for any item(s) of business included on the Agenda for that meeting. The Motion should specify the relevant Council Procedure Rule/s to be suspended.
- (2) A motion to suspend Procedure Rules shall not be moved without notice unless at least one half of the Members of the Council, Committee, Sub-Committee or Panel are present.

### **48. Standards of Conduct in Public when representing the Council**

Members have an obligation when taking part in Council and Committee meetings etc, held in public to comply with the protocol on standards of conduct in public approved by the Standards Committee and incorporated in Part 5 of the Constitution.

### **49. Appointment of Leader or Mayor Other than at Annual Meetings of Council**

- (1) In the event that the Leader of the Council resigns part way through his or her term of office, or is incapacitated (to such an extent that they are no longer able to reasonably carry out their duties and responsibilities as Leader) or otherwise dies in office the Deputy Leader will act as Leader of the Council in accordance with Article 7 of the Council Constitution until such time as an election takes place and a new Leader of the Council is successfully elected. Such an election shall take place at the next possible meeting of Council or at an Extraordinary Meeting of Council convened for such a purpose.
- (2) In the event that the Mayor resigns from office part way through his or her term of office or otherwise dies in office the Deputy Mayor shall act in his or her place for the remainder of the Mayors term of office.

### **50. Relevant Definitions**

"Municipal Year" defines the period between each meeting of Annual Council, which normally take place during May.

“Group Leaders” is the term referring to the Leader of each political group which is represented on the Council.

“Key Discussion” is the description of format for a presentation followed by a discussion and debate which takes place over 60 minutes at ordinary meetings of the Council which are designated as Key Discussion meetings.

“Council Petitions Debate” is the description of part of the Council’s Petition Scheme as referred to in CPR 9a, which provides that if a petition is validated to be containing 3000 signatures (or more) from different persons on a subject matter that is relevant to the powers and duties of Kirklees, a debate on the matter shall be scheduled at a meeting of Council.

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**Name of meeting: Corporate, Governance and Audit Committee**

**Date: 26<sup>th</sup> April 2019**

**Title of report: Proposed changes to the Council’s Code of Conduct**

**Purpose of report**

To set out proposed changes to the Council’s Code of Conduct as outlined in paragraph 2 and as set out in more detail in the attached Appendices, which show the proposed amendments.

To note changes to the standards process that follow the Committee of Standards in Public Life’s report ‘Local Government Ethical Standards’.

To seek approval and/or comments and/or recommendations from Committee in relation to these proposed changes to make to Annual Council on 22 May 2019.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council’s Forward Plan (key decisions and private reports)?</a>	Not applicable
The Decision - Is it eligible for “call in” by Scrutiny?	Not applicable
Date signed off by Director & name	
Is it also signed off by the Service Director for Finance, Information and Transactional Service?	No financial implications
Is it also signed off by the Service Director – Legal, Governance and Commissioning Support?	Julie Muscroft
Cabinet member portfolio	Graham Turner

**Electoral wards affected: N/A**

**Ward councillors consulted: N/A**

**Public or private: Public**

**Have you considered GDPR? Yes**

**1. Summary**

- 1.1 To set out proposed changes in relation to the Code of Conduct that follow from the publication of the report ‘Local Government Ethical Standards’ by the Committee on Standards in Public Life (CSPL). A copy of the report is attached at Appendix 1.

- 1.2 The CSPL published its report following a consultation exercise that Kirklees contributed to. The report made a series of recommendations and 'best practice' suggestions.
- 1.3 The report suggests that legislation will be required to implement the recommendations, whilst the best practice suggestions do not and may be adopted by local authorities straight away. Whilst it may be true to say that the recommendations are likely to need legislation to make them compulsory, many of them are not currently prohibited and so can be adopted voluntarily. Any legislation would simply have the effect of making those recommendations compulsory.
- 1.4 Following the publication of the report the Standards Committee met and discussed the report's findings. A copy of the report is attached at Appendix 2.
- 1.5 The Committee discussed the extent to which Kirklees already complied with any of the recommendations and best practice suggestions, as well as whether there were any recommendations or best practice suggestions that could be adopted.
- 1.6 A significant number of the recommendations were already being implemented, either as part of the Code of Conduct or the standards process and these are detailed in Appendix 3.
- 1.7 A number of recommendations were made in respect of amendments to the Code of Conduct and the standards process and these are detailed below and in the Appendices 3 and 4.

## **2. Information required to take a decision**

### **CODE OF CONDUCT**

The proposed changes to the Code of Conduct are set out in track change in Appendix 4.

#### **PART 1 – Application**

2.01 There are no proposed changes.

#### **PART 2 – Interpretation**

2.02 There are no proposed changes.

#### **PART 3 and 3A – General Principles**

2.03 Part 3A has been expanded to include a working definition of bullying and harassment. Again, this follows the recommendation of the CSPL in their report and makes use of the suggested wording. It is intended to add clarity to the Code of Conduct.

## **PART 4 – Disclosable Pecuniary Interests**

2.04 There are no proposed changes.

## **Part 5 – Interests which are not Disclosable Pecuniary Interests (Other Interests)**

2.05 There are no proposed changes.

## **PART 6 – Sensitive Information**

2.06 There are no proposed changes.

## **PART 7 – Gifts and Hospitality**

2.07 The CSPL report made recommendations concerning the declaration of gifts and hospitality. Kirklees does already require members to declare such gifts and hospitality. There are some minor changes in the current process proposed.

2.08 There are a number of changes, following the CSPL report. It was not recommended to increase the level at which declaration has to be made to £50, as suggested by the report. It will remain at £25 and over in the Code. It was recommended that aggregate gifts from a single source that totals £100 or over must be declared.

2.09 It was also recommended that the register that is currently kept by the Monitoring Officer be made available on line.

## **Review**

2.10 There is a recommendation in the CSPL report that Principal Councils should review their Code of Conduct each year and regularly seek the views where possible of the public, community organisations and neighbouring authorities. The committee took the view that any such review which would include seeking wider views of the public, community organisations etc, should be bi-annual, recognising that it might be a lengthy process to undertake. It was noted that there is the power to review the Code sooner should the need arise and that the Corporate Governance and Audit Committee conduct an annual review of the Constitution of which the Code forms part in any event.

## **Standards Process**

2.11 In addition to making recommendations concerning changes to Codes of Conduct, the CSPL also made other recommendations some of which could be adopted without legislation and they also highlighted best practice suggestions, with a strong suggestion that local authorities adopt these, as they would be free to do so without waiting for any legislation to be enacted.

- 2.12 These were considered by the Standards Committee who noted that some of the recommendations as well as best practice suggestions had already been adopted.
- 2.13 Those that had not were considered and the following recommendations were made:
- 2.14 That Town and Parish Councils be recommended to adopt the Kirklees Code of Conduct. There are no restrictions on them being able to do so and there are a number of advantages to them doing so. These would include councillors who sit as Town or Parish Councillors, as well as being Kirklees Councillors, having a single code, the Monitoring Officer would have a uniform code against which to consider all complaints concerning councillor conduct, and training given to Kirklees councillors can be extended to Town and Parish councils at a minimal cost. It was agreed that the Monitoring Officer write to Parish and Town Councils and ask that they consider adopting the Kirklees Council Code of Conduct and recommend that they consider the report of the CSPL and its recommendations at a Parish / Town Council meeting (if they haven't yet done that) as soon as possible after the elections in May.
- 2.15 That Kirklees Council publishes a named contact at the Council's auditor in its whistleblowing policy. Contact details for the auditor are already in the existing policy and enquiries have been made of the auditor for a named contact. It is recommended that authority be given to the Monitoring Officer to update the policy with the details of the named contact.
- 2.16 That all councillors undertake formal induction training and that all members of the Standards Committee undertake annual refresher training. The training provided on the Code of Conduct and standards process has been redrafted and should be available to all members in the near future.
- 2.17 That printed copies of the Kirklees Code of Conduct be made available at council buildings, in addition to being published on the website. This will ensure that any members of the public who do not have access to the internet can still view the Code of Conduct and be provided with a printed copy.
- 2.18 Under the Localism Act, the council is required by law to appoint an Independent Person (IP). The role of the IP in Kirklees is to act as a point of consultation and to be a decision maker for any formal standards complaints. The CSPL made a number of recommendations about using IPs many of which the Council already does. It also recommended that Councils have more than one. Members will recall that we currently have one IP following the last recruitment process in 2016/17. The Standards Committee recommended that a further IP be recruited and that the current IPs term be extended by two years. This would mean that we would have an experienced and new IP in place who would overlap.
- 2.19 On the 4<sup>th</sup> of August 2017 this committee considered a report concerning the role of the IP and resolved to recommend to council the appointment of Michael Stow as IP for a period of two years. It is



recommended that authority be given for the contract of the current IP to be renewed for a further two years and a report be submitted to Council to request the renewal.

- 2.20 It is also recommended that that a recruitment process should be agreed to recruit a second IP on the same terms as the current IP and the Monitoring Officer be delegated with authority to do that in consultation with the Chair of Standards and the Chair of Corporate Governance and Audit Committee.
- 2.21 That the council's Standards Process be updated to allow for the publication of any decision notices on the council's website. This is currently done by some local authorities and was a recommendation in the CSPL report. Subject to any privacy concerns and data protection legislation, it was recommended that Kirklees adopt this recommendation.
- 2.22 That the complaints process be made available as printed copies at council buildings in addition to being published on the website. As for 2.17, this will allow any members of the public who do not have access to the internet to be able to access the complaints process and to be provided with a hard copy of the documentation.
- 2.23 Following a CSPL recommendation, it is proposed that a public interest test be incorporated into the standards process. The wording will be based on that used by the CSPL report with some clarificatory notes and guidance.

### **3. Implications for the Council**

Although the report of the CSPL has not yet resulted in legislation, it is important for the Council to be aware of its recommendations and to actively consider these and to make a decision to implement any that are deemed to be good recommendations.

With regards to the best practice recommendations, the CSPL has indicated that it will be actively checking for compliance with these when performing any audits of local authority Codes of Conduct and standards processes.

It is also essential that the Constitution complies with current legislation. Failure to do so could lead to legal challenges, unnecessary procedural delays and less transparency in the Council's democratic process.

#### **3.1 Working with People**

N/A

#### **3.2 Working with Partners**

N/A

#### **3.3 Place Based Working**

N/A

#### **3.4 Improving Outcomes for Children**

N/A

**3.5 Other (e.g. Legal/Financial or Human Resources)**

N/A

**4. Consultees and their opinions**

4.1 The Standards Committee, Group Business Managers and various officers in Legal, Governance and Commissioning have been consulted. All members were provided with a copy of the CSPL report for information and comment.

**5. Next steps**

5.1 This will be considered by Annual Council on 22 May 2019. Any feedback and comments or recommendations from CGA will be included in that report.

5.2 Any amendments agreed by Council on that date will be made to the Constitution.

5.3 The current Independent Person's contract will be extended and steps to recruit a further Independent Person will be put in place.

5.4 The changes suggested by Standards Committee that do not require changes to the constitution be adopted.

**6. Officer recommendations and reasons**

**That CGA:**

6.1 Consider the proposed changes to the Code of Conduct and the Standards Process set out in 2.03, 2.07 to 2.09, 2.14 to 2.17, 2.19 to 2.23 and Appendices 3 to 4 and make any recommendations / comments / observations about proposed changes to the constitution as well as to the standards process before the changes are considered by Council.

**7. Cabinet portfolio holder recommendation**

N/A

**8. Contact officer**

Julie Muscroft, Service Director – Legal, Governance and Commissioning

David Stickley, Senior Legal Officer

**9. Background Papers and History of Decisions**

Report of the Committee on Standards in Public Life into Local Government standards.

Report to the Standards Committee, 6<sup>th</sup> March 2019.

**10. Service Director responsible**

Julie Muscroft, Service Director – Legal, Governance and Commissioning Support, 3<sup>rd</sup> floor, Civic Centre 1. Telephone: 01484 221000. Email [Julie.muscroft@kirklees.gov.uk](mailto:Julie.muscroft@kirklees.gov.uk)

**Appendices**

Appendix 1 – Copy of the CSPL report ‘Local Government Ethical Standards’

Appendix 2 – Copy of report to Standards Committee, 6<sup>th</sup> March 2019

Appendix 3 – List of recommendations and best practice suggestions discussed by Standards Committee, headed ‘ITEM 8’

Appendix 4 - Track change copy of the Code of Conduct, showing proposed changes

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# **Local Government Ethical Standards**

**A Review by the  
Committee on  
Standards in Public Life**

**Committee on  
Standards in  
Public Life**







# Local Government Ethical Standards

Committee on Standards in Public Life

*Chair: Lord Evans of Weardale KCB DL*

January 2019







# The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

## **Selflessness**

Holders of public office should act solely in terms of the public interest.

## **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

## **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

## **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

## **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

## **Honesty**

Holders of public office should be truthful.

## **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of



appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

**Lord Evans of Weardale**  
**Chair, Committee on Standards in Public Life**





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# Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

## Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

### **Declaring and managing interests**

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

### **Investigations and safeguards**

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

### **Sanctions**

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



## **Town and parish councils**

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

## **Supporting officers**

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

## **Councils' corporate arrangements**

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

## **Leadership and culture**

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be





written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



# List of recommendations

<b>Number</b>	<b>Recommendation</b>	<b>Responsible body</b>
<b>1</b>	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
<b>2</b>	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
<b>3</b>	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
<b>4</b>	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
<b>5</b>	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
<b>6</b>	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government



Number	Recommendation	Responsible body
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.	Government
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government



Number	Recommendation	Responsible body
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government



<b>Number</b>	<b>Recommendation</b>	<b>Responsible body</b>
<b>23</b>	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
<b>24</b>	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
<b>25</b>	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
<b>26</b>	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association



# List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.



**Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.



# Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.<sup>1</sup>

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were to:

**1. Examine the structures, processes and practices in local government in England for:**

- a. Maintaining codes of conduct for local councillors
- b. Investigating alleged breaches fairly and with due process
- c. Enforcing codes and imposing sanctions for misconduct
- d. Declaring interests and managing conflicts of interest
- e. Whistleblowing

**2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government**

**3. Make any recommendations for how they can be improved**

**4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation**

<sup>1</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>





Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Gooden of Wilkin Chapman LLP for his support and advice throughout.



# Chapter 1: Overview of standards

## Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as 'parish councils' for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.<sup>2</sup>

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

<sup>2</sup> Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales



care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

### **The current system**

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.



# Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

**1997** The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

**1998** The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.<sup>3</sup> The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

<sup>3</sup> Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



**2005** In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

**2007** Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.



**2010** In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.<sup>4</sup> The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”<sup>5</sup>

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5657/2169997.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf)

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



## Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.





Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



# Chapter 2:

## Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.<sup>6</sup>

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

### **Variation, consistency, and clarity**

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

<sup>6</sup> Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4



The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are 'twin' or 'triple' hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.<sup>7</sup>

**Monitoring Officer, North Hertfordshire District Council**

In Ashford, a 'Kent model' code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.<sup>10</sup>

**Ashford Borough Council**

The issue of parish councils' codes of conduct is closely related; we discuss this in detail in chapter 5.

### **Model code of conduct**

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a 'pan-Worcestershire' code. This also meant that common training could take place across authorities.<sup>8</sup>

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.<sup>9</sup>

**Worcestershire County Council**

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.<sup>11</sup>

**INLOGOV, University of Birmingham**

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.<sup>12</sup> A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.<sup>13</sup> We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

**Recommendation 1: The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.**

### **Bullying and harassment**

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

<sup>12</sup> Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

<sup>13</sup> Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10



which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

### Example of a bullying provision

Extract from Newcastle City Council code of conduct<sup>14</sup>

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

### Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated “[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance”.<sup>15</sup>

<sup>14</sup> Newcastle City Council Code of Conduct. Available at: [https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part\\_5\\_2a\\_-\\_members\\_code\\_of\\_conduct.pdf](https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf)  
<sup>15</sup> Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: [http://www.sandwell.gov.uk/downloads/file/24029/gowling\\_wlg\\_report](http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report)



The Committee heard from Monitoring Officers and independent investigators that the broad 'respect' provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient".<sup>16</sup>

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities<sup>17</sup>

<sup>16</sup> Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>  
<sup>17</sup> Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.<sup>18</sup>

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

**Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.**

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

### **Intimidation of councillors**

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.<sup>19</sup>

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.<sup>20</sup>

### **Local Government Association**

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

18 Equality Act 2010, section 26

19 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

20 Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.<sup>21</sup>

### **Association of Police and Crime Commissioners**

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on a register of interests. The nature of local democracy means that those who are likely to engage in intimidation of a councillor are likely to live nearby. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.<sup>22</sup> We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62





### Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.<sup>23</sup>

**City of Westminster, *Guidance note to members on Register of Interests.***

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

**Recommendation 2: The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.**

### Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.<sup>24</sup> This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.<sup>25</sup>

### Lawyers in Local Government

Our evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use.

The question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

<sup>23</sup> City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

<sup>24</sup> Localism Act 2011, section 27(2): "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*"

<sup>25</sup> Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.<sup>26</sup>

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".<sup>27</sup> This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

### Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."<sup>28</sup>

26 Ministerial Code, paras 7.13, 7.18

27 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

28 Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>



The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in a official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



### Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.<sup>29</sup>

The *High Court, in Heesom v Public Service Ombudsman for Wales*,<sup>30</sup> considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We therefore propose that, given their significant representative role, there should be a rebuttable presumption that a councillor’s behaviour in public is in an official capacity. An individual’s behaviour in private, in a personal capacity, should remain outside the scope of the code.

**Recommendation 3: Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.**

### Purporting to act as a member or a representative

The 2007 model code for local government stated that its scope included not just when a councillor was “conducting the business of the authority”, but also if a councillor was to “act, claim to act or give the impression you are acting as a representative of your authority”.<sup>31</sup> The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007



an individual is improperly purporting to act as a councillor do not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.<sup>32</sup>

#### **Hoey Ainscough Associates**

*MC v Standards Committee of LB Richmond*<sup>33</sup> drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

**Recommendation 4: Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**

### **Compliance with standards processes**

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

**Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.**

### **Writing codes of conduct**

The Committee has previously outlined criteria for an effective code of conduct:

- seen as relevant every day and not exceptional
- proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle

<sup>32</sup> Written evidence 212 (Hoey Ainscough Associates)

<sup>33</sup> *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively<sup>34</sup>

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.<sup>35</sup> The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.<sup>36</sup>

**Jonathan Goolden,  
Wilkin Chapman LLP**

Drawing up a code is an important process for an authority: it involves the members of that authority considering what the Seven Principles of Public Life demand in their own context.

A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised.

Many authorities have not yet revisited their codes in the light of learning experiences.<sup>37</sup>

**Jonathan Goolden,  
Wilkin Chapman LLP**

**Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.**

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.<sup>37</sup>

<sup>34</sup> Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

<sup>35</sup> DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

<sup>36</sup> Jonathan Goolden, Roundtable, 18 April 2018

<sup>37</sup> Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

### Example of a clear code of conduct

Extract from Plymouth City Council code of conduct<sup>38</sup>

#### *Disrepute*

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

#### *Misuse of position*

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

#### *Use of council resources*

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

#### *Advice of Monitoring Officer and Responsible Finance Officer*

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

#### *Giving reasons for decisions*

Councillors must give reasons when required to by the law or by any council procedures.

**Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.**

### Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

**Integrity:** Holders of public office must avoid placing themselves under obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

### **The Disclosable Pecuniary Interests (DPI) arrangements**

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.





## Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.<sup>39</sup>

### Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

## Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

## Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.<sup>40</sup>

#### **Mid Sussex District Council**

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPis.<sup>41</sup>

#### **London Borough of Croydon**

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.<sup>42</sup>

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)



**Recommendation 5: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.**

### Gifts and hospitality

Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.<sup>43</sup>

### Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. An individual threshold of £100 could allow a councillor to accept significant gifts and hospitality from a single source on multiple occasions, without needing to register the fact that they have done so. £50 is the registration threshold for gifts or donations during election campaigns, which would then provide a consistent declaration threshold both during and outside election periods.<sup>44</sup>

**Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.**

<sup>43</sup> Written evidence 315 (Transparency International UK)

<sup>44</sup> Available online at: [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0005/141773/ca-part-3-locals-ew.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf), 20



**Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.**

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

**Cabinet Office principles for accepting gifts or hospitality**

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider’s relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.<sup>45</sup>

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.<sup>46</sup>

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at:

<https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18



## Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: “[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.”<sup>47</sup>

## Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have “[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting”. The test of having a ‘disclosable

pecuniary interest *in* any matter’ is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest ‘in’ that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.<sup>48</sup>

**North Hertfordshire District Council**

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI ‘in any matter to be considered at a meeting’. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration ‘relates to or is likely to affect’ the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.<sup>49</sup>

**Ashford Borough Council**

47 Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

48 Written evidence 22 (North Hertfordshire District Council)

49 Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an 'objective test' for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

### Tests for actively managing interests in the devolved codes

#### Scotland

"Whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor."<sup>50</sup>

#### Wales

"[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest."<sup>51</sup>

#### Northern Ireland

"An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents."<sup>52</sup>

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3



Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

**Recommendation 7: Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in relation to that matter”.**

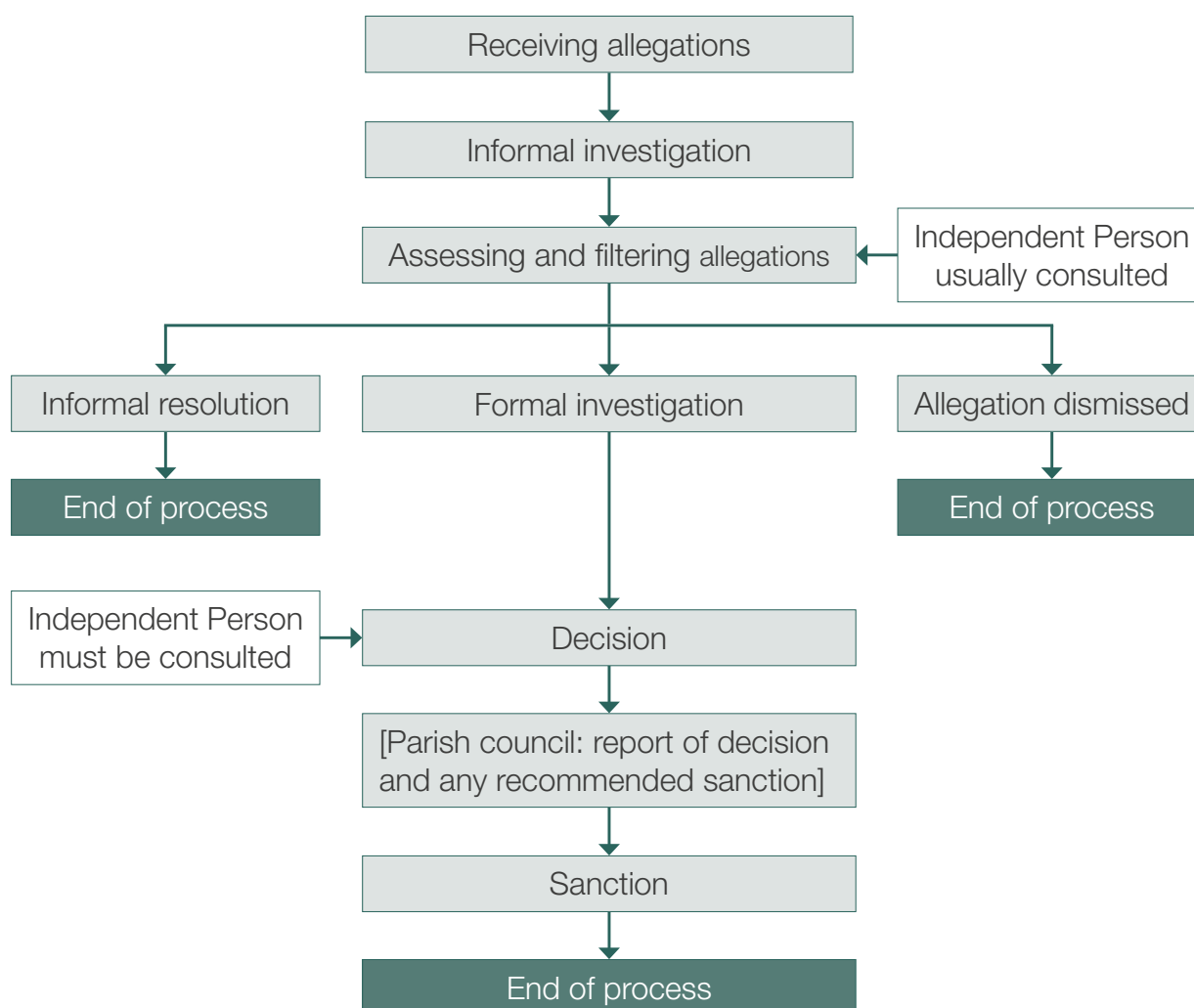


# Chapter 3: Investigations and safeguards

## Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

### The current investigation process







Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

### Filtering complaints

The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so.

The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'.

### Northern Ireland Local Government Commissioner for Standards public interest test

#### 1 'CAN' we investigate your complaint?

- Is the person you are complaining about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

#### 2 'SHOULD' we investigate your complaint?

- Is there evidence which supports the complaint?
- Is the conduct something which it is possible to investigate?
- Would an investigation be proportionate and in the public interest?<sup>53</sup>

**Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.**

### Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

53 Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.<sup>54</sup>  
**Cllr Dan Cohen, Leeds City Council**

### Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for ‘independence’ specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be ‘taken into account’, they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title ‘Independent Person’ creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...]<sup>55</sup>  
**Richard Stow, Independent Person**

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority’s code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority’s Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

54 Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

55 Written evidence 209 (Richard Stow)



We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.<sup>56</sup>

### London Borough of Sutton

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

### Best practice 7: Local authorities should have access to at least two Independent Persons.

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

56 Written evidence 311 (London Borough of Sutton)



**Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.**

The role should also be strengthened. Security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.<sup>57</sup>

**Dr Peter Bebbington,  
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

**Recommendation 8: The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.**

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.<sup>58</sup>

**Hoey Ainscough Associates**

**Recommendation 9: The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.**

<sup>57</sup> Dr Peter Bebbington, Roundtable, 18 April 2018

<sup>58</sup> Written evidence 212 (Hoey Ainscough Associates)



Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

**Recommendation 10: A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.**

We have noted recent First Tier Tribunal cases<sup>59</sup> which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

**Recommendation 11: Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.**

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017\_0220 (GRC)



## Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

### Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.<sup>60</sup>

<sup>60</sup> Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.<sup>61</sup>

#### **Wychavon Borough Council**

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

**Recommendation 12: Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.**

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

#### **Appeals and escalation**

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

61 Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.<sup>62</sup>

### Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.<sup>63</sup>

### London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.<sup>64</sup> This is an under-appreciated safeguard within the current system.

### Common issues with local authority standards processes considered by the Local Government Ombudsman<sup>65</sup>

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

64 Written evidence 126 (Local Government and Social Care Ombudsman)

65 Written evidence 126 (Local Government and Social Care Ombudsman)





Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.<sup>66</sup>

### **Local Government Ombudsman**

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

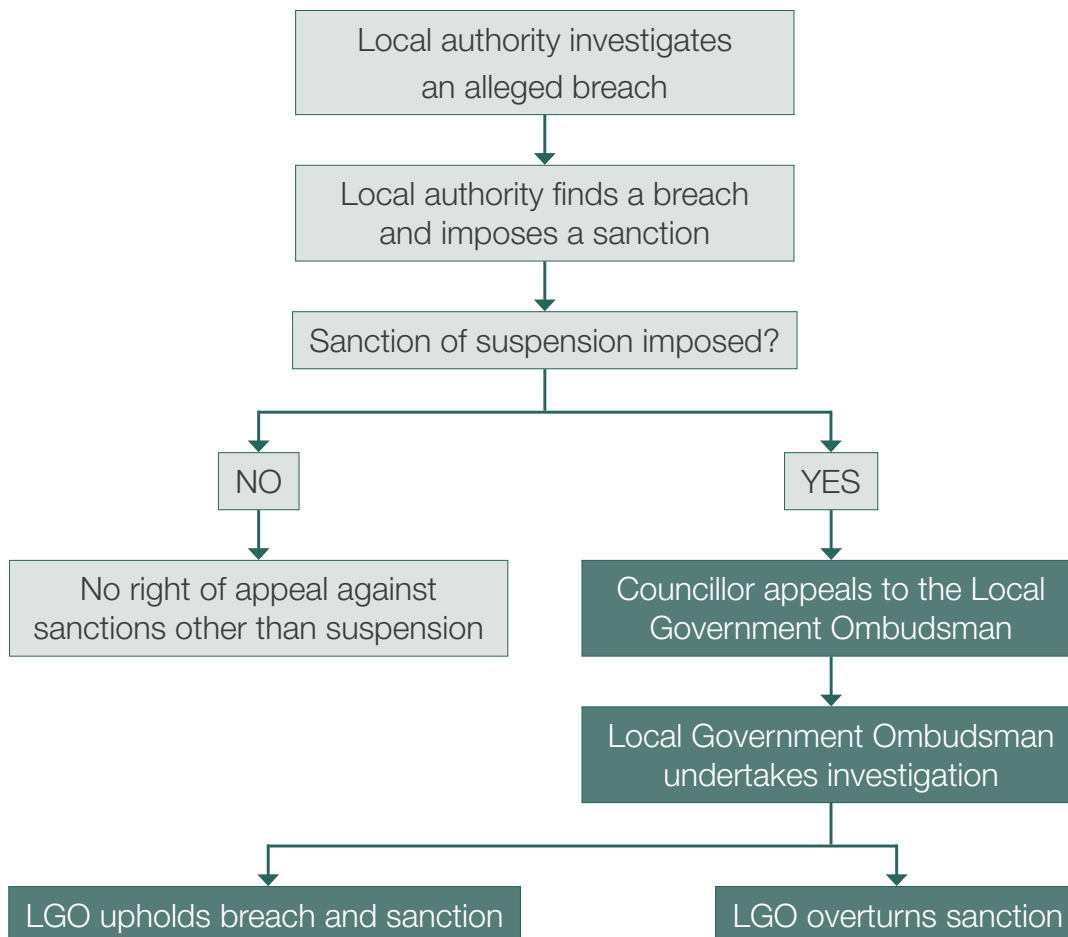
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



## Proposed appeals process





**Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.**

The Nolan principle of openness demands that councils should be taking decisions, including decisions on standards issues, in an open way. The experience of the Committee is that whilst transparency does not automatically increase public trust in a process, it is nevertheless essential to enabling public scrutiny and accountability.

**Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.**

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

### Promoting openness and transparency

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.

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.

**Recommendation 15: The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.**



**Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.**

**Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.**

## **Avoiding legalisation**

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.



# Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”<sup>67</sup>

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”<sup>68</sup>

## The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.<sup>69</sup> In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

67 Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

68 Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

69 Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

### **The current sanctions arrangements**

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.<sup>70</sup>

### **Tonbridge and Malling Borough Council**

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.<sup>71</sup>

### **Taunton Deane Borough Council**

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.<sup>72</sup>

### **Hoey Ainscough Associates**

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.<sup>73</sup>

### **David Prince CBE**

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

### **Party group discipline**

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.<sup>74</sup>

**Hoey Ainscough Associates**

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.<sup>75</sup>

**Andrew Maughan, Monitoring Officer,  
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)





often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

### **Examples of political party disciplinary process used as an alternative to the formal standards process**

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.<sup>76</sup>

**Cllr Rory Love, Chairman,  
Conservative Councillors' Association**

76 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.<sup>77</sup>

**Cllr Rory Love, Chairman,  
Conservative Councillors’ Association**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.<sup>78</sup>

**Cllr Simon Henig CBE, Chair,  
Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

### **The sanction of the ‘ballot box’**

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.<sup>79</sup>

**Sandwell Metropolitan Borough  
Council**

<sup>77</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

<sup>78</sup> Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

<sup>79</sup> Written evidence 239 (Sandwell Metropolitan Borough Council)



In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.<sup>80</sup>

**Wycombe District Council**

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”<sup>81</sup> Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].<sup>82</sup>

**Cllr David Gaye**

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.<sup>83</sup>

**Cornwall Council**

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

### Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).<sup>84</sup>

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.<sup>85</sup>

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.<sup>86</sup> However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

### Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

84 Written evidence 106 (Standards Commission for Scotland)

85 Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

86 Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>



**Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.**

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

### **Giving legal certainty to councils**

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

**Recommendation 17: The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.**

### **Criminal offences in the Localism Act 2011**

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.<sup>87</sup>

**Taunton Deane Borough Council**

87 Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

**Recommendation 18: The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.**

### **Disqualification of councillors**

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

### **Current law on the disqualification of councillors**

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



# Chapter 5:

## Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.<sup>88</sup>

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create a increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

### Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

<sup>88</sup> Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.<sup>89</sup>

### **Cornwall Association of Local Councils**

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

89 Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018





and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.<sup>90</sup>

**Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.**

### Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.<sup>91</sup>

**Hoey Ainscough Associates**

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.<sup>92</sup>

**Society of Local Council Clerks**

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also suggested that difficulties persist in resolving standards matters where clerks are not well supported by the parish council to formally make and resolve complaints, or to prevent behaviour from recurring. Parish councils should take corporate responsibility when allegations of a councillor

90 The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

91 Written evidence 212 (Hoey Ainscough Associates)

92 Written evidence 197 (Society of Local Council Clerks)



bullying an employee are received. For example, where behaviour that is in breach of a code is observed by councillors or reported by a clerk, the parish council should lodge a formal standards complaint corporately or in the name of the chair. A clerk should not have to do so themselves. In addition to providing necessary support to the clerk in such circumstances, such measures signify to individual councillors that disruptive behaviour is not ignored or accepted by the council generally.

**Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.**

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.<sup>93</sup>

**Society of Local Council Clerks**

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

**Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.**

### **Investigations and sanctions in town and parish councils**

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)



individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.<sup>94</sup>

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.<sup>95</sup>

#### **Cornwall Council**

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

**Recommendation 20: Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.**

Following *Taylor v Honiton Town Council*,<sup>96</sup> a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.<sup>97</sup>

#### **Wychavon Borough Council**

94 Written evidence 206 (Cornwall Association of Local Councils)

95 Written evidence 147 (Cornwall Council)

96 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

97 Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

**Recommendation 21: Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.**

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,<sup>98</sup> which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.<sup>99</sup> The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.<sup>100</sup> We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

98 *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

99 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

100 See *Moore v Bude-Stratton Town Council* [2000] EAT 313\_99\_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



# Chapter 6: Supporting officers

## Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.<sup>101</sup>

**Max Caller CBE**

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.<sup>102</sup> Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.<sup>103</sup>

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.<sup>104</sup>

<sup>101</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>102</sup> For example, in sections 59, 60, 66 of the Local Government Act 2000

<sup>103</sup> Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

<sup>104</sup> Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. They will offer formal legal advice; but they will also act as a mediator and adviser in relation to standards issues. Some of the most significant difficulties for Monitoring Officers include the inherent potential for conflict when simultaneously:

- acting as a source of advice and guidance for members and officers (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- overseeing and managing investigations to determine whether serious breaches of the code of conduct have occurred, either personally or by seeking outside expertise and handling the consequential report and conveying it to members

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.<sup>105</sup>

### **Lawyers in Local Government**

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length.

**Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.**

<sup>105</sup> Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

### **Standing of statutory officers**

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.<sup>106</sup> The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.<sup>107</sup>

### **Lawyers in Local Government**

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

**Recommendation 22: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.**

<sup>106</sup> Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

<sup>107</sup> Written evidence 228 (Lawyers in Local Government)



## Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.<sup>108</sup>

**Max Caller CBE**

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.<sup>109</sup>

**Dame Stella Manzie DBE**

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

## Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.<sup>110</sup>

**Protect**

<sup>108</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>109</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

<sup>110</sup> Written evidence 305 (Protect)





**Recommendation 23: The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.**

We therefore see benefits to councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor.

**Recommendation 24: Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.**

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.<sup>111</sup>

### **Protect**

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

111 Written evidence 305 (Protect)



# Chapter 7:

## Councils' corporate arrangements

### A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.<sup>112</sup> The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

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<sup>112</sup> National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>



## Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.<sup>113</sup>

**Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea**

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that "[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability."<sup>114</sup>

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

## Responding to the new governance challenges

### Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance 'illusion', that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.<sup>115</sup>

**Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea**

113 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

114 "What next for care and health?", *Municipal Journal*, 22 February 2018, 16

115 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.<sup>116</sup>

### **Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)***

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

### **Potential advantages of council nominees as board directors or trustees**

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

<sup>116</sup> Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)



### Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected<sup>117</sup>

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.<sup>118</sup>

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.<sup>119</sup>

### **Audit Scotland, *Councils' use of arm's-length external organisations***

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".<sup>120</sup> However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

118 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

119 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny\\_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

**Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.**

### Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.<sup>121</sup>

**Nicola Greenan, Director, East Street Arts, and LEP board member**

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, “[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation”.<sup>122</sup>

The report also identified a need to consider “[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications”.<sup>123</sup> Ney recommended that “[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

<sup>121</sup> Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

<sup>122</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

<sup>123</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".<sup>124</sup>

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.<sup>125</sup>

### **Ethical standards and corporate failure**

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

### **Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)<sup>126</sup>**

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

<sup>124</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

<sup>125</sup> Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

<sup>126</sup> PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>



### **Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)<sup>127</sup>**

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".<sup>128</sup> The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

<sup>127</sup> Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

<sup>128</sup> Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34





**Northamptonshire County Council (events taking place between 2015-17; report by Max Caller CBE, Best Value Inspector, 2018)<sup>129</sup>**

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.<sup>130</sup>

**Dame Stella Manzie DBE**

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

<sup>129</sup> Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690731/Best\\_Value\\_Inspection\\_NCC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf)

<sup>130</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.<sup>131</sup>

**Max Caller CBE**

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

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<sup>131</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



# Chapter 8: Leadership and culture

## Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.<sup>132</sup>  
**Dame Stella Manzie DBE**

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leader of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

<sup>132</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



## Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.<sup>133</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.<sup>134</sup>

**Dawn French, Chief Executive,  
Uttlesford District Council, Essex**

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.<sup>135</sup>

**Dame Stella Manzie DBE**

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

<sup>133</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>134</sup> Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

<sup>135</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.<sup>136</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

### The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.<sup>137</sup>

**Dame Stella Manzie DBE**

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

<sup>136</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>137</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.<sup>138</sup>

**Cllr Rory Love, Chairman,  
Conservative Councillors' Association**

**Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.**

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

### **Building an ethical culture**

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

138 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

**Recommendation 25: Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.**

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.<sup>139</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.<sup>140</sup>

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.<sup>141</sup>

**Andrew Maughan, Monitoring Officer,  
Camden Council**

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.<sup>142</sup>

**Darryl Chamberlain, editor, 853 blog**

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

<sup>140</sup> House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

<sup>141</sup> Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

<sup>142</sup> Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018





[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.<sup>143</sup>

**Barry Quirk CBE, Chief Executive,  
Royal Borough of Kensington &  
Chelsea**

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says 'these people are elected and have entitlement to know and there are some rules about confidentiality'. They can't pursue cases where they have individual reasons for not being involved.<sup>144</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

**Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.**

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

143 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

144 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



# Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.



# Appendix 1: About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”*

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

## **Membership of the Committee, as of January 2019**

Lord (Jonathan) Evans of Weardale KCB DL,  
Chair

The Rt Hon Dame Margaret Beckett DBE MP  
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah  
(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

## **Secretariat**

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



# Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
  - research on the legal framework for local government standards
  - analysis of a sample of 20 principal authority codes of conduct
  - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

## Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerlake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

\* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



## Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

### Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



## Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



## Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

\*Follow-up telephone conversation





## **Committee on Standards in Public Life**

Room GC.07, 1 Horse Guards Road, London SW1A 2HQ

Tel: 020 7271 2948

Email: [public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)

January 2019



**Name of meeting: Standards Committee**

**Date: 6<sup>th</sup> March 2019**

**Title of report: Committee on Standards in Public Life update**

**Purpose of report**

To brief the Standards Committee on the report of the Committee on Standards in Public Life on Local Government Ethical Standards and seek its views about future steps that it recommends that the Council consider taking arising from the recommendations in the report.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>not applicable</b>
<b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a></b>	<b>no</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>no</b>
<b>Date signed off by <a href="#">Strategic Director</a> &amp; name</b>	
<b>Is it also signed off by the Service Director for Finance IT and Transactional Services?</b>	
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning Support?</b>	<b>Yes</b>
<b>Cabinet member <a href="#">portfolio</a></b>	

**Electoral wards affected: All**

**Ward councillors consulted: None**

**Public or private: Public**

**Have you considered GDPR? Yes. There are no implications arising from this report**

## **1. Summary**

- 1.1 This report follows the publication by the Committee on Standards in Public Life (CSPL) of its report '*Local Government Ethical Standards*' on the 30<sup>th</sup> of January 2019.
- 1.2 The report followed a consultation exercise conducted by the CSPL over the course of a number months, in which various stakeholders were invited to express their views. You will recall that the consultation questionnaire was considered by this committee in March 2018 and the Monitoring Officer submitted a response on behalf of the Council. Appendix 1.
- 1.3 At the September 2018 Standards Committee meeting, reference was made to a speech by Dr Jane Martin, in which she outlined the main areas in which consultees had offered opinions.
- 1.4 The report has made a number of recommendations and has suggested best practice in a number of areas. Many of the recommendations will require legislation should the government choose to accept them. In contrast, the best practice suggestions are things that Councils can consider implementing straight away, as no legislation would be required.
- 1.5 In the summary, the report states that their best practice recommendations '*should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement*'. The report suggests that the CSPL will review the implementation of their best practice recommendations in 2020.
- 1.6 The Appendix to this report describe each of the recommendations and best practice with an initial commentary from officers about them and where relevant some potential steps that Kirklees might consider taking to implement some of them.

## **2. Information required to take a decision**

### **2.1 CSPL Report**

- 2.1.1 The report contains 26 recommendations to the Government and 15 best practice suggestions. These are listed in full at appendix 1. All numbers below refer to the numbering in Appendix 1.
- 2.1.2 Many of the recommendations will require some legislation, although a number of the recommendations are for legislation to be introduced to compel local authorities to do something that they can already do on a voluntary basis, whereas the best practice suggestions can be implemented without the need for legislation.

### 2.1.3

Some of the key themes in the recommendations / best practice are as follows;

- Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. The body of the report refers to there being created a rebuttable presumption that a member's public behaviour is in an official capacity.
- A Local Authority's Code of Conduct should apply to a member when they claim to act, or give the impression they are acting, in their capacity as a member or representative of the Local Authority.
- Local authorities should be given the power to suspend Councillors, without allowances, for up to six months. One of the issues that was clear from the consultation process was that there was a general view that there were insufficient sanctions available to local authorities. Recommendations 13 and 14 are for members who have been suspended to have the right of appeal to the Local Government Ombudsman. It is recommended that the Ombudsman has the power to consider both the findings and the sanction imposed, and not just whether or not the sanction applied was appropriate.
- Further consideration to the role of and support to Independent persons with a requirement to have at least two. Suggestions about length of term.
- That statutory officer protections be extended further.
- A number of changes are suggested to the role of standards in Parish and Town Councils with the Parish and/ town Clerks having specific qualifications.
- More consistency across Codes of Conduct with some minimum standards and also the need to be more specific about some behaviours including bullying and use of social media.
- The outcome of complaints be published on the web page.
- Better visibility of the Code of Conduct and how to complain.
- The need to ensure safety and security of members better.

- Better clarity about the role/ status of the Standards Committee and who may be a voting member of it.

2.1.4 Some of the recommendations which it might be possible to do straight away or which we already do are as follows and members are invited to discuss/ comment:

Recommendation	Comment / Suggestion
2. That the Government should ensure that candidates are not required to publicly disclose their home addresses. It recommends that the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended	Kirklees made some changes around 15 months ago in respect of candidate addresses and it is recommended that those changes continue.
6. A requirement for local authorities to establish a register of gifts and hospitality and record single gifts of £50 or over or gifts totalling £100 or over from a single source in one year. This recommendation is for legislation to be introduced to compel local authorities to keep a register, but it is not currently prohibited for an authority to keep a register.	Kirklees does currently keep a register and does require declarations of gifts or hospitality of the value of £25 or over. It is recommended that the current register be kept. Consideration should be given as to whether the current level that triggers a declaration should remain unchanged, be brought into line with the recommendation or changed to a different sum. The register is not currently published, but consideration should be given to whether it should be made available on line.
11. Local Authorities should provide legal indemnity to their Independent Persons if their views or advice are disclosed. Again, this is not currently prohibited and the recommendation is for legislation to compel the provision of legal indemnity.	It should be noted that Kirklees does already provide its Independent Person with legal indemnity.
15. The Local Government Transparency Code should be updated to require authorities to publish on an annual basis the number of Code of Conduct complaints received, what they	Currently, this information is reported to the Standards Committee on a 6 monthly basis and is contained in a publicly available document. Consideration should be given as

<p>relate to, the outcomes and details of any sanctions applied.</p>	<p>to whether this information could be provided in a different or more obvious way.</p>
<p>20. Town and Parish Councils should be required to adopt the Code of Conduct of their principal authority or the new model code. This is not currently prohibited and some Town and Parish Councils do adopt the Kirklees Code of Conduct. Given that Kirklees is responsible for breach investigations for Town and Parish Councils, it is likely to be of benefit to have a single Code of Conduct. It is also likely to be of benefit to those members who both sit as Kirklees Councillors and also on a Town or Parish Council.</p>	<p>It is recommended that the matter be raised with Town and Parish Councils with a view to seeking voluntary adoption of the Kirklees Code of Conduct.</p>
<p>23. The Local Government Transparency Code should be updated to require local authorities to ensure their whistleblowing policy specifies a named contact for the external auditor and to make that available on its website. The current whistleblowing policy does contain details of the external auditor, along with contact details.</p>	<p>Enquiries are being undertaken with the auditor to identify a named contact who can be included in the policy. It is recommended that a named contact be included in the published policy.</p>
<p>24. Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.</p>	<p>The current whistleblowing policy does treat Councillors as 'prescribed persons' and does list them as alternative contacts to line management. A prescribed person is one that can be approached by a whistleblower to make a disclosure. Making a disclosure to a designated prescribed person will make the disclosure protected. This means that the whistleblower has the right not to be unfairly dismissed or suffer a detriment as a result of their disclosure.</p>

<p>25. Councillors should be required to attend formal induction training by their political groups and the recommendation is for parties to add such a requirement nationally to their rules. Training and induction is important and it is of benefit to have the support of groups in ensuring members are properly skilled.</p>	<p>This appears to relate to groups/ national parties providing support and not just encouraging members to take part in Council training. It is unclear how this will work in respect of independent councillors It is recommended that the Standards Committee involve GBMs in any discussions on the role of political groups in member training.</p>
<p>26. Local Government Association peer reviews should include consideration of how an authority maintains ethical standards.</p>	<p>This may be worth bearing in mind in the event that Kirklees participates in another Peer Review. The Monitoring Officer has alerted the Chief Executive to this recommendation.</p>

Members are asked to consider the above suggestions and decide if further action is needed what if any further steps they would like to recommend that the Council take. Members are also asked to consider if there are other recommendations they feel could be introduced in advance of changes to legislation.

2.1.3 The best practice suggestions are set out below with a commentary with some suggested actions / recommendations:

Best Practice Suggestion	Comments
<p>1. Local Authorities should include prohibitions on bullying and harassment in their Codes of Conduct. It suggests that a list of example behaviours be included in the code</p>	<p>The current code does contain a prohibition on bullying and intimidation. The CSPL report contains a number of examples, which may find their way into the model code. It is recommended that the Kirklees code be amended to include such examples. Some consideration should also be given to social media guidance, as this has led to a number of complaints.</p>
<p>2. Local Authorities should have a provision in their codes that require members to comply with any standards investigation and</p>	<p>The Kirklees code does already contain a requirement for members to comply with the standards process, but the</p>



to prohibit trivial or malicious complaints.	sanctions for failing to comply are weak.
3. Authorities should review their codes of conduct each year and seek the views of the public, community organisations and other local authorities	It is believed that an annual review is impractical, given the suggestions on consultation and the process that needs to be followed to implement any changes. It is recommended that this suggestion is not adopted but that the Code of Conduct is reviewed at least bi-annually and a further discussion is held about the approach to consultation.
4. The Code of Conduct should be readily accessible, in a prominent position on the website and available in Council buildings.	Kirklees does publish its Code of Conduct on its website, and it can be easily found from the homepage. It is recommended that printed copies are made available at reception desks in council buildings.
5. Gifts and hospitality registers should be updated at least once per quarter and published.	It is recommended that the register should be published on the Council's website.
6. Councils should publish a clear and straightforward public interest test that would be used to filter allegations.	The report contains one currently used in Northern Ireland. It is recommended that this be used as a basis to formulate a public interest test to be incorporated in the Code of Conduct.
7. Local Authorities should have access to at least two Independent Persons. Kirklees formerly had two and this has been under review.	It is noted that the number of complaints that involve the Independent Person has been increasing and it is recommended that the recruitment process be started for a second Independent Person and it is agreed that the contract of the current Independent Person be extended.
8. An Independent Person should be consulted as to whether or not a complaint should progress and given an opportunity to comment on allegations made	Kirklees do this as part of the current agreed standards process, so no action is required in respect of this best practice suggestion.
9. Where a decision is made on an allegation of misconduct following a formal investigation, the decision notice should be published on the council's website, to include a brief	It is recommended that decision notices should be published provided there would not be any GDPR issues in making the findings public. In the current decision notices, the views of the

statement of facts, which provisions of the code were engaged, the view of the Independent Person, the reasoning of the decision maker and any sanctions applied.	Independent Person are referenced.
10. A Local Authority should have straightforward and accessible guidance to the complaints process on its website.	Kirklees does have this, but it is recommended that printed copies should be available in council buildings.
13. A Local Authority should have procedures in place to deal with any conflicts of interest that arise during a standards investigation.	The report suggests using a Monitoring Officer from a neighbouring authority. This has been raised at the WYLAW group meetings and it has been agreed that WYLAW members will do this.
14. Councils should report on separate bodies that they have set up or own as part of their annual governance statement	To some extent this is already done, but it is recommended that the Head of Risk be asked to look at this.
15. Senior officers should meet with group leaders or whips regularly to discuss standards issues.	Currently the GBMs meet regularly with the Monitoring Officer and the Group Leaders meet regularly with the Chief Executive and the Monitoring Officer. GBMs attend Standards Committee by invitation when there are relevant items on the agenda.

### **3. Implications for the Council**

#### **3.1 Early Intervention and Prevention (EIP)**

N/A

#### **3.2 Economic Resilience (ER)**

N/A

#### **3.3 Improving Outcomes for Children**

N/A

#### **3.4 Reducing demand of services**

N/A

### 3.5 **Other (eg Legal/Financial or Human Resources)**

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have reputational implications.

## 4. **Consultees and their opinions**

N/A

## 5. **Next steps**

- 5.1 Any recommendations by this committee which require changes to policy, and/or further approval and/or changes to the Constitution will be presented to Corporate Governance and Audit Committee and/ or Council as applicable.
- 5.2 Any approved amendments to the Code of Conduct and / or policy and / or the Constitution will be made.

## 6. **Officer recommendations and reasons**

- 6.1 It is recommended that the contents of the CSPL report are noted and welcomed.
- 6.2 It is recommended that the actions set out in Section 2 of the report are agreed and appropriate steps taken to refer them on for implementation and approval.

## 7. **Cabinet portfolio holder's recommendations**

N/A

## 8. **Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

## 9. **Background Papers and History of Decisions**

- 9.1 Report to Standards Committee 7 March 2018 -  
<https://democracy.kirklees.gov.uk/documents/g5415/Public%20reports%20pack%2007th-Mar-2018%2011.00%20Standards%20Committee.pdf?T=10>

- 9.2 Report of the Committee on Standards in Public Life -  
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- 9.3 Committee on Standards in Public Life Consultation document -  
<https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>
- 9.4 Kirklees Council's response to the consultation.
10. **Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
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Number	Recommendation	Responsible Body	Comments	Our Views
1.	The Local Government Association should create an updated model Code of Conduct, in consultation with representative bodies of Councillors and Officers of all tiers of Local Government.	Local Government Association	This is a recommendation for the LGA to comment upon. The LGA have responded, on the 30th of January, stating that in their view 'A locally-led approach to standards – underpinned by a national framework – remains the right approach and the LGA is happy to play a leading role in updating a code of conduct to help guide our members'.	Is this a move towards a standardised Code of Conduct? There is clearly no recommendation in the report to go back to the pre-Localism Act system and abolish the ability of authorities to determine their own codes, but is it the case that this could be the possible end result of the LGA producing a model code? Will there be pressure to adopt it? The stated purpose of the recommendation is to create some consistency and reflect common expectations across Local Authorities (and Town and Parish Councils). The Codes do vary considerably at the moment. A number of Model Codes were circulated when the Localism Act introduced the new approach to Standards in 2011/12. One Model Code which is then adapted therefore makes some sense and may avoid confusion. The report does appear to support Councils having final ownership – so using a "Model" Code as a starting point and then adding to it as appropriate. The report goes on to suggest that Codes are regularly reviewed and updated which would seem to support the view that it would be a starting point for Councils to adopt and amend as appropriate. This recommendation would be relatively easy to implement. We should watch what the LGA do.
2.	The Government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a Councillor does not need to register their home address on an authority's Register of Interests.	Government	Will require primary or secondary legislation	Members may already ask to have their home addresses withheld, but they have to request this and satisfy the Monitoring Officer that there are grounds for doing so - "sensitive Personal interests". This proposal should lessen the potential risk to concerned members. We already relaxed the approach to this in Kirklees but the new approach is welcome. It is noted that recent changes to Electoral rules mean that candidates for local election (as is already the case for parliamentary candidates) do not have to include their home address on nomination papers. We will continue to use the more relaxed approach that we introduced about 15 months ago.
3.	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit Local Authorities to presume so when deciding upon Code of Conduct breaches.	Government	Will require primary or secondary legislation	This is probably a welcome step that recognises the blurring that can occur in respect of a member's social media presence. Certainty on this can assist members in understanding how social media posts will be regarded. The proposal appears to come out of a look at what Wales and Northern Ireland do. The wording will require some clarity however to make it work in practice and could lead to some issues around interpretation (as it currently does in any event). The report itself refers to there being a "rebuttable presumption that a councillor's behaviour in public is in an official capacity. An individual's behaviour in private, in a personal capacity, should remain outside the scope of the Code". The distinction between public and private may be blurred however. What about a councillor who commits a criminal offence but whilst acting in private, what about a councillor in private uses threats like "...dont you know who i am ....". Lets see what the legislation says but its something that we wrestle with from time to time and will continue to until we can achieve better clarity.
4.	Section 27(2) of the Localism Act 2011 should be amended to state that a Local Authority's Code of Conduct applies to a Member when they claim to act, or give the impression they are acting, in their capacity as a Member or as a representative of the Local Authority.	Government	Will require primary or secondary legislation	As above, some certainty must be welcomed.
5.	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trustee roles in a Charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government	Will require primary or secondary legislation	Clarity on disclosable interests is likely to be welcomed by members.
6.	Local Authorities should be required to establish a register of Gifts and Hospitality, with Councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model Code of Conduct.	Government	Will require primary or secondary legislation	This is something that isn't currently prohibited and some authorities do keep public registers. Kirklees Code of Conduct requires members to declare gifts and hospitality of £25 or more in any event. We could take a decision to change this to the recommended higher figure and be more explicit about making the register public. We don't need legislation to do this voluntarily.

7.	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that Councils include in their Code of Conduct that a Councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".	Government	Will require primary or secondary legislation	Clarity on disclosing interests is likely to be welcomed by members. Not sure however that this achieves it as it still requires a judgement call and different members of the public may have different views on what "so significant" that it is likely to prejudice your consideration or decision-making in relation to that matter " means.
8.	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government	Will require primary or secondary legislation	Concerns were raised that a two year period was far too short, and four years was better. Concerns had also been raised about the difficulty in recruiting suitable IPs. Helpful to have some clarity and 2/4 years provides some consistency. Would probably favour slightly longer or at least have that flexibility - so three years and three years. We currently have one IP after we had only one applicant last time. We said we would review that and see if we should appoint another. We did that last year at Standards and decided for the time being to continue with one. Perhaps we could consider another recruitment exercise so that there is overlap between current IP and any new IP? We don't need to wait for legislation to do this.
9.	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government	Will require primary or secondary legislation	Decision notices that are currently produced do refer to the participation of the IP in the decision making process. The decisions are not published however - they are shared with a limited group of individuals who could chose to share the decisions. (see later recommendations )
10.	A Local Authority should only be able to suspend a Councillor where the Authority's Independent Person agrees both with the finding of a breach and that suspending the Councillor would be a proportionate sanction.	Government	Will require primary or secondary legislation	It is not unreasonable, where the harshest of sanctions is applied, that the decision should be unanimous. (See recommendation 16 below which proposes a new sanction be introduced )
11.	Local Authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The Government should require this through secondary legislation if needed.	Government/All Local Authorities	Will require primary or secondary legislation	This is not an unreasonable suggestion. It is also noted that the creation of a network for Independent Persons is suggested in the surrounding text to the recommendation. That would be a sensible idea. Also whilst there are networks for Monitoring Officers for best practice these could be strengthened and better formalised.
12.	Local Authorities should be given the discretionary power to establish a decision-making Standards Committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government	Will require primary or secondary legislation	This recommendation is made to change some of the gaps in the current legislation under the Localism Act. It is discretionary under the Localism Act whether Councils have a Standards Committee. Standards Committees may be decision makers or they can play a role in monitoring behaviours / reporting back to Council. In Kirklees we have the second - advisory model. In current legislation Independent Persons can be non-voting members of the Standards Committee. Some respondents to the consultation also felt that it might be beneficial to have members from Town and Parish Councils on them too who were able to vote. This is the background to this recommendation. It isn't intended to be compulsory but corrects the previous approach and would allow those who wanted to adopt such an approach. Its a welcome update.
13.	Councillors should be given the right to appeal to the Local Government Ombudsman if their Local Authority imposes a period of suspension for breaching the Code of Conduct.	Government	Will require primary or secondary legislation	It is noted that the Ombudsman is proposed to only have a role where the most serious form of sanction has been applied. This is a sensible approach
14.	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a Code of Conduct breach by a Councillor and the appropriate sanction, on appeal by a Councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the Local Authority.	Government	Will require primary or secondary legislation	It is noted that there would be a power to impose an alternate sanction, as well as a power to determine if the allegation of breach was founded. This a sensible approach and would be welcome - although the extent to which the LGO could impose (and which) alternative sanctions will be interesting. Suspension should be a last option. It may be required after a series of other sanctions have been imposed but not carried out.

15.	The Local Government Transparency Code should be updated to require Councils to publish annually: the number of Code of Conduct complaints they receive; what the complaints broadly relate to (eg bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government	Will require primary or secondary legislation	This proposal is to compel authorities to publish. There is currently no prohibition on this and some authorities make their findings public. Kirklees could choose to follow this recommendation if they chose. We currently do six monthly reports with this information in them (which is therefore public) but we could be more proactive in publishing the statistics on line.
16.	Local authorities should be given the power to suspend Councillors, without allowances, for up to six months.	Government	Will require primary or secondary legislation The LGA are not wholly supportive of this, stating that, in their view, a number of adequate sanctions already exist to deal with the most serious issues and care needs to be taken to avoid adding to the current regime and causing unintended consequences. For example, suspending councillors for up to six months could see them lose their seat. This would pose a risk to the democratic process leaving residents without locally-elected representative.	This is a welcome suggestion and appears to be in response to the strong views that were expressed during the consultation that there were not adequate sanctions available to local authorities. The report itself says that the 'current lack of robust sanctions damages public confidence in the standards system'. This appears to be in response to the views expressed. See comments earlier as well.
17.	The Government should clarify if Councils may lawfully bar Councillors from Council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government	May require primary or secondary legislation	Clarity is likely to be welcomed.
18.	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government	Will require primary or secondary legislation	This is welcome as its hasn't been wholly effective. Presumably, this proposal is made on the basis that Councils will have adequate sanctions in exchange for the abolition but it is unclear at present.
19.	Parish Council Clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish Councils	Unclear if this is really "good practice" recommendation rather than something requiring legislation	This should be beneficial to Town and Parish Councils for the reasons set out in the report. It may give more tools/ confidence to deal with tricky matters but won't stop poor behaviour by Parish/ Town councillors
20.	Section 27(3) of the Localism Act 2011 should be amended to state that Parish Councils must adopt the Code of Conduct of their principal authority, with the necessary amendments, or the new model code.	Government	Will require primary or secondary legislation	There is likely to be a positive benefit to this, especially where members sit on both Kirklees and a Town or Parish Council. It will also be beneficial to the Monitoring Officer when dealing with any conduct complaints.
21.	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a Parish Councillor following the finding of a breach is to be determined by the relevant principal authority.	Government	Will require primary or secondary legislation	There is currently a lack of clarity about the extent to which Town and Parish Councils must impose a sanction recommended by the principal authority. This is proposal is intended to clarify that.
22.	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government	Will require primary or secondary legislation	This is a welcome step to protect the independence of statutory officers.

23.	The Local Government Transparency Code should be updated to provide that Local Authorities must ensure that their Whistleblowing Policy specifies a named contact for the external auditor alongside their contact details, which should be available on the Authority's website.	Government	Will require primary or secondary legislation	This is already part of Kirklees' whistleblowing policy.
24.	Councillors should be listed as "prescribed persons" for the purposes of the Public Interest Disclosure Act 1998.	Government	Will require primary or secondary legislation to make it compulsory.	Kirklees' whistleblowing policy does treat members as prescribed persons, listing them as alternative contacts for employees wishing to make disclosures.
25.	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties	Unclear what's needed to make this a requirement across groups / parties	We already have induction training for new Councillors and so far have had full attendance or we have managed to meet with Councillors unable to make induction in the first week. This appears to be over and above that with an obligation on group and national parties. This is a welcome recommendation but unclear how this will work in practice. The training and induction of members is important and it is welcomed that there is a proposal to make this a requirement. Not clear what will happen with independents.
26.	Local Government Association corporate peer reviews should also include consideration of a Local Authority's processes for maintaining Ethical Standards.	Local Government Association	Legislation not required	The LGA haven't commented directly on this proposal. Do local authorities want their codes and processes subject to such review? What powers would be given to the LGA if they decided they weren't suitable? In theory a good idea.

Number	Best practice	Responsible Body	Comments	Our Views
1.	Local Authorities should include prohibitions on bullying and harassment in Codes of Conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.	Local authority	No legislation would be required - an authority can choose the contents of its own code of conduct.	Kirklees already says (3A.2) "You must not bully or intimidate any person or attempt to bully or intimidate them". The report provides some good examples of the type of thing that should be included in Codes however as examples of what that might mean in practice. It is proposed that we consider this in more detail and look at amending the Code in Kirklees to give more specific references to what might amount to bullying. There is also reference to social media in the report and the need to provide appropriate guidance - it doesn't form part of the best practice/ recommendations but it is suggested. This should be picked up by the standards committee and more help and guidance given to members as it overlaps with issues around behaviours and has led to a significant number of complaints.
2.	Councils should include provisions in their Code of Conduct requiring Councillors to comply with any formal Standards investigation and prohibiting trivial or malicious allegations by Councillors.	Local authority	No legislation would be required - an authority can choose the contents of its own code of conduct.	the Kirklees code already contains this but the sanctions for not complying are weak.
3.	Principle Authorities should review their Code of Conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring Authorities.	Local authority	No legislation would be required - an authority can choose how often it reviews its own code of conduct.	seeking the views of the public etc would be a sensible idea but an annual review may be too often? Perhaps bi annually would be more sensible - otherwise no sooner is something reviewed then we would be reviewing again.
4.	An Authority's Code should be readily accessible to both Councillors and the public, in a prominent position on a Council's website and available in Council premises.	Local authority		Kirklees' Code of Conduct is published on its website. Perhaps there could be a link from the home page. We can look at other ways to make it prominent.
5.	Local Authorities should update their gifts and hospitality register at least once per quarter and publish it in an accessible format, such as CSV.	Local authority		See earlier comments in the recommendations. Suggest that this is something we can do quickly.
6.	Councils should publish a clear and straightforward public interest test against which allegations are filtered.	Local authority	skeh15ish.x	Yes agreed we should consider what that might look like as part of a discussion with members of the Standards committee and recommend that to Council. The report makes reference to one which is used in Northern Ireland which we could explore as a starting point.



7.	Local Authorities should have access to at least two Independent Persons.	Local authority	There are no restrictions on the numbers of Independent persons that an authority can appoint.	This may be an ideal, but may not reflect the difficulty in recruiting suitable IPs. As referred to earlier - suggest that we consider another recruitment to overlap with the current IP.
8.	An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.	Local authority		Kirklees already involve their IP at the first 'sift' stage in the complaints process as well as later on in the process.
9.	Where a Local Authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of fact, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.	Local authority		Some thought needs to be given as to whether Kirklees wants to publish its decision notices. Currently, these are only made available to the member's group leader and GBM and the member complained of, plus the complainant. Currently, the other GBMs don't see the decision notice. This may be something which is worth considering as an additional way of getting compliance with recommendations. One for further discussion.
10.	A local authority should have straightforward accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.	Local authority		Kirklees does have this, but perhaps there could be a direct link to this from the homepage.
11.	Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.	Town or parish council	This is a matter for the individual Town or Parish Councils to adopt.	This looks like a sensible suggestion - it may be worth a conversation with Parish and Town Councils about this
12.	Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.	Local authority		Currently, the Monitoring Officer does deal with complaints made about Town or Parish council members. This does impact on resources - significantly at times.
13.	A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.	Local authority		This is a sensible suggestion. To raise at the WYLAW group.
14.	Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.	Local authority		Yes a sensible idea. Discuss with head of Audit and Risk and include in the AGS
15.	Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	Local authority		The Monitoring Officer regularly meets with the GBMs and the Chief Exec meets regularly with the Group Leaders.

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## ITEM 8

### 2.1.4

2	Noted that Kirklees has already changed its processes
6	Agree to maintain the current £25 limit and to publication of the register on line
11	Noted that Kirklees already does this
15	Agree to maintain the same 6 monthly publication process, but with some tables to make comparisons easier and trends more visible
20	Agree that Town and Parish Councils be asked to adopt KMC code of conduct (Monitoring Officer to contact Town/Parish Councils), and also suggest that discussion of the CSPL report is scheduled as an item of business on their agendas
23	Action noted, awaiting contact name from Grant Thornton
24	Noted that the current whistleblowing policy does treat members as such
25	Recommend to CGA that the Code of Conduct be amended to make formal induction for new Councillors mandatory Members of Standards Committee to undertake annual refresher training It was also noted that there may be an obligation imposed on national parties, if this recommendation is adopted
26	Noted

### 2.1.3

1	Recommend to CGA that the Code of Conduct is amended to include the examples of bullying and intimidation from page 33 of the CSPL report Bring report to a future Standards Committee re guidance on social media training
2	Noted
3	Agree bi-annual approach to code of conduct reviews (with any additional updates if and as required)
4	Noted that the Code of Conduct is on the website Agreed that copies should be made available in Council buildings
5	Agreed to publish on Council website (see point 6 above)
6	Agreed to publish as part of the standards process and the MO is asked to incorporate this into the standards process
7	Agree to recommend to CGA, for approval by full Council
8	Noted
9	Agreed to recommend to CGA
10	Kirklees does currently publish complaints process details on its website It is agreed to also make copies available at Council buildings
13	Noted that such arrangements do already exist within WYLAW
14	Agreed to ask the Head of Risk to look into this
15	Noted

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## Code of Conduct for Members

### 1 Application

1.1 This Code applies to you as a member of Kirklees Council (“the authority”) and it is your personal responsibility to comply with the requirements of this Code. This Code sets out the standards of behaviour required of you and applies to you whenever you act in the capacity of an elected or co-opted member of the authority, including –

- 1.1.1 at meetings of the authority
- 1.1.2 when acting as a representative of the authority
- 1.1.3 in taking any decision as a Cabinet member or a Ward Councillor
- 1.1.4 in discharging your functions as a Ward Councillor
- 1.1.5 at briefing meetings with officers and
- 1.1.6 at site visits
- 1.1.7 when corresponding with the authority other than in a private capacity

1.2 Where you act as a representative of your authority on another local authority, you must, when acting for that other authority, comply with that other authority’s code of conduct.

1.3 Where you act as a representative of your authority on a body which is not another local authority you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### 2 Interpretation

For the purposes of this Code –

2.1 “member of the authority” includes:

- 2.1.1 elected members; and
- 2.1.2 co-opted members who are entitled to vote on any questions which fall to be determined by the committees, sub-committees, joint committee, joint subcommittees or area committees upon which they sit.

2.2 “meeting” means any meeting of:

- 2.2.1 the authority;
- 2.2.2 the executive of the authority; or
- 2.2.3 any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or area committees.

2.3 “body” means any body of which you are a member or in a position of general control or management and –

- 2.3.1 to which you are appointed or nominated by your authority; or
- 2.3.2 which is a body –

- (a) exercising functions of a public nature; or
- (b) directed to charitable purposes; or

(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

2.4 “relevant person” for the purposes of paragraph 5 of this Code means any person or body with whom you have a family, social or business relationship.

### 3 General Principles

Your conduct as a member should be consistent with the following principles –

#### 3.1 Preamble

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, Non-Departmental Public Bodies, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

#### 3.2 Selflessness

Holders of public office should act solely in terms of the public interest.

#### 3.3 Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### 3.4 Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### 3.5 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.

#### 3.6 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.

#### 3.7 Honesty

Holders of public office should be truthful.

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### 3.8 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.

#### 3A General Principles and Obligations

1. You must treat others with respect.

~~2. You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.~~

~~You must not bully or intimidate any person, or attempt to bully or intimidate them. For the purposes of this code, bullying and harassment are defined as follows:~~

~~offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.~~

~~2. —~~

3. You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of behaviour.

4. You must not do anything which may cause the Council to breach any of the equality duties. This includes refraining from behaviour or comments which might reasonably be regarded as being racist, sexist or otherwise discriminatory towards other people.

5. You must not conduct yourself in a manner which would reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.

6. You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably be aware, is of a confidential nature, except where:-

- (i) You have the consent of a person authorised to give it;
- (ii) You are required by law to do so;
- (iii) The disclosure is made by a third party for the purposes of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or

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- (iv) The disclosure is –
  - (A) Reasonable and in the public interest
  - (B) Made in good faith and in compliance with the reasonable requirements of the authority; and
  - (C) You have consulted the Monitoring Office prior to its release.
- 7. You must not prevent another person gaining access to information which that person is entitled to by law.
- 8. You must be clear when communicating with the media or speaking in public that you do not give the impression you are acting in an official capacity when you are not. Nor should you express your own views in a way which misleads anyone reading or listening that it is official or agreed policy or position of the Council when it is your own personal view or those of a political party or group of people which you are a member.
- 9. You must respect the impartiality and integrity of the authority's statutory officers and its other employees. You must not do anything which compromises the impartiality and integrity of anyone who works for or on behalf of the Council, or do anything that is likely to compromise their impartiality and integrity.



10. When you use or authorise the use by others of the resources of the Council you must:
  - (i) Abide by the Council's reasonable requirements; and
  - (ii) Ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (iii) Have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
11. You must co-operate with the Standards process when you are the subject of a complaint and respond to a complaint that is brought against you, except where there are extenuating circumstances.
12. You must comply with the decision of the Standards process if you are found to be in breach of this Code of Conduct.
13. You must comply with the standards as described in the Council's Behaviours and in particular the protocol on Member/Officer Relations as well as all other relevant policies and guidance related to standards of appropriate behaviour and responsibilities from time to time agreed by the Council or which the Council is required to comply with or have appropriate regard to.
14. You must comply with the rules and procedures of meetings you attend. This includes compliance with the Council's Standing Orders and the authority and rulings of the Mayor or Chair.
15. When reaching decisions on any matter you must have regard to any relevant advice provided to you by the Council's –
  - (a) chief finance officer (the statutory s.151 Officer); or
  - (b) monitoring officer (the Service Director of Legal, Governance and Commissioning), where that officer is acting pursuant to his or her statutory duties.

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#### 4 Disclosable Pecuniary Interests

4.1 Disclosable Pecuniary Interests ("DPIs") are those interests defined as such in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ("the 2012 Regulations") or in any subsequent regulations which amend, vary or revoke the 2012 Regulations. For the purposes of illustration only, a summary of the 2012 Regulations is set out in the Schedule to this Code of Conduct.

4.2 You must, within 28 days of:

- 4.2.1 adoption of this Code of Conduct by the authority; or
- 4.2.2 taking office as a member or co-opted member of the authority notify the authority's Monitoring Officer of any DPI, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

4.3 When you are present at a meeting of the authority and you have a DPI in any matter to be considered or being considered at the meeting, and where the matter does not relate to

'sensitive information' as defined below, you must disclose the existence and nature of the interest to the meeting.

4.4 Following any disclosure of a DPI not on the authority's register or the subject of pending notification, you must notify the authority's Monitoring Officer of that interest within 28 days beginning with the date of disclosure.

4.5 Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a DPI and must withdraw from the meeting while the matter is under consideration.

4.6 You must within 28 days of becoming aware of any new DPI or the need to change or update a current DPI registration, notify the authority's Monitoring Officer of those new or revised register entries.

#### **5 Interests which are not Disclosable Pecuniary Interests (Other Interests)**

5.1 In addition to the requirements relating to DPIs, if you attend a meeting at which any item of business is to be considered and you are aware that you have an interest which does not amount to a DPI you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

5.2 You have an Other interest where –

(a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing (including interests in land and easements over land) of you or a member of your family or a person or an organisation 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 authority's administrative area, or

(b) it relates to or is likely to affect any of the interests that are defined as DPIs but are in respect of a member of your family (other than a partner) or a person with whom you have a close association.

5.2 In such circumstances you must consider whether your continued participation in the matter relating to your interest would be reasonable in the circumstances, particularly if the interest may give rise to a perception of a conflict of interests in the matter under discussion.

5.3 You do not have an Other interest if the interest relates to any business of the authority in respect of –

5.3.1 housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

5.3.2 school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

5.3.3 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;

5.3.4 an allowance, payment or indemnity given to members;

5.3.5 any ceremonial honour given to members; and

5.3.6 setting council tax or a precept under the Local Government Finance Act 1992.

## Sensitive Interests

5.4 Where you have an interest which is not a disclosable pecuniary interest and information relating to the interest is sensitive information, you must indicate to the meeting that you have an interest, the details of which are withheld.

### 6 Sensitive information

6.1 Where you consider that the information relating to any of your interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest under paragraph 4.

6.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 6.1 is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

6.3 In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person connected with you may be subjected to violence or intimidation.

### 7 Gifts and Hospitality

7.1 You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value ~~in excess of~~ £25 or over which you have accepted from or has been offered to you by any person or body other than the authority. You must also declare receipt of gifts or hospitality totalling £100 or over from any one single source in one year.

7.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality, such register to be available on line.

7.3 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the authority for this purpose.

## SCHEDULE

## Regulation 1(2)

### Disclosable Pecuniary Interests

Disclosable Pecuniary Interests are the interests specified in the second column of the following table and for the purposes of that table the following definitions apply:

"the Act" means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) (Disclosure of pecuniary interests upon taking office) or section 31(7) (Interests not entered on the authority’s register and not subject to a pending notification), as the case may be, of the Act;

“relevant person” means M or M’s spouse or civil partner, a person with whom M is living as husband and wife or a person with whom M is living as if they were civil partners;

“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.

**Table** Regulation 2

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.
Contracts	<p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act 1992(1)).</p> <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority –</p> <ul style="list-style-type: none"> <li>(a) under which goods or services are to be provided or works are to be executed; and</li> <li>(b) which has not been fully discharged.</li> </ul>

Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (along or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) – <ul style="list-style-type: none"> <li>(a) the landlord is the relevant authority; and</li> <li>(b) the tenant is a body in which the relevant person has a beneficial interest.</li> </ul>
Securities	Any beneficial interest in securities of a body where – <ul style="list-style-type: none"> <li>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</li> <li>(b) either – <ul style="list-style-type: none"> <li>i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>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 relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</li> </ul> </li> </ul>

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**Name of meeting:** Corporate Governance & Audit (CGA) and Council

**Date:** 26 April 2019 (CGA) & 22 May 2019 (Council)

**Title of report:** Proposed revisions to the terms of reference for the Health & Wellbeing Board

**Purpose of report:** The purpose of this report is to seek approval for the proposed revisions to the Terms of Reference for the Health and Wellbeing Board

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	No
The Decision - Is it eligible for call in by Scrutiny?	N/A
Date signed off by <u>Strategic Director</u> & name	Rachel Spencer-Henshall - 11 April 2019
Is it also signed off by the Service Director (Finance)?	James Anderson - 11 April 2019
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft - 11 April 2019
Cabinet member <a href="#">portfolio</a>	Give name of Portfolio Holder  Cllr Musarrat Khan - Health and Social Care

**Electoral wards affected:** N/A

**Ward councillors consulted:** N/A

**Public or private:** PUBLIC

**(Have you considered GDPR?)**

**This report contains no information that falls within the scope of the General Data Protection Regulation**

## 1. Summary

In accordance with The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, if the Council wishes to alter the voting rights and membership the board must first be consulted on any proposed amendments.

On the 28 March 2019 the Health and Wellbeing Board, considered and approved the amendments to the terms of reference.

## 2. Information required to take a decision

- 2.1 The national, regional and local context the Board is operating within has undergone significant changes over the past 12-18 months, including:
- Publication of the NHS Long Term Plan with its emphasis on promoting collaboration
  - The West Yorkshire Health and Care Partnership has formally become an 'Integrated Care System' and the new Partnership Board will meet from June 2019
  - Creation of the West Yorkshire Joint Committee of Clinical Commissioning Groups, the West Yorkshire Association of Acute Trusts and the West Yorkshire Mental Health Services Collaborative
  - The emergence of Primary Care Networks, which has been formalised in the new GP Contract and our local arrangement will be confirmed in May
  - Establishment of the Kirklees Integrated Commissioning Board and the Kirklees Integrated Provider Board. The Integrated Provider Board includes senior representatives from across the Kirklees health and social care sector
  - The Kirklees Partnership arrangements are also being reviewed, and the Children and Young People's Partnership is being re-established
- 2.2 The current membership as set out in the Terms of Reference has not been changed since the Board was established in April 2013. The membership reflected the requirement as set out in the Health and Social Care Act 2012. Core membership that health and wellbeing boards must include:
- at least one councillor from the relevant council
  - the director of adult social services
  - the director of children's services
  - the director of public health
  - a representative of the local Healthwatch organisation
  - a representative of each relevant clinical commissioning group (CCG)
  - any other members considered appropriate by the council'
- 2.3 In addition there are 'invited observers' from all the key local health and care provider organisations in Kirklees. This has meant that provider organisations have not had a formal voice at the Board, and that representatives from Overview and Scrutiny have only been able to observe Board meetings as members of the public.
- 2.4 In light of the shift to a much more collaborative culture which is at the core of both the Kirklees Health and Wellbeing Plan and the NHS Long Term Plan it is timely to update the membership of the Board.

## 3. Proposals

- 3.1 Corporate Governance and Audit Committee and Council are asked to consider and agree the proposed revision to the Terms of Reference for 2019-20, specifically; (See appendix 1)



- extending the membership of the Board to include a nominated representative of the Kirklees Integrated Provider Board. The Integrated Commissioning Board joint chairs are the CCG Chief Officer and Director of Adult Social Care and are already Board members.
- Add a representative of Kirklees Overview and Scrutiny as an 'invited observer'.

3.2 The Health and Wellbeing Board has also agreed that a full review of the Board's Terms of Reference is undertaken and a report setting out proposed changes in light of the changing national, regional and local context set out above be presented to the Board in Autumn 2019.

#### **4. Implications for the Council**

##### **4.1 Working with People**

##### **4.2 Working with Partners**

The existing partnership arrangements between the council and partners will be strengthened

##### **4.3 Place Based Working**

##### **4.4 Improving outcomes for children**

##### **4.5 Other (eg Legal/Financial or Human Resources)**

#### **5. Consultees and their opinions**

The Health and Wellbeing Board approved the revisions to the terms of reference

#### **6. Next steps and timelines**

Following consideration by Corporate Governance and Audit Committee, on the 26 April 2019, the report will progress to Annual Council on 22 May 2019 for approval.

#### **7. Officer recommendations and reasons**

That the revised Terms of Reference of the Health and Wellbeing Board be approved.

#### **9. Cabinet portfolio holder's recommendations**

Not applicable

10. **Contact officer(s)**

Phil Longworth, Senior Manager – Integrated Support Kirklees Council

[Phil.longworth@kirklees.gov.uk](mailto:Phil.longworth@kirklees.gov.uk)

Tel : 01484 221000

Jenny Bryce-Chan, Principal Governance Officer

[Jenny.bryce-chan@kirklees.gov.uk](mailto:Jenny.bryce-chan@kirklees.gov.uk)

Tel: 01484 221000

11. **Background Papers and History of Decisions**

12. **Service Director responsible**

Julie Muscroft, Service Director, Legal Governance and Commissioning

## Health and Wellbeing Board

### Membership

Membership of the Board includes voting and non-voting members as set out below:-

#### Voting members

- Three Members of Kirklees Council's Cabinet, one of whom may be the Leader
- One Senior Councillor from the main opposition group
- One Councillor from a political group other than the administration and main opposition group
- Director for Children Services
- Director for Public Health
- Director of Adult Social Care
- One representative of local Kirklees Healthwatch
- Three representatives of North Kirklees Clinical Commissioning Group
- Three representatives of Greater Huddersfield Clinical Commissioning Group
- **One representative of Kirklees Integrated Provider Board**

#### Non-voting members

- Chief Executive Kirklees Council
- Representative of NHS England ( Statutory requirement: to participate in the Board's preparation of JSNA / JHWS and if requested to participate in exercise of the commissioning functions of the Board in relation to the Kirklees HWB Area)

#### Invited observers

Invited observers from key local partners to promote integration:

Chief Executive or nominated representative of significant partners:

- Mid Yorkshire Hospitals Trust
- Calderdale and Huddersfield Foundation Trust
- South West Yorkshire Partnership Foundation Trust
- Current community health provider
- West Yorkshire Police
- **Representative of Kirklees Council Overview and Scrutiny**

#### Terms of Reference

The Health and Wellbeing Board is a statutory Committee of the Council bringing together the NHS, the Council and partners to:

- Improve the health and wellbeing of the people in their area, reduce health inequalities and promote the integration of services.
- Develop, publish and own the Joint Strategic Needs Assessment for Kirklees (JSNA) (which is known locally as the Kirklees Joint Strategic Assessment (KJSA)) to inform local planning, commissioning and delivery of services and meet the legal responsibilities of Kirklees Council and the Clinical Commissioning Groups.

- Publish and maintain a statement of needs for pharmaceutical services across the Kirklees area.
- Develop, publish and own the Joint Health and Wellbeing Strategy for Kirklees, based on the JSNA and other local intelligence, to provide the overarching framework for planning, commissioning and delivery of services.
- Provide the structure for overseeing local and regional planning and accountabilities for health and wellbeing related services and interventions and the development of sustainable integrated health and social care systems.
- Promote integration and partnership working with the NHS, social care, public health and other bodies in the planning, commissioning and delivery of services to improve the wellbeing of the whole population of Kirklees, including as part of regional working.
- Ensure the involvement and engagement of service users, patients and the wider public in planning, commissioning and delivery of services to improve the wellbeing of the whole population of Kirklees.
- Provide leadership and oversight of key strategic programmes, such as the Kirklees Health and Wellbeing Plan, Better Care Fund, and to encourage use of associated pooled fund arrangements where appropriate.
- Provide assurance that the commissioning and delivery of plans of partners have taken sufficient account of the Joint Health and Wellbeing Strategy and the Joint Strategic Needs Assessment.
- Ensure that the Council's statutory duties in relation to health protection arrangements and plans are delivered through the work of its sub- committee, the Kirklees Health Protection Board.
- Exercise any other functions of the Council delegated to the Board by the Council.

### **Voting Rights**

See membership list

In accordance with The Local Authority (Public Health, Health and Wellbeing boards and Health Scrutiny) Regulations 2013, if the Council's wishes to alter the voting rights and membership the board must first be consulted on any proposed amendments.

### **Substitute Members**

Voting Board Members can send a substitute to represent them should they be unable to attend and if appropriate cast their vote.

### **Quorum**

The quorum for the board will be attendance by 50% of the accountable bodies and 50% of the membership.

**Name of meeting: Annual Council**

**Date: 22 May 2019**

**Title of report: Dates of Council Meetings – 2019 to 2020 Municipal Year**

**Purpose of report:**

**To determine dates and times for meetings of Council for the 2019-2020 municipal year**

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)?</a>	No
The Decision - Is it eligible for "call in" by Scrutiny?	No
Signed off by Director	Rachel Spencer-Henshall
Is it also signed off by the Service Director for Financial Management, IT, Risk and Performance?	N/A
Is it also signed off by the Service Director - Legal Governance and Commissioning	Yes, Julie Muscroft
Cabinet Member portfolio	Not applicable

**Electoral wards affected: Not applicable**

**Ward councillors consulted: Not applicable**

**Public or Private Status: Public**

## 1. Summary

Council Procedure Rule 2 (1) advises that the dates of ordinary Council Meetings in each Municipal Year will be determined by the Council following recommendations made by the Corporate Governance and Audit Committee.

Council Procedure Rule 5(1) states that there shall be two types of Ordinary meeting of the Council, one which focuses on Holding the Executive to Account, and the other for Key Discussions. No less than four ordinary meetings must be designated as Holding the Executive to Account.

The following dates/times are proposed, all meetings to be held in Huddersfield Town Hall at 5.30pm.

The meeting of Annual Council, scheduled for 20 May 2020, will commence (with a civic ceremony) at 12.30pm.

Date	Council Meeting
2019	
Wednesday 17 <sup>th</sup> July	Holding Executive to Account
Wednesday 18 <sup>th</sup> September	Key Discussion
Wednesday 16 <sup>th</sup> October	Holding Executive to Account
Wednesday 13 <sup>th</sup> November	Key Discussion
Wednesday 11 <sup>th</sup> December	Holding Executive to Account
2020	
Wednesday 15 <sup>th</sup> January	Key Discussion
Wednesday 12 <sup>th</sup> February	Budget Council
Wednesday 18 <sup>th</sup> March	Holding Executive to Account
Wednesday 20 <sup>th</sup> May	Annual Council

## 2. Information required to take a decision

Not applicable

## 3. Implications for the Council

### 3.1 Early Intervention and Prevention (EIP)

Not applicable

**3.2 Economic Resilience (ER)**

Not applicable

**3.3 Improving Outcomes for Children**

Not applicable

**3.4 Reducing demand of services**

Not applicable

**4. Consultees**

- Engagement with Leading Members
- Corporate Governance and Audit Committee – 26 April 2010 (recommended to Council for approval)

**5. Next steps**

That, subject to approval, the dates be confirmed for 2019/2020.

**6. Officer recommendations and reasons**

That the schedule of Council meetings for the 2019-2020 municipal year be approved.

**7. Cabinet portfolio holder recommendation**

Not applicable.

**8. Contact officer**

Andrea Woodside, Governance Officer

**9. Background Papers and History of Decisions**

Not applicable.

**10. Assistant Director responsible**

Julie Muscroft, Service Director - Legal, Governance and Commissioning

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**Name of meeting: Corporate Governance & Audit Committee**  
**Date: 26<sup>th</sup> April 2019**

**Title of report: Proposed Revisions to Contract Procedure Rules**

**Purpose of report; To provide information on proposed changes to Contract Procedure Rules for the municipal year 2019/20**

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)?</a>	Not applicable
The Decision - Is it eligible for "call in" by Scrutiny?	Not applicable
Date signed off by Director & name	J Muscroft Service Director - Legal Governance and Commissioning
Is it also signed off by the Service Director for Finance, IT & Transactional Services	Yes ( CFO)
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Yes
Cabinet member portfolio	Not applicable

**Electoral wards affected: All**  
**Ward councillors consulted: Not applicable**  
**Have you considered GDPR; Yes**  
**Public**

## 1. Summary

- 1.1 This report sets out information on proposed changes to Contract Procedure Rules.
- 1.2 The main areas proposed for amendment relate to values. These are shown on the attached documents.

## 2. Information required to take a decision

- 2.1 The detail is contained within the attachment. Because many of the changes are in tables in the text, these do not show up by track changes, so attention is drawn particularly to the Appendix A, which highlights the changes in a comparative form(2018 to 2019)
- 2.2 The main changes relate to values, aligning most actions to thresholds of £25,000, £100,000 and the EU goods/supplies thresholds- just over £180,000 at present. Other changes emphasise the need for electronic tendering, remove the role of Audit in opening tenders (the electronic portal system providing appropriate controls) and entitle the Head of Procurement to make supplier selections to submit tenders for jobs below a £100,000 threshold.

### **3. Implications for the Council**

- 3.1 **Working with People** – None directly
- 3.2 **Working with Partners** – None directly
- 3.3 **Place Based Working** – None directly
- 3.4 **Improving outcomes for children**– None directly
- 3.5 **Other (eg Legal/Financial or Human Resources)**- Although each of the sub categorisations above suggest no direct implications, these Procedure Rules covers all aspects of the councils operations,.

### **4. Consultees and their opinions**

- 4.1 The service directors for finance, and legal governance and commissioning, and legal and legal services advisers have been involved in the drafting of these proposals.

### **5. Next steps & Timelines**

- 5.1 This matter will go forward to Annual Council for consideration.

### **6. Officer recommendations and reasons**

- 6.1 Members are asked to consider the proposed changes to Contract Procedure Rules and recommend them to Annual Council for approval.
- 6.2 Note that EU Procurement Values may change from 1<sup>st</sup> January 2020, necessitating a revision to these rules.

### **7. Cabinet portfolio holder recommendation**

- 7.1 Not applicable.

### **8. Contact officer**

Jane Lockwood, Head of Procurement  
Martin Dearnley, Head of Risk

### **9. Background Papers and History of Decisions**

The attached document includes track changes, and a clean (new) version. The 2018 version of CPRs is available as a part of the council constitution

### **10. Service Director responsible**

Service Directors of Legal Governance & Commissioning,

## CPR Comparison Table

## APPENDIX A

This table is provided to give an overview of key suggested changes to the Council Procedure Rules (CPRs) for 2019. The table does not include minor amendments such as grammatical changes and changes in referencing.

CPR 2018	CPR 2019
Contents table	Contents table
3. Choice of Procurement Process 4. Advertising 5. Competition and Supplier Selection	These have been combined into one table; 3. Procurement Process (& renumbering of the contents table thereafter)
6. Quotation receipt & evaluation	Now 4. Quotation has been replaced with the word Tender throughout the CPRs
Definitions	Definitions
Data Protection Legislation Data Protection Act 1998	Change in date; Data Protection Act 2018
	Addition of; General Data Protection Regulation
Head of Corporate Property Management	Minor change
Official Council Order	Value/Threshold Change Supply for a value of less than £160,000 has changed to the current EU supplies and services threshold.
Procurement Strategy	Has been removed as out of date and under review
	Addition of; Reasonable means
Rule 1 – Conduct and Compliance	Rule 1 – Conduct and Compliance
	Head of Procurement may Addition of; 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation, as appropriate,

	with the Service Director, Solicitor to the Council, Chief Finance Officer and Head of Internal Audit
<b>Rule 2 – Preparation and Process</b>	<b>Rule 2 – Preparation and Process</b>
(3) Value £20,000 (9) For contracts up to £160,000 (10) For contracts above £160,000 (13) contract exceeding £180,000	(3) Value increased to £25,000 Change in values/threshold across the CPRs to align with existing EU thresholds for supplies and services. Implications of this are that the procurement team will now assume responsibility for contracts between £160,000 and EU threshold (currently at £181,302) Values for (9), (10) & (13) have been changed to; EU supplies and services threshold 2.1.9 slight change in wording
Rules 3 (Choice of Procurement Process, Rule 4 (Advertising) & Rule 5 (Competition & Supplier Section) have been consolidated into one table called Procurement Process Changes have been made to values to; <ul style="list-style-type: none"> <li>- align with requirements under Transparency Regulations (£25k)</li> <li>- to simplify the different bands and align with EU Threshold</li> </ul>	
<b>Rule 3 – Choice of Procurement Process</b>	<b>Rule 3 Procurement Process</b>
Value of Supplies <ul style="list-style-type: none"> <li>- Up to £200</li> <li>- Between £200 and £20,000</li> <li>- £20,000 to £99,999</li> <li>- £100,000 up to EU Threshold or £180,000 (whichever is lower)</li> <li>- Above EU Threshold or £180,000 (whichever is lower)</li> </ul>	Value of Supplies <ul style="list-style-type: none"> <li>- £0 - £24,999</li> <li>- £25,0000 – EU Threshold</li> <li>- Above EU Threshold</li> </ul> Changes have been made to values to align with requirements under Transparency Regulations (£25k) and in line with EU Thresholds. The Head of Procurement can determine a select list of contractors for projects below £100,000
Rules 4&5 – Advertising & Competition & Supplier Section	Rules 4&5 – Advertising & Competition & Supplier Section No substantial changes to the content of this section, just to how the

	information is displayed
<b>Rule 6 – Quotation Receipt &amp; Evaluation</b>	<b>Rule 4 – Tender Receipt &amp; Evaluation</b>
6.1 For Procurements which are valued above £180,000	4.1 For Procurements which are valued about £25,000, suppliers must be required to submit tenders by electronic means of communication.
6.2, 6.3 & 6.4 all relate to paper quotes – which have been removed as paper submissions no longer allowed	
6.5 Opening of tenders by procurement and audit	4.3 All electronic Tenders received by the appointed time will be opened at the same time by the Head of Procurement.  The procurement portal has a clear auditable pathways which have negated the need for audit to open tenders. Appropriate controls exist within the system.
<b>Rule 7 – Standing Lists, Dynamic Purchasing Systems and Framework Agreements</b>	<b>Rule 5 – Standing Lists, Dynamic Purchasing Systems and Framework Agreements</b>
7.4 .....and other appropriate printed newspaper or journal	5.4 changed to ...and other appropriate media as the Head of Procurement may determine
7.11 All Framework Agreements will be in the form of a written contract...	5.11 changed to All Framework Agreements will in the form of a written agreement
<b>Rule 8 – Exceptions from Competition</b>	<b>Rule 6 – Exceptions from Competition</b>
8.2 The Head of Procurement must approve any proposed trail arrangement exceeding £20,000	8.2 changed to ...arrangement exceeding £25,000
8.7 The Solicitor to the Council must be consulted in advance to any negotiation in respect of any contract estimated to exceed £160,000...	8.7 changed to .....contract estimated to exceed the EU supplies and services threshold
<b>Rule 9 – Record Keeping and Reporting</b>	<b>Rule 7 – Record Keeping and Reporting</b>
9.1 (last sentence) The documentation must be kept for a period of at least 3 years from the date of award of the contract	9.1 changed to ...documentation must be kept for a period as defined within the Councils

	relevant retention schedule
<b>Rule 10 – Income Contracts &amp; Concessions</b>	<b>Rule 8 – Income Contracts &amp; Concessions</b>
10.3.1 Assets valued at below £200 may be disposed of by any means 10.3.2 Assets valued between £200 and up to £20,000 must be disposed of by a method chosen by the Service Director....	10.3.1&2 changed to 8.3.1 Assets valued up to £25,000 must be disposed of by a method chosen by the Service Director 8.3.2 Assets valued above £25,000 must be disposed of following public notice....
10.4.1 & 2 relating to generating income... The Head of Procurement must direct and supervise the tendering arrangement expected to generate income in excess of £20,000	8.4.1 & 2 Change in threshold from £20,000 to £25,000
<b>Rule 12 – Executing Contracts</b>	<b>Rule 10 – Executing Contracts</b>
12.2 & 12.3 Contracts for all Supplies, Concessions, Income Contracts and Framework agreements up to and including £160,000	10.2 & 10.3 changed to ...agreements up to the EU supplies and services threshold
12.4 The Solicitor of the Council may authorise officers who are not Legal Officers to sign specific or specialist contracts for Supplies of above £160,000....	10.4 changed to ...contracts for Supplies above the EU supplies and services threshold
12.5 ....provide third parties with a power of attorney to sign Council contracts of £160,000 or below	10.5 changed to ...contracts of values below the EU suppliers and services threshold
<b>Appendix 1 – Examples of Policies which are relevant to CPR 2.1 (15)</b>	
Removed link to Project Management Handbook Added links to; <ul style="list-style-type: none"> <li>- Financial Procedure Rules</li> <li>- GDPR</li> </ul>	
<b>Appendix 2</b>	
Refreshed to show current EU Thresholds only. Some additional wording	
<b>Appendix 3 – Information to be reported to the Head of Procurement (CPR 11)...now (CPR 7)</b>	
A & C – Value changed so that procurement team are notified of all contracts awarded of £5,000 or above	
<b>Appendix 4 Relationship between Commissioning and Procurement</b>	
Diagram has been replaced to show the relationship between Commissioning, Procurement and Contract Management	



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**KIRKLEES COUNCIL**  
**CONTRACT PROCEDURE RULES**

**JUNE 2019**

## **CONTRACT PROCEDURE RULES**

Definitions

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## **DEFINITIONS**

<b>Award Criteria</b>	Relate directly to the goods, services or works to be provided. Award criteria evaluate supplier's offers made in relation to fulfilling the Council's requirements for the Supply, in particular the Specification.
<b>Chief Executive</b>	The Chief Executive is the head of the Council's paid staff and its principal adviser on policy matters and leads the discharge of Council strategy and responsibilities.
<b>Chief Finance Officer</b>	Means the Service Director – Finance, Professional & Transactional Services.
<b>Commissioning</b>	The relationship between commissioning and procurement is described in the diagram in Appendix 4.
<b>Conflict of Interest</b>	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shall at least cover any situation where relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of a Procurement or sale procedure.
<b>Concession</b>	Is where a Supplier is remunerated mostly through being permitted to run and exploit the work or service and is exposed to a potential loss on its investment.
<b>CPR</b>	Means these Contract Procedure Rules.
<b>Data Protection Legislation</b>	Means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, and all other laws and regulations relating to the processing of personal data and privacy, and also where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>Dynamic Purchasing System</b>	Is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements (as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for contracts, and it should be set up using the restricted procedure.
<b>European Single Procurement Document</b>	Is a standard electronic document that a tenderer for a contract to which the EU Procurement Rules apply may use to declare that none of the exclusion grounds apply to it and that it meets the necessary regulatory criteria or relevant commercial capability requirements. Only the preferred bidder will be required to submit all documentation to evidence the content of the form.

<b>EU Procurement Rules</b>	The rules on procurement for Supplies above the EU Threshold prescribed by the EU in Directives relating to public contracts - as amended and supplemented by the European Court of Justice. These rules also normally extend to the WTO Government Procurement Agreement signatories, which (in 2016) are Armenia, Aruba, Canada, the EU, Iceland, Israel, Japan, Hong Kong China, Liechtenstein, Montenegro, New Zealand, Norway, Singapore, South Korea, Switzerland, Chinese Taipei, and the US.
<b>EU Threshold (or *)</b>	The financial threshold from time to time at which the EU Procurement Rules are applicable to a Supply. Current EU Thresholds are set out in Appendix 2.
<b>Financial Ratio</b>	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
<b>FPR</b>	The Financial Procedure Rules.
<b>Framework Agreement</b>	Means an agreement between the Council and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Framework Agreements which deal with Supplies that are above, or aggregate above, the EU Threshold are subject to the EU Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework' and 'Framework Suppliers' shall be construed accordingly.
<b>GDPR</b>	The General Data Protection Regulations. The General Data Protection Regulation 2016/679 is a regulation in EU law on data protection and privacy for all individuals within the European Union and the European Economic Area. These are now incorporated into the Data Protection Act 2018.
<b>Head of Corporate Property Management</b>	Means the officer appointed by the Service Director who is responsible for corporate property management functions.
<b>Head of Internal Audit</b>	Means the officer appointed by the Chief Executive who is responsible for internal audit.
<b>Head of Procurement</b>	Means the officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.
<b>Local Government Transparency Requirements</b>	Means the statutory codes and legislation requiring the Council to publish information, such as <sup>†</sup> the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.

<b>Income Contract</b>	An Income Contract is one where the main object of the contract is that the Council does something listed in CPR 8.1.1 – 8.1.2 in relation to a Council asset <sup>1</sup> and includes situations where the Council does so at nil value (subject to this not being a Grant – see CPR 8.2).
<b>Official Council Order</b>	A standard form of contract for a Supply for a value of less than the current EU supplies and services threshold approved by the Solicitor to the Council whether attached electronically or by paper to an order for Supplies.
<b>Personal Data</b>	Means data which relate to a living individual who can be identified— (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual (e.g. references) and any indication of the intentions of the data controller or any other person in respect of the individual.
<b>Procurement</b>	The purchase, contract hire, lease, rental <sup>2</sup> or any other form of acquisition which results in a contract for Supplies where the Council is the buyer (therefore, in the context of the CPR, this does not include the Council providing the Supply to itself or gifts). Procurement also includes the establishment of Standing Lists, Framework Agreements and Dynamic Purchasing Systems. ‘Procurement’ and ‘Procured’ shall be construed accordingly.
<b>Reasonable Means</b>	Methods of selection or advertising which reflect reasonable trade practice. This might include informal briefs, supplier written Tenders or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet.
<b>Service</b>	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director (see Appendix 5).
<b>Senior Manager</b>	Means an officer who reports directly to a Head of Service.
<b>Service Director</b>	Means the most senior officer responsible for the day to day functions of each Service.
<b>Solicitor to the Council</b>	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
<b>Specification</b>	A written document detailing the Council’s requirements. This can include things such as definitions, acceptance test methods, material requirements or characteristics, drawings, plans, certifications of compliance with standards, workmanship, data security measures, quality control including performance testing and KPIs, completion, delivery, safety, timing, key personnel qualities, communication requirements, returns policies and tolerances.

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<sup>1</sup> For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

<sup>2</sup> Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or his delegate [See the FPR].

<b>Special Purpose Vehicle</b>	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with others to provide specific Supplies to the Council.
<b>Standing List</b>	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
<b>Suitability Criteria</b>	Relate to the assessment or vetting of suppliers' general capability, fidelity, skill, competence, etc. to carry out the contract. ' <b>Suitability</b> ' shall be interpreted accordingly.
<b>Supply</b>	Means the supply of any works, goods, or services; being provided, or to be provided, to or on behalf of the Council (whether by purchase, lease, hire or any other arrangement).
<b>Supplier</b>	Any person, partnership, company, or other organisation, which provides or contractually offers to provide any Supply to the Council or on behalf of the Council.
<b>Tender</b>	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
<b>Value for Money</b>	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
<b>Whole Life Costing Approach</b>	<p>Is an approach which addresses all the elements of a Supply over its life cycle such as:-</p> <ul style="list-style-type: none"> <li>• costs relating to acquisition,</li> <li>• costs of use, such as consumption of energy and other resources,</li> <li>• maintenance costs,</li> <li>• end of life costs, such as collection and recycling costs</li> </ul> <p>which can be used to produce a spend profile of the Supply over its anticipated lifespan.</p>
<b>YORTender</b>	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts.

\* In the text a \* means the value will track the EU threshold rounded down to the nearest £5,000. Also, see "EU threshold"

† The words "including", "include", "for example", "e.g.", and "such as" in these CPRs indicate examples and are not intended to be limiting

## **INTRODUCTION**

These Contract Procedure Rules aim to promote the highest standard of probity, integrity, and impartiality in making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition. To that end procurers shall follow the 'Procurement Principles' referred to below.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts. Service Directors should recognise the Council's view of the difference between Commissioning and Procurement (see Appendix 4).

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly related to and proportionate to the need which the Supply fulfils and should appropriately balance the value of and risks associated with any proposed action.

EU Procurement Rules, which are often more onerous, also apply to the procurement of all works, goods and services exceeding the EU Threshold, and where there is a conflict between these Contract Procedure Rules and the EU Procurement Rules, the EU Procurement Rules prevail. The GDPR principles of data protection by design and by default and by minimisation should also be taken into consideration in the context of contracts and their award procedures that involve the transfer of personal data.

The Council's Financial Procedure Rules must also be complied with. In particular if you are giving a Grant then FPR 20 will apply.

### **Procurement Principles:**

The aim of every procurement exercise should be value for money. In pursuit of that aim, procurers shall endeavour to treat market operators equally and without discrimination, and to act in a transparent and proportionate manner. Without detracting from those principles, procurers should consider how social value might be enhanced in contracts and procurement processes, including encouraging the participation of local businesses in Council tenders.

## **RULE 1 – CONDUCT AND COMPLIANCE AND WAIVER**

- 1.1 All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
- 1.2 Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular:-
  - 1.2.1 the legality of the proposed non-compliant process or action; and
  - 1.2.2 the reputational and financial risks associated with the proposed non-compliant process or action.
- 1.3 Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
- 1.4 Each Service Director must ensure:-
  - 1.4.1 compliance with these CPRs and the FPRs, using training, instruction and internal control processes;
  - 1.4.2 appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures.
- 1.5 When authorising staff to procure Supplies on his or her behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations.
- 1.6 The Head of Procurement may:-
  - 1.6.1 authorise officers who are not procurement officers under his or her managerial responsibility to act on his or her behalf in respect of any role assigned to the Head of Procurement in these CPRs;
  - 1.6.2 issue waivers in relation to the need to consult him or her under CPR 1.3;
  - 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation , as appropriate, with the Service Director, Solicitor to the Council, Chief Finance Officer and Head of Internal Audit

The Head of Procurement must record the precise extent of such authorisations and the officer to which roles have been delegated and share these authorisations with the Solicitor to the Council and the Head of Internal Audit.
- 1.7 A Service Director has authority to commence any Procurement subject to:-
  - 1.7.1.1 compliance with these CPRs and FPRs; and
  - 1.7.1.2 having appropriate delegated authority; and
  - 1.7.1.3 compliance with management processes designed to ensure that proposed projects meet the Council’s business needs; and
  - 1.7.1.4 seeking Value for Money.
- 1.8 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by European and UK law and agreements with Grant funding organisations.



- 1.9 The Head of Procurement, the Solicitor to the Council and the Head of Internal Audit may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:-
- 1.9.1 the Head of Procurement – Good Procurement Practice;
  - 1.9.2 Solicitor to the Council – The EU Procurement Rules and other laws and Corporate Governance;
  - 1.9.3 Head of Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.10 Any dispute concerning interpretation of these CPRs must be referred to the Head of Internal Audit who, in consultation with the Solicitor to the Council, may provide clarification and determination.
- 1.11 Subject to Part 3 of the Council’s constitution and without prejudice to the role of the Monitoring Officer or the Chief Finance Officer, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of Internal Audit, and the Solicitor to the Council provided that:-
- 1.11.1 the post holders to whom these duties are assigned must hold general competencies in respect of:-
    - public sector procurement in respect of duties reassigned from the Head of Procurement;
    - finance in respect of duties reassigned from the Head of Internal Audit;
    - Law and Court procedure in respect of duties reassigned from Solicitor to the Council.
  - 1.11.2 the same degree of separation of officer responsibility for the duties is maintained.
- 1.12 **Conflicts of Interest and Integrity<sup>3</sup>:**
- 1.12.1 Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
  - 1.12.2 Any Officer, Member or other person acting on the Council’s behalf in procuring a Supply must declare any potential Conflict of Interest as soon as he or she becomes aware of a potential Conflict of Interest and update the declaration in the event of any changes.
  - 1.12.3 Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.
  - 1.12.4 In exercising the decisions delegated to them, the Head of Procurement, Head of Internal Audit and Solicitor to the Council (or any other persons undertaking their responsibilities by application of CPR 1.11 or CPR 1.6) must reach their decisions independently.

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<sup>3</sup> Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.7 of the Council’s Constitution and Members should also refer to Part 5.1 of the Constitution.

## RULE 2 – PREPARATION AND PROCESS

2.1 Each Service Director must ensure:-

- (1) That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPR or the EU Procurement Rules, unless justified by objective reasons.
- (2) Each Procurement complies with the following:-
  - a. it is justified by a business case (that includes a risk assessment) approved personally by a Senior Manager with relevant authority to purchase; and
  - b. a Whole Life Costing Approach underpins the specification of the Supply and
  - c. it aligns with the Procurement Strategy; and
  - d. it complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 6.12), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions that have been made under CPRs 6.10 & 6.11 and contracted suppliers).
- (3) The Supply is likely to be within budgetary provision (see CPR 10.1).
- (4) An estimate of the full cost of the Supply contract or Framework Agreement which is as accurate as possible is made. Valuations must:
  - a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
  - b. assess the gross value of a Framework Agreement to be the reasonably estimated value of all Supply contracts which might be made through it;
  - c. where the Supply contract includes a fixed duration, cover the entire possible duration of the contract (i.e. including any options, such as for extension or renewal);
  - d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
  - e. include any Grant funding;
  - f. exclude VAT.
- (5) Where the cost of the Supply is less than the EU Threshold and an approved Framework Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the EU Procurement Rules.
- (6) Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.
- (7) The process can be adequately resourced.
- (8) The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.1(10) below) and other procurement documentation. The documents must be likely to be understandable by all reasonably well informed people in the relevant industry in the same way.

- (9) For contracts up to the EU supplies and services threshold, other than Land Contracts (as to which see CPR 9); the Service Director shall wherever possible use appropriate standard contract terms. Otherwise every contract for Supplies or Income Contract must set out:
- a. details of the Supply to be made or to be disposed of;
  - b. the price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
  - c. the time(s) within which the contract is to be performed;
  - d. termination provisions and break clauses, if appropriate;
  - e. appropriate data protection clauses where personal data is involved; and
  - f. such other matters as the Solicitor to the Council considers to be necessary (the Solicitor to the Council need not be consulted, but guidance must be followed).
- (10) For contracts above the EU supplies and services threshold, other than Land Contracts (as to which see CPR 9); the Service Director must consult with the Solicitor to the Council who will prepare contract documentation appropriate for the contract.
- (11) Where a competitive process is being carried out: a transparent, unambiguous and clearly set out schedule of Award Criteria, which are objectively verifiable and non-discriminatory and are appropriately prioritised, must be prepared and advertised. These criteria must be linked to the subject matter of the contract, must not include unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR 3.4 – 3.9) and must be proportional to the contract's main objectives.
- (12) Consideration of whether it would be appropriate to divide large procurements into contract Lots<sup>4</sup> and must record the decision and reasoning.
- (13) The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the EU supplies and services threshold.
- (14) The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.
- (15) That (unless Cabinet authorises otherwise) the formal Council policies and/or guides referred to in Appendix 1 are followed.
- (16) All supply contracts in excess of £300,000 will be bonded in the sum of 10% of the Tender value, except where the Solicitor to the Council and Head of Internal Audit agree either:-
- a. No bond is necessary; or
  - b. A different value (or percentage) is appropriate; and or
  - c. A parent company guarantee or other form of surety can be accepted instead.
- (17) A risk log is maintained during the Procurement process.

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<sup>4</sup> This is not the same thing as disaggregation. Please contact Corporate Procurement if there is any doubt about what this means.

- 2.2 If you are considering conducting interviews or receiving presentations you should discuss this with the Head of Procurement at the preparatory stage (also see CPRs 4.14-4.16).
- 2.3 Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000, the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the Solicitor to the Council and / or the Head of Internal Audit, and undertake these consultations as necessary.
- 2.4 The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with EU Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the Official Journal of the European Union (OJEU) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.5 Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier, and no technical advice may be sought or accepted from any supplier in relation to the preparation of any specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.
- 2.6 In preparing a Specification, the Service Director should consider how the procurement activity might meet the Council's wider policy and strategy but subject always to ensuring full compliance with EU and UK procurement legislation. In respect of contracts for services, Service Directors must also consider (a) how what is proposed to be procured might improve the economic, social and environmental well-being of Kirklees, (b) which proportionate actions (which must comply with the EU Procurement Rules) might be taken in the Procurement with a view to securing that improvement, and (c) whether any consultation might be needed to inform them in relation to 2.6(b).
- 2.7 Where any Supplier is given possession of or access to any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation, any Information Commissioner's Office directions to the Council and the undertaking which the Chief Executive gave to the Information Commissioner in July 2011. The Service Director must follow the Council's Information Security Policy, in particular regarding contracting with data processors and sharing data, and consult with the Information Governance Team. The Service Director must ensure that:
- A. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
  - B. appropriate guarantees of the security of the personal data are included within a written contract;
  - C. the performance of the contract is appropriately monitored;
  - D. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
  - E. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
  - F. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

All contracts that involve the processing or sharing of personal data must be reported to the Information Governance Team, who will keep a log of these contracts. The log will be reviewed by the Information Governance Board on a six-monthly basis.

## Collaboration

- 2.8 The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.9 However, the EU Procurement Rules provide for joint liability where one authority procures on behalf another (other than as a central purchasing organisation, e.g. YPO). This increases the risks for the passive partner(s). So when taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organisation and the Crown Commercial Service); addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

## RULE 3 - PROCUREMENT PROCESS

- 3.1 Subject to complying with the law, the process for procurement must comply with the following:-

Value of Supplies	Requirement		
	Procurement Process	Advertising	Min no. of Suppliers
<b>£0 - £24,999.99</b>	<p>Any Reasonable means to select are permitted. Reasons to justify the decision taken must be recorded.</p> <p>Where practicable Supplies from a Supplier within the Council's area must be considered in addition to Supplies from Suppliers outside the area (although the best value Supply must always be chosen).</p> <p>All contracts awarded in excess of £5,000 must be reported to Corporate Procurement.</p>	Any reasonable means	3
<b>£25,000 – EU Threshold</b>	<p>One of the following:-</p> <ul style="list-style-type: none"> <li>• Quotations (CPRs 3-4)</li> <li>• Framework Suppliers, Standing Lists, etc. (CPR 5)</li> <li>• Exemptions (CPR 6)</li> <li>• Internal, Consortia &amp; Compulsory (CPR 6)</li> </ul>	<p><b>As the Head of Procurement determines</b></p> <ol style="list-style-type: none"> <li>1. From a standing list</li> <li>2. An approved Framework Agreement</li> <li>3. An approved Dynamic Purchasing System</li> <li>4. Advertise on YORTender, Contracts Finder PLUS other</li> </ol>	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>

		<p>reasonable advertising means;</p> <p>Or</p> <p>For value below £100,000, use of suppliers selected otherwise (except where the procurement applies to a grant obliging competition, or cross border competition may be compromised)</p>	
<b>Above EU Threshold</b>	<p>One of the following:-</p> <ul style="list-style-type: none"> <li>• Tenders (CPRs 3 - 4)</li> <li>• Framework Suppliers, Standing Lists, etc. (CPR 5)</li> <li>• Exemptions (CPR 6)</li> <li>• Internal, Consortia &amp; Compulsory (CPR 6)</li> </ul>	<p>Advertise on YORtender, Contracts Finder and OJEU- and in other media if appropriate (OJEU first); or</p> <p>Use approved Framework Agreement; or</p> <p>Use approved Dynamic Purchasing System</p>	<p>(or £180,000 whichever is lower)</p> <p>5</p>

3.2 These CPRs also apply to the selection of any nominated or named sub-contractor, product or manufacturer whose use by a supplier is a requirement of a contract specification.

3.3 A Service Director must invite at least the number above of suppliers to submit a written Tender, unless:-

3.3.1 an **approved**<sup>5</sup> Framework Agreement or Dynamic Purchasing System is being used (and in which case the rules of the Framework Agreement or the Dynamic Purchasing System must be followed); or

3.3.2 it is otherwise agreed with the Head of Internal Audit in consultation with the Solicitor to the Council.

The Suppliers must have indicated that they are willing to submit a Tender. If it is not possible to identify the number of willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

### Supplier Selection

3.4 Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.

<sup>5</sup> See CPR 5.17

- 3.5 Where the procurement process has an overall value of less than the supplies and services EU threshold, a qualification stage must not be used, although key, proportional, Suitability questions linked to the subject matter of the contract should, as appropriate, be used to establish the Suitability of the supplier. The questions (or absence of any) must be approved by the Head of Procurement.
- 3.6 When operating a procurement process with a value above the supplies and services EU threshold, and subject to CPR 3.7, the Service Director must use the Council's standard selection questionnaire to establish Suitability and/or to establish a shortlist. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary.
- 3.7 The European Single Procurement Document must be accepted where applicable.
- 3.8 The selection of any potential Supplier to submit a Tender must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. Selection Criteria must be transparent and financial ratios to be used as part of the evaluation must be disclosed. When conducting a procurement process which is subject to the EU Procurement Rules, minimum standard and/or pass marks must be published in the relevant OJEU contract notice or invitation to confirm interest.
- 3.9 Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

#### **RULE 4 –TENDER RECEIPT & EVALUATION**

- 4.1 For Procurements which are valued above £25,000, suppliers must be required to submit Tenders by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the YORtender system unless the Head of Procurement agrees otherwise. (If the Head of Procurement approves another means, they will be required to agree and supervise a fair means of tender opening) .
- 4.2 All invitations must state clearly the date and time of return. Electronic Tenders must be returned in accordance with the approved tendering system requirements.
- 4.3 All electronic Tenders received by the appointed time will be opened at the same time by the Head of Procurement.
- 4.4 At the Tendering opening the Head of Procurement will maintain a written record of the:-
- 4.4.1 nature of the Supply;
  - 4.4.2 name of each supplier submitting a Tender and the date/time of receipt;
  - 4.4.3 name of suppliers failing to submit prices/proposal;
  - 4.4.4 prices from each supplier;
  - 4.4.5 names of the persons present at the opening;
  - 4.4.6 date and time of opening of Tenders;
  - 4.4.7 any reason for rejecting any Tender.
- 4.5 Late Tenders must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder

which submits the late Tender. Any decision to accept a late Tender will be made by the Head of Procurement following both (a) such verification as he or she feels appropriate and (b) approval by the Head of Internal Audit. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.

4.6 Suppliers must always be required to submit bids which comply with the tender documents. Variant bids may be permitted providing that the tender documents:-

- 4.6.1 say whether a standard or reference bid is also required;
- 4.6.2 include the minimum requirements to be met by the variants;
- 4.6.3 set award criteria which can be applied to the variants.

and the variants which are submitted must conform to the requirements of the tender documents.

Tenders which do not comply with the above in this CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Internal Audit.

4.7 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.1(11)) and keep a written record of the analysis and outcome.

4.8 The use of or participation in e-auctions to set prices is permitted where:-

- 4.8.1 bids can be ranked automatically; and
- 4.8.2 the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed; and
- 4.8.3 the written agreement of the Head of Internal Audit has been given; and
- 4.8.4 the process is subject to supervision by the Head of Procurement.

4.9 The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.

4.10 The Service Director must ensure that, where required by EU procurement rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the Solicitor to the Council that the debrief process has completed satisfactorily prior to formal acceptance of any Tender.

4.11 Any complaint or challenge to the procurement process at any stage must immediately be referred to the Head of Procurement, who must take steps to investigate and (subject to CPR 4.13) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.

4.12 If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the Solicitor to the Council must be informed immediately with full objective disclosure of the facts relating to the issue(s), who will manage the claim. At this stage information exchange should be restricted and Service Directors must not copy dispute related information to anybody who has not seen it before until the Solicitor to the Council advises about confidentiality and Legal Privilege.



## Clarifications, Presentations and Interviews

- 4.13 Where information or documentation submitted by a bidder is or appears to be incomplete (including where specific documents are missing) or erroneous or unclear, Service Directors may request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation, provided that requests for clarification:
- 4.13.1 set an appropriate time limit for a reply; and
  - 4.13.2 do not request changes or otherwise seek to influence the bidder; and
  - 4.13.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
  - 4.13.4 treat all tenderers equally and fairly and so, for example, the request:-
    - 4.13.4.1 must not occur before all of the bids have been subject to an initial evaluation;
    - 4.13.4.2 must not unduly favour or disadvantage the bidder to whom the request is addressed; and
    - 4.13.4.3 must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 4.14 Clarity may also be facilitated through planned presentations designed to assist in understanding or verifying submitted bids. Clarification questions may be asked during such presentations and prior scoring may be appropriately moderated (but the presentation itself must not be scored). All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.
- 4.15 Interviews and / or presentations which form part of the bid (rather than clarification of a submission) are discouraged and must be authorised by the Head of Procurement in writing. They must also be:-
- 4.15.1 comprehensively recorded; and
  - 4.15.2 assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
  - 4.15.3 supervised by the Head of Procurement.
- 4.16 Where interviews and / or presentations are to be used, unless the Head of Procurement agrees otherwise, all bidders must be invited to participate.

## **RULE 5 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS AND FRAMEWORK AGREEMENTS: CREATION AND USAGE**

- 5.1 The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

### **Standing Lists**

- 5.2 The Head of Procurement will determine for which types of Supply Council-wide Standing Lists must be kept (see CPR 6.10). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.

- 5.3 Standing Lists may be used for Supplies where the aggregated value (in compliance with the EU Procurement Rules) of the Supply in question does not exceed the relevant EU Threshold. Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant EU Threshold.
- 5.4 Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the YORTender web site, Contracts Finder and other appropriate media as the Head of Procurement may determine. Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.
- 5.5 Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation, of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.
- 5.6 The Head of Procurement (in consultation with the Solicitor to the Council) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.
- 5.7 If there are insufficient suppliers on a Standing List, or too few are willing to submit Tenders, to meet the CPR's Tender requirements potential Suppliers must be sought as if a Standing List is not maintained.
- 5.8 Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

### **Council Framework Agreements and Dynamic Purchasing Systems**

- 5.9 Framework Agreements and Dynamic Purchasing Systems may be used to source contracts for appropriate types of Supplies (subject to compliance with the EU Procurement Rules, as applicable). However they must not be used to attempt to create further Framework Agreements or Dynamic Purchasing Systems.
- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract (but must not be procured through a standing list, another framework agreement or a Dynamic purchasing system) and in accordance with the EU Procurement Rules.
- 5.11 All Framework Agreements will be in the form of a written agreement detailing the method by which the Council will call off Supplies during the duration of the Framework Agreement and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.
- 5.12 Framework Agreements above the EU Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
- 5.13 Contracts created through Framework Agreements must not be greater than 4 years in duration without being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.

- 5.14 Dynamic Purchasing Systems must:
- 5.14.1 be set up by an advertised competitive process which is approved by the Head of Procurement; and
  - 5.14.2 remain advertised; and
  - 5.14.3 not limit the number of suppliers admitted to the system (but the system may be split into categories); and
  - 5.14.4 be set up with clear operative rules which involve obtaining Tenders from all suppliers on the system, or on the relevant category on the system, as appropriate; and
  - 5.14.5 be operated wholly electronically; and
  - 5.14.6 be open to new entrants; and
  - 5.14.7 not last longer than 5 years.
- 5.15 When using Framework Agreements or Dynamic Purchasing Systems, the Council must follow the procurement rules set out in the Framework Agreement or the Dynamic Purchasing System.
- 5.16 The Head of Procurement will ensure that the use of Framework Suppliers and Dynamic Purchasing Systems provide value for money, considering all procurement costs and alternative approaches.
- 5.17 The Head of Procurement will maintain a list of all approved Framework Agreements and Dynamic Purchasing Systems (noting which of these comply with the EU Procurement Rules) which Service Directors are permitted to use.

#### **Use of Third Party Procurement Facilities**

- 5.18 Supplies may be obtained through third party Frameworks Agreements that:-
- 5.18.1 are created by a public body or a private sector party as agent of a public sector body which is approved by the Head of Procurement (see also CPR 5.1);
  - 5.18.2 have valid mechanisms that exist to enable the Council to use the Framework Agreement (including appropriate transparent referencing in the procurement documents and inclusion in the framework call of conditions);
  - 5.18.3 comply with the Council's Contract Procedure Rules, or in the opinion of the Head of Internal Audit, rules which are broadly comparable;
  - 5.18.4 are included in the CPR 5.17 approved list (and, if the Supply which is to be procured is above the EU Threshold, is noted in the list as being compliant with the EU Procurement Rules);
  - 5.18.5 where the EU procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

#### **RULE 6 – EXCEPTIONS FROM COMPETITION**

- 6.1 Subject to compliance with the EU Procurement Rules the following are exempted from the competitive requirements of these CPR<sup>6</sup>:
- 6.1.1 where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative or

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<sup>6</sup> When the EU Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

- substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
- 6.1.2 items purchased or sold by public auction (in accordance with arrangements agreed by the Head of Internal Audit);
- 6.1.3 the selection of a supplier whose usage is a condition of a Grant funding approval;
- 6.1.4 the selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party;
- 6.1.5 where CPR 6.10 applies;
- 6.1.6 counsel or other external legal advice, provided that the Solicitor to the Council takes steps to ensure that value for money is being obtained;
- 6.1.7 a necessary Supply required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of Internal Audit;
- 6.1.8 direct award from an approved Framework Agreement (see CPR 5.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the EU Procurement Rules;

The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an exception in respect of a supply valued in excess of £100,000.

- 6.2 **Trial Purchases:** Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000, to ascertain if the Supply is of interest to the Council, without competition. Where an exception to competition in CPR 6.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply. Arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £25,000.

**< There are substantial restrictions on the use of negotiated contracts where EU Procurement Rules apply >**

- 6.3 The procuring Service Director and the Head of Procurement may decide that;
- 6.3.1 An alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason for their decision and obtain the approval of the Head of Internal Audit.
  - 6.3.2 Following receipt of Tenders for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Tenders.
  - 6.3.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.
  - 6.3.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the council without competition is appropriate (although subject to EU Procurement Rules).

**Note in the above,** in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by his or her own Service Director, there must be consultation with the Head of Internal Audit.

## **Negotiated Contracts**

- 6.4 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.
- 6.5 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 6.6 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of Internal Audit of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

## **Legal Issues**

- 6.7 The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed the EU supplies and services threshold (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).
- 6.8 Before a decision pursuant to CPRs 6.1 to 6.3 is made, the Head of Procurement will determine whether the likely level of interest from suppliers based in other EU Member States is sufficiently low so that the EU Procurement Rules do not require the Procurement to be advertised.
- 6.9 Before a decision pursuant to CPRs 6.1 to 6.3 is made, the Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to be achieved, he/she must consult with the Solicitor to the Council about the possibility of state aid before approving the exemption from competition.

## **MANDATORY SUPPLIERS, FRAMEWORKS AGREEMENTS OR DYNAMIC PURCHASING SYSTEMS**

- 6.10 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the EU Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.
- 6.11 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework Agreement or a Dynamic Purchasing System or Standing Lists, and set standards to be established in those arrangements.
- 6.12 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-
  - 6.12.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;
  - 6.12.2 in respect of the outsourcing of an activity having a value below £100,000;
  - 6.12.3 in respect of services provided within schools;
  - 6.12.4 in respect of ad hoc services for the design and construction of buildings or parts of buildings.

## **RULE 7 - RECORD KEEPING AND REPORTING**

- 7.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation).

To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on:-

- 7.1.1 communications with economic operators and internal deliberations;
- 7.1.2 preparation of the procurement or sale documents;
- 7.1.3 any interviews, other dialogue or negotiation;
- 7.1.4 supplier vetting; and
- 7.1.5 reasons for award of the contract.

The documentation must be kept for a period as defined within the Councils relevant retention schedule.

- 7.2 A full trail of electronic Tenders received must be recorded in YORtender or retained in a database approved by the Head of Internal Audit.
- 7.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 3).
- 7.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the EU Procurement Rules.
- 7.5 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 3.
- 7.6 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 7.3 above).
- 7.7 The Service Director must keep a written record of the reasons for using a negotiated procedure

## **RULE 8 - INCOME CONTRACTS & CONCESSIONS (INCLUDING NIL VALUE AND DISPOSAL CONTRACTS)**

- 8.1 CPRs 8.2 to 8.6 apply when the Council intends to derive income from:-

- 8.1.1 the disposal of property (other than Land);
- 8.1.2 the sale of a right to exploit a business opportunity;
- 8.1.3 the operation of business activity.

CPR 8 does not apply to Land (See CPR 9).

- 8.2 Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of Internal Audit must be consulted and he will decide whether this amounts to a Grant (and so FPR 20 applies instead of CPR 8).

### The disposal of an asset

8.3 The procedure for the Disposal of assets is:-

- 8.3.1 assets valued up to £25,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained;
- 8.3.2 assets valued above £25,000 must be disposed of following public notice either by open Tender process, closed Tender process involving at least 3 prospective purchasers or public auction. The use of the Council web site is permissible for this purpose.

Leased assets must be disposed of only in accordance with the instruction of the lessor.

### The sale of a right to exploit a business opportunity

8.4 The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process as set out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.

- 8.4.1 A business opportunity contract that will not generate income in excess of £25,000 over the duration of the contract may be sourced by any reasonable means to select (see an explanation of this phrase in respect of Supplies in the Definitions section) arranged and undertaken by the Service Director responsible for the activity.
- 8.4.2 The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £25,000.

### The operation of business activity, beyond that normally undertaken by a local authority.

- 8.5 If an Income Contract is intended to be or become profitable or be commercial in nature, advice must be obtained from the Solicitor to the Council.
- 8.6 If an Income Contract has any potential to distort the relevant market advice must be obtained from the Solicitor to the Council.

### Concession Contracts

8.7 Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

Concession contracts for works or services with a value of £4,104,000 or more are subject to the Public Concessions Regulations 2016 and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with these Regulations.

### Valuation

8.8 The value of a Concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the Supplies which are the object of the Concession contract and for any ancillary Supplies.

- 8.9 The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.
- 8.10 When calculating the estimated value of a Concession contract or Income Contract, Service Directors shall, where applicable, take into account:-
- 8.10.1 the value of any form of option and any extension of the duration of the contract;
  - 8.10.2 revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;
  - 8.10.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;
  - 8.10.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;
  - 8.10.5 revenue from sales of any assets which are part of the contract;
  - 8.10.6 the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;
  - 8.10.7 any prizes or payments to candidates or tenderers.

## **RULE 9 - LAND**

- 9.1 Procurement of Land will generally be by the means described in this CPR 9. The Head of Corporate Property Management must be consulted in respect of all Land transactions of any value except where the Solicitor to the Council authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 9.2 The Head of Corporate Property Management (and any other Director authorised so to do) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to him by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to him from the Cabinet.
- 9.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Property Management and the Solicitor to the Council, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 9.4 Where Land is sold at a public auction, the Head of Corporate Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made. If a successful bid is less than the reserve price then the Head of Corporate Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

## **RULE 10 – EXECUTING CONTRACTS**

### **SUPPLIES**

- 10.1 A contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is likely to be sufficient ongoing funding to meet the contractual cost through the anticipated life of the contract.



10.2 Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and Framework Agreements up to the EU supplies and services threshold must be in writing and can be made by the Service Director either:-

10.2.1 where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or

10.2.2 By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

If the Service Director and Solicitor to the Council decides that it is appropriate for the contract to be sealed (or if it is required by law), the contract will be executed by the Solicitor to the Council.

The Head of Procurement must ensure that the Councils electronic procurement systems are set up so that the most appropriate Official Council Order are available to be attached to the supply being purchased.

10.3 Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and every Framework Agreement with an estimated value above the EU supplies and services threshold must be in writing and must (subject to CPR 10.4) be either:-

(a) made under the corporate common seal of the Council, attested by one legal officer; or

(b) signed by two legal officers.

who have been nominated as contract signatories by the Solicitor to the Council under her Scheme of Officer Delegations.

10.4 Notwithstanding CPR 10.3, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist contracts for Supplies above the EU supplies and services threshold. Two authorised officers must sign each such contract.

10.5 The Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant contracts and suitable record keeping, provide third parties with a power of attorney to sign Council contracts of values below the EU supplies and services threshold.

## **LAND**

10.6 The Solicitor to the Council will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies (with the exception of the granting of tenancies for housing and associated properties for rent which is delegated to Kirklees Neighbourhood Housing Ltd) and other deeds and documents associated with Land. The Solicitor to the Council may nominate other officers to enter into Land commitments and arrangements using documentation previously approved by the Solicitor to the Council.

10.7 Any contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed by, or have the corporate common seal affixed in the presence of, the Solicitor to the Council (or by a legal officer nominated by him or her).

Additionally, the Solicitor to the Council may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR9.1.

## **GENERAL**

- 10.8 The Solicitor to the Council is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 10.3 and provided that this is not subject to any contrary direction from the Council or Cabinet.

## **RULE 11 – VARIATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS**

- 11.1 A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.
- 11.2 A Service Director, in consultation with the Solicitor to the Council, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.
- 11.3 The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.
- 11.4 The Head of Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the Solicitor to the Council accept such proposed sums.
- 11.5 Service Directors may vary contracts by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract.
- 11.6 Any variation with a value above £25,000 to a contract which cannot be fulfilled by following CPR 11.5 must be subject to the approval of the Head of Procurement.
- 11.7 Any variation to a contract which cannot be fulfilled by following CPR 11.5 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.

## **RULE 12 - MISCELLANEOUS**

- 12.1 A Special Purpose Vehicle (as a limited liability company or otherwise) to be wholly or partially owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the Solicitor to the Council and the Chief Finance Officer. This does not apply to any purchase of shares or similar for the purpose of investment.

Approved by Council  
Apply from 1 June 2019

## Appendix 1

### Examples of Policies which are relevant to CPR 2.1(15)

- **Kirklees Financial Procedure Rules**  
<http://www.kirklees.gov.uk/beta/your-council/pdf/constitution-part-46.pdf>
- **Social Value Policy Statement**  
<http://www.kirklees.gov.uk/beta/business-with-the-council/pdf/socialValuePolicyStatement.pdf>
- **General Data Protection Regulation (GDPR) Guidance**  
<http://www.kirklees.gov.uk/beta/information-and-data/general-data-protection-regulation.aspx>

## Appendix 2

EU Thresholds 1 Jan 2018 –31 Dec 2019	
Supply and service contracts	£181,302 ( <b>£180,000*</b> )
Light Touch Regime Contracts (Annex XIV)	£615,278 ( <b>£615,000*</b> )
Works contracts	£4,551,413 ( <b>£4,550,000*</b> )
Small lots – supplies & services	£65,630 ( <b>£65,000*</b> )
Small lots – works	£820,370 ( <b>£820,000*</b> )

\* These are current the values for the purposes of these CPRs.

The threshold values to be used will be those applicable at the commencement of the procurement process. EU Procurement threshold values are revised every two years.

## Appendix 3

### Information to be Reported to the Head of Procurement (CPR 7)

	Information	When
A.	Details of all contracts awarded for Supplies of £5,000 or above following a competitive process including the name of the Supplier, and amount of the Tender and if the chosen supplier was not the cheapest, then the same information in relation to unsuccessful Suppliers, and the reason why the successful Supplier was chosen.	When Requested
B.	Details of all contracts awarded for Supplies of £100,000 or above, which result from negotiation including the reason for negotiation and the name of the successful Supplier and value of the contract.	When Requested
C.	Details of all contracts awarded for supplies of £5,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue, including the reason for the exemption.	When Requested
D.	Contracts with a value of £5,000 or more see CPR, with the following information: 1. reference number	In All Cases On Contract Award

	<ol style="list-style-type: none"> <li>2. title of agreement</li> <li>3. local authority department responsible</li> <li>4. description of the goods and/or services being provided</li> <li>5. Supplier name and details</li> <li>6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract)</li> <li>7. Value Added Tax that cannot be recovered</li> <li>8. start, end and review dates</li> <li>9. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and</li> <li>10. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number</li> </ol>	
E.	All other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases On Request
F.	Copies of Regulation 84 reports	All cases where the EU Procurement Rules apply On Contract Award

## Appendix 4

### Relationship between Commissioning and Procurement



#### Commissioning

- **What do we want?**
- Led by the service
- Engaging users

#### Procurement

- **How do we get it?**
- Led by Procurement
- Engaging Suppliers

#### Contract Management

- **Are we still getting what we asked for?**
- Led by Service
- Managing the Supplier



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**KIRKLEES COUNCIL**  
**CONTRACT PROCEDURE RULES**

**JUNE 20198**

## **CONTRACT PROCEDURE RULES**

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## **DEFINITIONS**

<b>Award Criteria</b>	relate directly to the goods, services or works to be provided. Award criteria evaluate supplier's offers made in relation to fulfilling the Council's requirements for the Supply, in particular the Specification.
<b>Chief Executive</b>	The Chief Executive is the head of the Council's paid staff and its principal adviser on policy matters and leads the discharge of Council strategy and responsibilities.
<b>Chief Finance Officer</b>	Means the Service Director – Finance, Professional & Transactional Services
<b>Commissioning</b>	The relationship between commissioning and procurement is described in the diagram in Appendix 4.
<b>Conflict of Interest</b>	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shall at least cover any situation where relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of a Procurement or sale procedure.
<b>Concession</b>	Is where a Supplier is remunerated mostly through being permitted to run and exploit the work or service and is exposed to a potential loss on its investment.
<b>CPR</b>	Means these Contract Procedure Rules.
<b>Data Protection Legislation</b>	Means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, and all other laws and regulations relating to the processing of personal data and privacy, and also where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>Dynamic Purchasing System</b>	is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements (as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for contracts, and it should be set up using the restricted procedure.
<b>European Single Procurement Document</b>	is a standard electronic document that a tenderer for a contract to which the EU Procurement Rules apply may use to declare that none of the exclusion grounds apply to it and that it meets the necessary regulatory criteria or relevant commercial capability requirements. Only the preferred bidder will be required to submit all documentation to evidence the content of the form.

<b>EU Procurement Rules</b>	The rules on procurement for Supplies above the EU Threshold prescribed by the EU in Directives relating to public contracts - as amended and supplemented by the European Court of Justice. These rules also normally extend to the WTO Government Procurement Agreement signatories, which (in 2016) are Armenia, Aruba, Canada, the EU, Iceland, Israel, Japan, Hong Kong China, Liechtenstein, Montenegro, New Zealand, Norway, Singapore, South Korea, Switzerland, Chinese Taipei, and the US.
<b>EU Threshold (or *)</b>	The financial threshold from time to time at which the EU Procurement Rules are applicable to a Supply. Recent and current EU Thresholds are set out in Appendix 2.
<b>Financial Ratio</b>	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
<b>FPR</b>	The Financial Procedure Rules.
<b>Framework Agreement</b>	Means an agreement between the Council and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Framework Agreements which deal with Supplies that are above, or aggregate above, the EU Threshold are subject to the EU Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework' and 'Framework Suppliers' shall be construed accordingly.
<b>Grant</b>	<p>A grant is a gift which may be linked to outputs and outcomes, but is not a contract for works, goods or services. A contract for Supplies involves the exchange of works, goods or services for money (or money's worth) or a Concession. The distinction is crucial:</p> <ul style="list-style-type: none"> <li>• for contracts these CPR apply; for grants see FPR 4 for rules about accepting grants and FPR 20 about giving grants;</li> <li>• The remedies in respect of failure are very different;</li> <li>• The EU Procurement Rules do not apply to Grants;</li> <li>• State aid rules may apply to gratuitous benefit but not to purchases at market rate.</li> </ul>
<b><u>GDPR</u></b>	<u><a href="#">The General Data Protection Regulations. The General Data Protection Regulation 2016/679 is a regulation in EU law on data protection and privacy for all individuals within the European Union and the European Economic Area. These are now incorporated into the Data Protection Act 2018.</a></u>
<b>Head of Corporate Property Management</b>	Means the officer appointed by the Service Director – <del>Economy, Regeneration &amp; Culture</del> who is responsible for corporate property management functions.
<b>Head of Internal Audit</b>	Means the officer appointed by the Chief Executive who is responsible for internal audit.
<b>Head of Procurement</b>	Means the officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.

<b>Local Government Transparency Requirements</b>	Means the statutory codes and legislation requiring the Council to publish information, such as <sup>†</sup> the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.
<b>Income Contract</b>	An Income Contract is one where the main object of the contract is that the Council does something listed in CPR 10.1.1 – 10.1.2 in relation to a Council asset <sup>1</sup> and includes situations where the Council does so at nil value (subject to this not being a Grant – see CPR 10.2).
<b>Official Council Order</b>	A standard form of contract for a Supply for a value of less than <del>£160,000</del> currently <u>the EU supplies and services threshold</u> approved by the Solicitor to the Council whether attached electronically or by paper to an order for Supplies.
<b>Personal Data</b>	means data which relate to a living individual who can be identified— (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual (e.g. references) and any indication of the intentions of the data controller or any other person in respect of the individual.
<b>Procurement</b>	The purchase, contract hire, lease, rental <sup>2</sup> or any other form of acquisition which results in a contract for Supplies where the Council is the buyer (therefore, in the context of the CPR, this does not include the Council providing the Supply to itself or gifts). Procurement also includes the establishment of Standing Lists, Framework Agreements and Dynamic Purchasing Systems. ‘Procurement’ and ‘Procured’ shall be construed accordingly.
<b>Procurement Strategy</b>	The Council’s Corporate Procurement Strategy 2013-2017, which can be found here: <a href="http://www.kirklees.gov.uk/business/businessWithCouncil/pdf/procurementStrategy.pdf">http://www.kirklees.gov.uk/business/businessWithCouncil/pdf/procurementStrategy.pdf</a>
<b>Quotation:</b>	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
<b><u>Reasonable Means</u></b>	<u>Methods of selection or advertising which reflect reasonable trade practice. This might include informal briefs, supplier written quotations or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet.</u>
<b>Service</b>	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director (see Appendix 5).
<b>Senior Manager</b>	Means an officer who reports directly to a Head of Service.

<sup>1</sup> For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

<sup>2</sup> Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or his delegate [See the FPR].

<b>Service Director</b>	Means the most senior officer responsible for the day to day functions of each Service. The Service Directorates as at 1 April 2017 are shown in the Council Structure diagram in Appendix 5.
<b>Solicitor to the Council</b>	Means the Service Director – Legal, Governance & Commissioning in her role as legal advisor to the Council.
<b>Specification</b>	A written document detailing the Council’s requirements. This can include things such as definitions, acceptance test methods, material requirements or characteristics, drawings, plans, certifications of compliance with standards, workmanship, data security measures, quality control including performance testing and KPIs, completion, delivery, safety, timing, key personnel qualities, communication requirements, returns policies and tolerances.
<b>Special Purpose Vehicle</b>	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with others to provide specific Supplies to the Council.
<b>Standing List</b>	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 7.
<b>Suitability Criteria</b>	Relate to the assessment or vetting of suppliers’ general capability, fidelity, skill, competence, etc. to carry out the contract. ‘ <b>Suitability</b> ’ shall be interpreted accordingly.
<b>Supply</b>	Means the supply of any works, goods, or services; being provided, or to be provided, to or on behalf of the Council (whether by purchase, lease, hire or any other arrangement).
<b>Supplier</b>	Any person, partnership, company, or other organisation, which provides or contractually offers to provide any Supply to the Council or on behalf of the Council.
<b>Value for Money</b>	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
<b>Whole Life Costing Approach</b>	is an approach which addresses all the elements of a Supply over its life cycle such as:— <ul style="list-style-type: none"> <li>• costs relating to acquisition,</li> <li>• costs of use, such as consumption of energy and other resources,</li> <li>• maintenance costs,</li> <li>• end of life costs, such as collection and recycling costs</li> </ul> which can be used to produce a spend profile of the Supply over its anticipated lifespan.
<b>YORTender</b>	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts.

\* In the text a \* means the value will track the EU threshold rounded down to the nearest £5,000. Also, see “EU threshold”

† The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be limiting

## **INTRODUCTION**

These Contract Procedure Rules aim to promote the highest standard of probity, integrity, and impartiality in making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition. To that end procurers shall follow the 'Procurement Principles' referred to below.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts. Service Directors should recognise the Council's view of the difference between Commissioning and Procurement (see Appendix 4).

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly related to and proportionate to the need which the Supply fulfils and should appropriately balance the value of and risks associated with any proposed action.

EU Procurement Rules, which are often more onerous, also apply to the procurement of all works, goods and services exceeding the EU Threshold, and where there is a conflict between these Contract Procedure Rules and the EU Procurement Rules, the EU Procurement Rules prevail. The GDPR principles of data protection by design and by default and by minimisation should also be taken into consideration in the context of contracts and their award procedures that involve the transfer of personal data.

The Council's Financial Procedure Rules must also be complied with. In particular if you are giving a Grant then FPR 20 will apply.

### Procurement Principles:

The aim of every procurement exercise should be value for money. In pursuit of that aim, procurers shall endeavour to treat market operators equally and without discrimination, and to act in a transparent and proportionate manner. Without detracting from those principles, procurers should consider how social value might be enhanced in contracts and procurement processes, including encouraging the participation of local businesses in Council tenders

## RULE 1 – CONDUCT AND COMPLIANCE

- 1.1. All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
  - 1.2. Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular:
    - 1.2.1. the legality of the proposed non-compliant process or action; and
    - 1.2.2. the reputational and financial risks associated with the proposed non-compliant process or action.
  - 1.3. Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
  - 1.4. Each Service Director must ensure: -
    - 1.4.1. Compliance with these CPRs and the FPRs, using training, instruction and internal control processes
    - 1.4.2. Appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures
  - 1.5. When authorizing staff to procure Supplies on his or her behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations.
  - 1.6. The Head of Procurement may
    - 1.6.1. authorise officers who are not procurement officers under his or her managerial responsibility to act on his or her behalf in respect of any role assigned to the Head of Procurement in these CPRs;
    - 1.6.2. issue waivers in relation to the need to consult him or her under CPR 2.3.
    - 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation , as appropriate, with the Service Director, Solicitor to the Council, Chief Finance Officer and Head of Internal Audit
- The Head of Procurement must record the precise extent of such authorizations and the officer to which roles have been delegated and share these authorizations with the Solicitor to the Council and the Head of Internal Audit.
- 1.7. A Service Director has authority to commence any Procurement subject to:
    - compliance with these CPRs and FPRs, and
    - having appropriate delegated authority, and
    - compliance with management processes designed to ensure that proposed projects meet the Council’s business needs, and
    - seeking Value for Money
  - 1.8. These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by European and UK law and agreements with Grant funding organisations.

- 1.9. The Head of Procurement, the Solicitor to the Council and the Head of Internal Audit may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:
- 1.9.1. The Head of Procurement – Good Procurement Practice;
  - 1.9.2. Solicitor to the Council – The EU Procurement Rules and other laws and Corporate Governance;
  - 1.9.3. Head of Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.10. Any dispute concerning interpretation of these CPRs must be referred to the Head of Internal Audit who, in consultation with the Solicitor to the Council, may provide clarification and determination.
- 1.11. Subject to Part 3 of the Council’s constitution and without prejudice to the role of the Monitoring Officer or the Chief Finance Officer, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of Internal Audit, and the Solicitor to the Council provided that:
- 1.11.1. the post holders to whom these duties are assigned must hold general competencies in respect of:
    - Public sector procurement in respect of duties reassigned from the Head of Procurement;
    - Finance in respect of duties reassigned from the Head of Internal Audit;
    - Law and Court procedure in respect of duties reassigned from Solicitor to the Council.
  - 1.11.2. the same degree of separation of officer responsibility for the duties is maintained.
- 1.12. **Conflicts of Interest and Integrity<sup>3</sup>:**
- 1.12.1. Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
  - 1.12.2. Any Officer, Member or other person acting on the Council’s behalf in Procuring a Supply must declare any potential Conflict of Interest as soon as he or she becomes aware of a potential Conflict of Interest and update the declaration in the event of any changes.
  - 1.12.3. Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.
  - 1.12.4. In exercising the decisions delegated to them, the Head of Procurement, Head of Internal Audit and Solicitor to the Council (or any other persons undertaking their responsibilities by application of CPR 1.11 or CPR 1.6) must reach their decisions independently.

## **RULE 2 – PREPARATION AND PROCESS**

- 2.1 Each Service Director must ensure:-

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<sup>3</sup> Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.7 of the Council’s Constitution and Members should also refer to Part 5.1 of the Constitution.



- (1) That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPR or the EU Procurement Rules, unless justified by objective reasons.
- (2) Each Procurement complies with the following:
  - a. It is justified by a business case (that includes a risk assessment) approved personally by a Senior Manager with relevant authority to purchase, and
  - b. A Whole Life Costing Approach underpins the specification of the Supply and
  - c. It aligns with the Procurement Strategy, and
  - d. It complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 8.12), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions that have been made under CPRs 8.10 & 8.11 and contracted suppliers).
- (3) The Supply is likely to be within budgetary provision (see CPR 12.1).
- (4) An estimate of the full cost of the Supply contract or Framework Agreement which is as accurate as possible is made. Valuations must:
  - a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
  - b. assess the gross value of a Framework Agreement to be the reasonably estimated value of all Supply contracts which might be made through it;
  - c. where the Supply contract includes a fixed duration, cover the entire possible duration of the contract (i.e. including any options, such as for extension or renewal);
  - d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
  - e. include any Grant funding;
  - f. exclude VAT.
- (5) Where the cost of the Supply is less than the EU Threshold and an approved Framework Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the EU Procurement Rules.
- (6) Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.
- (7) The process can be adequately resourced.
- (8) The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.1(10) below) and other procurement documentation. The documents must be likely to be understandable by all reasonably well informed people in the relevant industry in the same way.
- (9) For contracts up to ~~£160,000, other than~~ the EU supplies and services threshold, other than Land Contracts (as to which see CPR 11); the Service Director shall wherever possible use appropriate standard contract terms ~~where an appropriate Official Council Order exists, the Service Director~~

~~shall wherever possible use such contract terms.~~ Otherwise every contract for Supplies or Income Contract must set out:

- a. Details of the Supply to be made or to be disposed of;
- b. The price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
- c. The time(s) within which the contract is to be performed;
- d. Termination provisions and break clauses, if appropriate;
- e. Appropriate data protection clauses where personal data is involved; and
- f. Such other matters as the Solicitor to the Council considers to be necessary (the Solicitor to the Council need not be consulted, but guidance must be followed).

(10) For contracts above ~~£160,000~~, other than ~~the EU supplies and services threshold~~ Land Contracts (as to which see CPR 11); the Service Director must consult with the Solicitor to the Council who will prepare contract documentation appropriate for the contract.

(11) Where a competitive process is being carried out: a transparent, unambiguous and clearly set out schedule of Award Criteria, which are objectively verifiable and non-discriminatory and are appropriately prioritised, must be prepared and advertised. These criteria must be linked to the subject matter of the contract, must not include unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR 5.2 – 5.7) and must be proportional to the contract's main objectives.

~~(12)~~ Consideration of whether it would be appropriate to divide large procurements into contract Lots<sup>4</sup> and must record the decision and reasoning.

~~(12)~~

~~(13)~~

~~(14)~~(13) The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding ~~£180,000\*~~ the EU supplies and services threshold

~~(15)~~(14) The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

~~(16)~~(15) That (unless Cabinet authorises otherwise) the formal Council policies and/or guides referred to in Appendix 1 are followed.

~~(17)~~(16) All supply contracts in excess of £300,000 will be bonded in the sum of 10% of the Quotation value, except where the Solicitor to the Council and Head of Internal Audit agree either:

- a. No bond is necessary; or
- b. A different value (or percentage) is appropriate; and or
- c. A parent company guarantee or other form of surety can be accepted instead.

~~(18)~~(17) A risk log is maintained during the Procurement process.

<sup>4</sup> This is not the same thing as disaggregation. Please contact Corporate Procurement if there is any doubt about what this means.

- 2.2 If you are considering conducting interviews or receiving presentations you should discuss this with the Head of Procurement at the preparatory stage (also see CPRs 6.16-6.18)..
- 2.3 Before commencing any process to obtain any Supply having an estimated cost exceeding £250,000, the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the Solicitor to the Council and / or the Head of Internal Audit, and undertake these consultations as necessary.
- 2.4 The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with EU Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the Official Journal of the European Union (OJEU) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.5 Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier, and no technical advice may be sought or accepted from any supplier in relation to the preparation of any specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.
- 2.6 In preparing a Specification, the Service Director should consider how the procurement activity might meet the Council's wider policy and strategy but subject always to ensuring full compliance with EU and UK procurement legislation. In respect of contracts for services, Service Directors must also consider (a) how what is proposed to be procured might improve the economic, social and environmental well-being of Kirklees, (b) which proportionate actions (which must comply with the EU Procurement Rules) might be taken in the Procurement with a view to securing that improvement, and (c) whether any consultation might be needed to inform them in relation to 2.6(b).
- 2.7 Where any Supplier is given possession of or access to any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation, any Information Commissioner's Office directions to the Council and the undertaking which the Chief Executive gave to the Information Commissioner in July 2011. The Service Director must follow the Council's Information Security Policy, in particular regarding contracting with data processors and sharing data, and consult with the Information Governance Team. The Service Director must ensure that:
- A. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
  - B. appropriate guarantees of the security of the personal data are included within a written contract;
  - C. the performance of the contract is appropriately monitored;
  - D. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
  - E. appropriate steps are taken to minimise as far as possible the impact of a breach of data security.
  - F. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.
- All contracts that involve the processing or sharing of personal data must be reported to the Information Governance Team, who will keep a log of these contracts. The log will be reviewed by the Information Governance Board on a six-monthly basis.

## Collaboration

- 2.8 The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.9 However, the EU Procurement Rules provide for joint liability where one authority procures on behalf another (other than as a central purchasing organisation, e.g. YPO). This increases the risks for the passive partner(s). So when taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organization and the Crown Commercial Service); addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

## RULE 3 - CHOICE OF PROCUREMENT PROCESS

- 3.1 Subject to complying with the law, the process for procurement must comply with ~~the following~~ appendix XXg:

Value of Supplies	Requirement
Up to £200	Any Procurement means is permitted
Up to between £200 and £250,000	<p><del>Any reasonable means to select the Supply is permitted. Reasons to justify the decision taken must be recorded. Where practicable Supplies from a Supplier within the Council's area must be considered in addition to Supplies from Suppliers outside the area (although the best value Supply must always be chosen).</del></p> <p><del>Reasonable Means to Select; this requires methods of selection which reflect reasonable trade practice. For Supplies below £250,000, it might include informal briefs, supplier written quotations or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet. The Service Director remains responsible for ensuring that the supplier selected is appropriate in terms of Suitability.</del></p> <p><del>All procurement activity in excess of £5,000 must be discussed with Corporate Procurement. There is an expectation, unless agreed otherwise (by Corporate Procurement) that at least 3 competitive quotes will be obtained for such procurements.</del></p>
above £250,000	<p>One of the following:</p> <p>◆ ————— Quotations ————— (CPRs 4 – 6)</p>

	◆ <del>Framework Suppliers, Standing Lists, Etc. (CPR 7)</del>
	◆ <del>Exemptions (CPR 8)</del>
	◆ <del>Internal, Consortia &amp; Compulsory (CPR 8)</del>

~~3.2~~ These CPRs also apply to the selection of any nominated or named sub-contractor, product or manufacturer whose use by a supplier is a requirement of a contract specification.

~~3.3~~

#### **RULE 4 - ADVERTISING**

4.1 The Service Director must advertise for Suppliers and/or quotations as ~~follows detailed in appendix XX.~~

<del>Estimated Value of Contract<sup>5</sup></del>		<del>Advertising Requirement</del>
<del>Works; above £4,550,000*</del> <del>Goods; above £180,000*</del> <del>Services other than 'Light Touch Regime' services; above £180,000*</del> <del>'Light Touch Regime' services; above £615,000*</del>		<del>Advertise on YORTender, Contracts Finder and OJEU and in other media if appropriate (OJEU first); or</del> <del>Use approved Framework Agreement; or</del> <del>Use approved Dynamic Purchasing System</del>
<del>From</del>  <del>Works</del> <del>£100,001</del>  <del>Goods</del> <del>£250,001</del>  <del>Services</del> <del>£250,001</del>	<del>Up to</del>  <del>Works; £4,550,000*</del> <del>Goods; £180,000*</del> <del>Services other than 'Light Touch Regime' services; £180,000*</del> <del>'Light Touch Regime' services; £615,000*</del>	<del>As the Head of Procurement determines</del>  <del>1. From a standing list</del> <del>2. An approved Framework Agreement</del> <del>3. An approved Dynamic Purchasing System</del> <del>4. Advertise on YORTender, Contracts Finder PLUS other reasonable advertising means;</del>  <del>Or</del> <del>For value below £100,000 use of suppliers selected otherwise (except where the procurement applies to a grant obliging competition, or cross border competition may be compromised)</del>

<sup>5</sup> ~~Please refer to CPRs 2.1(1) and 2.1(4)~~

<u>Goods or services from £200 up to £250,000</u> <u>Works from £200 to £100,000</u>	Any reasonable means.
<u>Below £200</u>	Any means (advertising is not necessary)

## RULE 5 – COMPETITION AND SUPPLIER SELECTION

### Number of Quotations

- 5.1 A Service Director must invite at least the following number of suppliers to submit a written Quotation as detailed in appendix XX:-

<u>Estimated Value of Contract</u>	<u>Minimum Number</u>
<u>£250,000 to £99,999</u>	<u>3</u>
<u>£100,000 up to EU Threshold or £180,000* (whichever is lower)</u>	<u>4</u>
<u>Above EU Threshold or £180,000* (whichever is lower)</u>	<u>5</u>

Unless

- 5.1.1 an **approved**<sup>6</sup> Framework Agreement or Dynamic Purchasing System is being used (and in which case the rules of the Framework Agreement or the Dynamic Purchasing System must be followed); or
- 5.1.2 it is otherwise agreed with the Head of Internal Audit in consultation with the Solicitor to the Council,

The Suppliers must have indicated that they are willing to submit a Quotation. If it is not possible to identify the number of willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

### Supplier Selection

- 5.2 Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.
- 5.3 Where the procurement process has an overall value of less than the supplies and services EU threshold ~~£181,302~~, a qualification stage must not be used, although key, proportional, Suitability questions linked to the subject matter of the contract should, as appropriate, be used to establish

<sup>6</sup> See CPR 7.17

the Suitability of the supplier. The questions (or absence of any) must be approved by the Head of Procurement.

- 5.4 When operating a procurement process with a value at the supplies and services EU threshold of £181,302 or above, and subject to CPR 5.5, the Service Director must use the Council's standard selection form of Suitability questionnaire (which is based on the 'selection questionnaire' requirements of procurement policy note 8/16) to establish Suitability and/or to establish a shortlist. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary (e.g. through [mysteryshopper@crownccommercial.gov.uk](mailto:mysteryshopper@crownccommercial.gov.uk)).
- 5.5 The European Single Procurement Document must be accepted where applicable.
- 5.6 The selection of any potential Supplier to submit a Quotation must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. Selection Criteria must be transparent and financial ratios to be used as part of the evaluation must be disclosed. When conducting a procurement process which is subject to the EU Procurement Rules, minimum standard and/or pass marks must be published in the relevant OJEU contract notice or invitation to confirm interest.
- 5.7 Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

## RULE 6 – QUOTATION RECEIPT & EVALUATION

- 6.1. For Procurements which are valued above £25,000-180,000\*, suppliers must be required to submit Quotations by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the YORTender system unless the Head of Procurement agrees otherwise.
- 6.2. All invitations must state clearly the date and time of return. Electronic quotations must be returned in accordance with the approved tendering system requirements. Paper quotations must be returned to:-

<b>Estimated Value</b>	<b>Returned to</b>
<u>£20,000 to £99,999</u>	<u>Service</u>
<u>£100,000 and above</u>	<u>Head of Procurement</u>

- ~~6.3. Paper quotations must be returned in a sealed envelope inscribed with the words: "Quotation for ....." and contain no other wording or marking to identify the sender.~~
- ~~6.4. All of the paper quotations must be kept securely and unopened. If any quotation bears any name or identifying mark of the bidder, this should be removed or obliterated.~~

6.5-6.3. All ~~paper and~~ electronic quotations received by the appointed time will be opened at the same time by a Corporate Procurement Officer (who must be independent of the quotations that are to be opened):

<b>Estimated Value</b>	<b>Representatives (at least)</b>

A	£20,000 to £99,999	<del>Two Service based officers who are independent of the procurement</del>
B	£100,000 and above	<del>One Internal Audit representative &amp; One Corporate Procurement officer</del>

~~A Legal Services Officer can act as substitute for one of the officers in C above.~~

~~6.6.6.4. At the quotation opening the Service Director (quotations estimated under £100,000) or Head of Procurement (quotations estimated at £100,000 or over) will maintain a written record of the:-~~

- ~~6.6.1.6.4.1. Nature of the Supply~~
- ~~6.6.2.6.4.2. Name of each supplier submitting a Quotation and the date/time of receipt~~
- ~~6.6.3.6.4.3. Name of suppliers failing to submit prices/proposal~~
- ~~6.6.4.6.4.4. Prices from each supplier~~
- ~~6.6.5.6.4.5. Names of the persons present at the opening~~
- ~~6.6.6.6.4.6. Date and time of opening of Quotations~~
- ~~6.6.7.6.4.7. Any reason for rejecting any Quotation~~

~~Each person present at the opening will initial each paper Quotation document, alongside the submitted price.~~

~~6.7.6.5. Late Quotations must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder which submits the late Quotation. Any decision to accept a late quotation will be made by the Head of Procurement following both (a) such verification as he or she feels appropriate and (b) approval by the Head of Internal Audit. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.~~

~~6.8.6.6. Suppliers must always be required to submit bids which comply with the tender documents.~~

~~Variant bids may be permitted providing that the tender documents:~~

- ~~o Say whether a standard or reference bid is also required;~~
- ~~o Include the minimum requirements to be met by the variants;~~
- ~~o set award criteria which can be applied to the variants;~~

~~and the variants which are submitted must conform to the requirements of the tender documents.~~

~~Quotations which do not comply with the above in this CPR 6.8 may be accepted by the Service Director, only after approval by the Head of Internal Audit.~~

~~6.9.6.7. The Service Director will carry out an evaluation of the Quotations received against the pre-set Award Criteria (CPR 2.1(11)) and keep a written record of the analysis and outcome.~~

~~6.10.6.8. The use of or participation in e-auctions to set prices is permitted where:~~

- ~~I. bids can be ranked automatically and~~
- ~~II. the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed, and~~
- ~~III. the written agreement of the Head of Internal Audit has been given, and~~
- ~~IV. the process is subject to supervision by the Head of Procurement.~~



~~6.11-6.9.~~ The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.

~~6.12-6.10.~~ The Service Director must ensure that, where required by EU procurement rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the Solicitor to the Council that the debrief process has completed satisfactorily prior to formal acceptance of any quotation.

~~6.13-6.11.~~ Any complaint or challenge to the procurement process at any stage must immediately be referred to the Head of Procurement, who must take steps to investigate and (subject to CPR 6.15) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.

~~6.14-6.12.~~ If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the Solicitor to the Council must be informed immediately with full objective disclosure of the facts relating to the issue(s), who will manage the claim. At this stage information exchange should be restricted and Service Directors must not copy dispute related information to anybody who has not seen it before until the Solicitor to the Council advises about confidentiality and Legal Privilege.

### **Clarifications, Presentations and Interviews**

~~6.15-6.13.~~ Where information or documentation submitted by a bidder is or appears to be incomplete (including where specific documents are missing) or erroneous or unclear, Service Directors may request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation, provided that requests for clarification:

~~6.15.1-6.13.1.~~ Set an appropriate time limit for a reply; and

~~6.15.2-6.13.2.~~ Do not request changes or otherwise seek to influence the bidder; and

~~6.15.3-6.13.3.~~ Deal with all of the matters in the Quotation which are incomplete or erroneous or unclear; and

~~6.15.4-6.13.4.~~ Treat all tenderers equally and fairly and so, for example, the request:

~~6.15.4.1-6.13.4.1.~~ Must not occur before all of the bids have been subject to an initial evaluation

~~6.15.4.2-6.13.4.2.~~ must not unduly favour or disadvantage the bidder to whom the request is addressed, and

~~6.15.4.3-6.13.4.3.~~ must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.

~~6.16-6.14.~~ Clarity may also be facilitated through planned presentations designed to assist in understanding or verifying submitted bids. Clarification questions may be asked during such presentations and prior scoring may be appropriately moderated (but the presentation itself must not be scored). All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.

~~6.17-6.15.~~ Interviews and / or presentations which form part of the bid (rather than clarification of a submission) are discouraged and must be authorized by the Head of Procurement in writing. They must also be:

~~6.17.1-6.15.1.~~ comprehensively recorded; and

- ~~6.17.2-6.15.2.~~ assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and  
~~6.17.3-6.15.3.~~ supervised by the Head of Procurement.

~~6.18-6.16.~~ Where interviews and / or presentations are to be used, unless the Head of Procurement agrees otherwise, all bidders must be invited to participate.

## **RULE 7 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS AND FRAMEWORK AGREEMENTS: CREATION AND USAGE**

- 7.1. The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

### **Standing Lists**

- 7.2. The Head of Procurement will determine for which types of Supply Council-wide Standing Lists must be kept (see CPR 8.10). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.
- 7.3. Standing Lists may be used for Supplies where the aggregated value (in compliance with the EU Procurement Rules) of the Supply in question does not exceed the relevant EU Threshold. Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant EU Threshold.
- 7.4. Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the YORTender web site, Contracts Finder and ~~other ne~~ appropriate media as the Head of Procurement may determine. ~~printed newspaper or journal.~~ Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.
- 7.5. Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation, of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.
- 7.6. The Head of Procurement (in consultation with the Solicitor to the Council) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.
- 7.7. If there are insufficient suppliers on a Standing List, or too few are willing to submit Quotations, to meet the CPR's quotation requirements potential Suppliers must be sought as if a Standing List is not maintained.
- 7.8. Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

## **Council Framework Agreements and Dynamic Purchasing Systems**

- 7.9. Framework Agreements and Dynamic Purchasing Systems may be used to source contracts for appropriate types of Supplies (subject to compliance with the EU Procurement Rules, as applicable). However they must not be used to attempt to create further Framework Agreements or Dynamic Purchasing Systems.
- 7.10. Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract (but must not be procured through a standing list, another framework agreement or a Dynamic purchasing system) and in accordance with the EU Procurement Rules.
- 7.11. All Framework Agreements will be in the form of a written ~~agreement~~ **contract** detailing the method by which the Council will call off Supplies during the duration of the Framework Agreement and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.
- 7.12. Framework Agreements above the EU Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
- 7.13. Contracts created through Framework Agreements must not be greater than 4 years in duration without being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
- 7.14. Dynamic Purchasing Systems must:
  - 7.14.1. be set up by an advertised competitive process which is approved by the Head of Procurement; and
  - 7.14.2. remain advertised; and
  - 7.14.3. not limit the number of suppliers admitted to the system (but the system may be split into categories); and
  - 7.14.4. be set up with clear operative rules which involve obtaining quotations from all suppliers on the system, or on the relevant category on the system, as appropriate; and
  - 7.14.5. be operated wholly electronically; and
  - 7.14.6. be open to new entrants; and
  - 7.14.7. not last longer than 5 years.
- 7.15. When using Framework Agreements or Dynamic Purchasing Systems, the Council must follow the procurement rules set out in the Framework Agreement or the Dynamic Purchasing System.
- 7.16. The Head of Procurement will ensure that the use of Framework Suppliers and Dynamic Purchasing Systems provide value for money, considering all procurement costs and alternative approaches.
- 7.17. The Head of Procurement will maintain a list of all approved Framework Agreements and Dynamic Purchasing Systems (noting which of these comply with the EU Procurement Rules) which Service Directors are permitted to use.

### **Use of Third Party Procurement Facilities**

- 7.18. Supplies may be obtained through third party Frameworks Agreements that:
  - 7.18.1. Are created by a public body or a private sector party as agent of a public sector body which is approved by the Head of Procurement (see also CPR 7.1);

- 7.18.2. Have valid mechanisms that exist to enable the Council to use the Framework Agreement (including appropriate transparent referencing in the procurement documents and inclusion in the framework call of conditions);
- 7.18.3. Comply with the Council's Contract Procedure Rules, or in the opinion of the Head of Internal Audit, rules which are broadly comparable;
- 7.18.4. Are included in the CPR 7.17 approved list (and, if the Supply which is to be procured is above the EU Threshold, is noted in the list as being compliant with the EU Procurement Rules);
- 7.18.5. Where the EU procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

## **RULE 8 – EXCEPTIONS FROM COMPETITION**

8.1 Subject to compliance with the EU Procurement Rules the following are exempted from the competitive requirements of these CPR<sup>7</sup>:

- 8.1.1 Where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
- 8.1.2 Items purchased or sold by public auction (in accordance with arrangements agreed by the Head of Internal Audit).
- 8.1.3 The selection of a supplier whose usage is a condition of a Grant funding approval.
- 8.1.4 The selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party.
- 8.1.5 Where CPR 8.10 applies.
- 8.1.6 Counsel or other external legal advice, provided that the Solicitor to the Council takes steps to ensure that value for money is being obtained.
- 8.1.7 A necessary Supply required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of Internal Audit.
- 8.1.8 Direct award from an approved Framework Agreement (see CPR 7.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the EU Procurement Rules.

The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an exception in respect of a supply valued in excess of £100,000.

8.2 **Trial Purchases:** Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000, to ascertain if the Supply is of interest to the Council, without competition. Where an exception to competition in CPR 8.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply. Arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £250,000.

<sup>7</sup> When the EU Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

## < There are substantial restrictions on the use of negotiated contracts where EU Procurement Rules apply >

- 8.3 The procuring Service Director and the Head of Procurement may decide that;
- 8.3.1 an alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason for their decision and obtain the approval of the Head of Internal Audit.
  - 8.3.2 Following receipt of Quotations for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Quotations.
  - 8.3.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Quotation for the Supply.
  - 8.3.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the council without competition is appropriate (although subject to EU Procurement Rules).

**Note in the above**, in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by his or her own Service Director, there must be consultation with the Head of Internal Audit.

### **Negotiated Contracts**

- 8.4 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.
- 8.5 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 8.6 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of Internal Audit of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

### **Legal Issues**

- 8.7 The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed [the EU supplies and services threshold £160,000](#) (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).
- 8.8 Before a decision pursuant to CPRs 8.1 to 8.3 is made, the Head of Procurement will determine whether the likely level of interest from suppliers based in other EU Member States is sufficiently low so that the EU Procurement Rules do not require the Procurement to be advertised.
- 8.9 Before a decision pursuant to CPRs 8.1 to 8.3 is made, the Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to

be achieved, he/she must consult with the Solicitor to the Council about the possibility of state aid before approving the exemption from competition.

## **MANDATORY SUPPLIERS, FRAMEWORKS AGREEMENTS OR DYNAMIC PURCHASING SYSTEMS**

- 8.10 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the EU Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.
- 8.11 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework Agreement or a Dynamic Purchasing System or Standing Lists, and set standards to be established in those arrangements.
- 8.12 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:
- 8.12.1 Where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;
  - 8.12.2 In respect of the outsourcing of an activity having a value below £100,000;
  - 8.12.3 In respect of services provided within schools;
  - 8.12.4 In respect of ad hoc services for the design and construction of buildings or parts of buildings.

## **RULE 9 - RECORD KEEPING AND REPORTING.**

- 9.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation).

To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on —

- 9.1.1 communications with economic operators and internal deliberations,
- 9.1.2 preparation of the procurement or sale documents,
- 9.1.3 any interviews, other dialogue or negotiation,
- 9.1.4 supplier vetting, and
- 9.1.5 reasons for award of the contract.

The documentation must be kept for a period as defined within the Councils relevant retention schedule. ~~of at least 3 years from the date of award of the contract.~~

- 9.2 A full trail of electronic quotations received must be recorded in YORTender or retained in a database approved by the Head of Internal Audit.
- 9.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 3).
- 9.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the EU Procurement Rules.
- 9.5 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 3.

- 9.6 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 9.3 above).
- 9.7 The Service Director must keep a written record of the reasons for using a negotiated procedure

## **RULE 10 - INCOME CONTRACTS & CONCESSIONS**

- 10.1. CPRs 10.2 to 10.6 apply when the Council intends to derive income from:
- 10.1.1. The disposal of property (other than Land);
  - 10.1.2. The sale of a right to exploit a business opportunity;
  - 10.1.3. The operation of business activity.

CPR 10 does not apply to Land (See CPR 11).

- 10.2. Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of Internal Audit must be consulted and he will decide whether this amounts to a Grant (and so FPR 20 applies instead of CPR 10).

### The disposal of an asset

- 10.3. The procedure for the Disposal of assets is;
- ~~10.3.1. Assets valued at below £200 may be disposed of by any means.~~
  - ~~10.3.2.~~ 10.3.1. Assets valued at between £200 and up to £250,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained.
  - ~~10.3.3.~~ 10.3.2. Assets valued above £20,500 must be disposed of following public notice either by open quotation process, closed quotation process involving at least 3 prospective purchasers or public auction. The use of the Council web site is permissible for this purpose.

Leased assets must be disposed of only in accordance with the instruction of the lessor.

### The sale of a right to exploit a business opportunity

- 10.4. The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process as set out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.
- 10.4.1. A business opportunity contract that will not generate income in excess of £250,000 over the duration of the contract may be sourced by any reasonable means to select (see an explanation of this phrase in respect of Supplies in CPR 3.1) arranged and undertaken by the Service Director responsible for the activity.
  - 10.4.2. The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £250,000.

The operation of business activity, beyond that normally undertaken by a local authority,

- 10.5. If an Income Contract is intended to be or become profitable or be commercial in nature, advice must be obtained from the Solicitor to the Council.
- 10.6. If an Income Contract has any potential to distort the relevant market—advice must be obtained from the Solicitor to the Council.

#### Concession Contracts

- 10.7. Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

Concession contracts for works or services with a value of £4,104,000 or more are subject to the Public Concessions Regulations 2016 and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with these Regulations.

#### Valuation

- 10.8. The value of a Concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the Supplies which are the object of the Concession contract and for any ancillary Supplies.
- 10.9. The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.
- 10.10. When calculating the estimated value of a Concession contract or Income Contract, Service Directors shall, where applicable, take into account: -
  - 10.10.1. the value of any form of option and any extension of the duration of the contract;
  - 10.10.2. revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;
  - 10.10.3. payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;
  - 10.10.4. the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;
  - 10.10.5. revenue from sales of any assets which are part of the contract;
  - 10.10.6. the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;
  - 10.10.7. any prizes or payments to candidates or tenderers.

#### **RULE 11 - LAND**

- 11.1 Procurement of Land will generally be by the means described in this CPR 11. The Head of Corporate Property Management must be consulted in respect of all Land transactions of any value except where the Solicitor to the Council authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 11.2 The Head of Corporate Property Management (and any other Director authorised so to do) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to him by a Service Director in accordance with Part 3



(Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to him from the Cabinet.

- 11.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Property Management and the Solicitor to the Council, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 11.4 Where Land is sold at a public auction, the Head of Corporate Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made. If a successful bid is less than the reserve price then the Head of Corporate Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

## **RULE 12 – EXECUTING CONTRACTS**

### **SUPPLIES**

- 12.1. A contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is likely to be sufficient ongoing funding to meet the contractual cost through the anticipated life of the contract.
- 12.2. Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and Framework Agreements up to the EU supplies and services threshold ~~and including £160,000~~ must be in writing and can be made by the Service Director either:-
- 12.2.1. where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
  - 12.2.2. By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

If the Service Director and Solicitor to the Council decides that it is appropriate for the contract to be sealed (or if it is required by law), the contract will be executed by the Solicitor to the Council.

The Head of Procurement must ensure that the Councils electronic procurement systems are set up so that the most appropriate Official Council Order are available to be attached to the supply being purchased.

- 12.3. Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and every Framework Agreement with an estimated value of more than the EU supplies and services threshold ~~£160,000~~ must be in writing and must (subject to CPR 12.4) be either:-
- (a) Made under the corporate common seal of the Council, attested by one legal officer, or
  - (b) Signed by two legal officers

who have been nominated as contract signatories by the Solicitor to the Council under her Scheme of Officer Delegations.

12.4. Notwithstanding CPR 12.3, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist contracts for Supplies ~~of~~ above the EU supplies and services threshold £160,000. Two authorised officers must sign each such contract.

12.5. The Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant contracts and suitable record keeping, provide third parties with a power of attorney to sign Council contracts of ~~£160,000 or values~~ below the EU supplies and services threshold.

## LAND

12.6. The Solicitor to the Council will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies (with the exception of the granting of tenancies for housing and associated properties for rent which is delegated to Kirklees Neighbourhood Housing Ltd) and other deeds and documents associated with Land. The Solicitor to the Council may nominate other officers to enter into Land commitments and arrangements using documentation previously approved by the Solicitor to the Council.

12.7. Any contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed by, or have the corporate common seal affixed in the presence of, the Solicitor to the Council (or by a legal officer nominated by him or her).

Additionally, the Solicitor to the Council may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR11.1.

## GENERAL

12.8. The Solicitor to the Council is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 12.3 and provided that this is not subject to any contrary direction from the Council or Cabinet.

## RULE 13 – VARIATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS

13.1. A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.

13.2. A Service Director, in consultation with the Solicitor to the Council, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.

13.3. The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.

13.4. The Head of Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the Solicitor to the Council accept such proposed sums.

- 13.5. Service Directors may vary contracts by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract.
- 13.6. Any variation with a value above £20,000 to a contract which cannot be fulfilled by following CPR 13.5 must be subject to the approval of the Head of Procurement.
- 13.7. Any variation to a contract which cannot be fulfilled by following CPR 13.5 must be made in writing and signed in accordance with CPR 12 even if it does not need a competitive Procurement process.

#### **RULE 14 - MISCELLANEOUS**

- 14.1 A Special Purpose Vehicle (as a limited liability company or otherwise) to be wholly or partially owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the Solicitor to the Council and the Chief Finance Officer. This does not apply to any purchase of shares or similar for the purpose of investment.

~~Approved by Council May 2018~~

~~Apply from 1 June 2018~~

Approved by Council

Apply from 1 June 2019

~~Contact Officer:~~

~~Mark Barnes~~

## Appendix 1

### Examples of Policies which are relevant to CPR 2.1(15)

Kirklees Council Social Value Policy Statement (see: <a href="http://www.kirklees.gov.uk/business/businessWithCouncil/pdf/socialValuePolicyStatement.pdf">http://www.kirklees.gov.uk/business/businessWithCouncil/pdf/socialValuePolicyStatement.pdf</a> )
Information Security Policy
The Council's "Project Management Handbook" and "Framework for Successful Projects" when the Head of Procurement advises that they are relevant
Evaluation Panel Guide

## Appendix 2

### EU Procurement Rules Thresholds

	EU Thresholds 2014-2015	EU Thresholds 1 Jan 2016 –31 Dec 2017	EU Thresholds 1 Jan 2016 –31 Dec 2017
Supply and service contracts	£172,514	£164,176	£181,302 ( <b>£180,000*</b> )
Light Touch Regime Contracts (Annex XIV)	£625,050	£589,148	£615,278 ( <b>£615,000*</b> )
Works contracts	£4,322,012	£4,104,394	£4,551,413 ( <b>£4,550,000*</b> )
Small lots – supplies & services	£66,672	£62,842	£65,630 ( <b>£65,000*</b> )
Small lots – works	£833,400	£785,530	£820,370 ( <b>£820,000*</b> )

\* These are current the values for the purposes of these CPRs.

The threshold values to be used will be those applicable at the commencement of the procurement process. EU Procurement threshold values are revised every two years.

## Appendix 3

### Information to be Reported to the Head of Procurement (CPR 11)

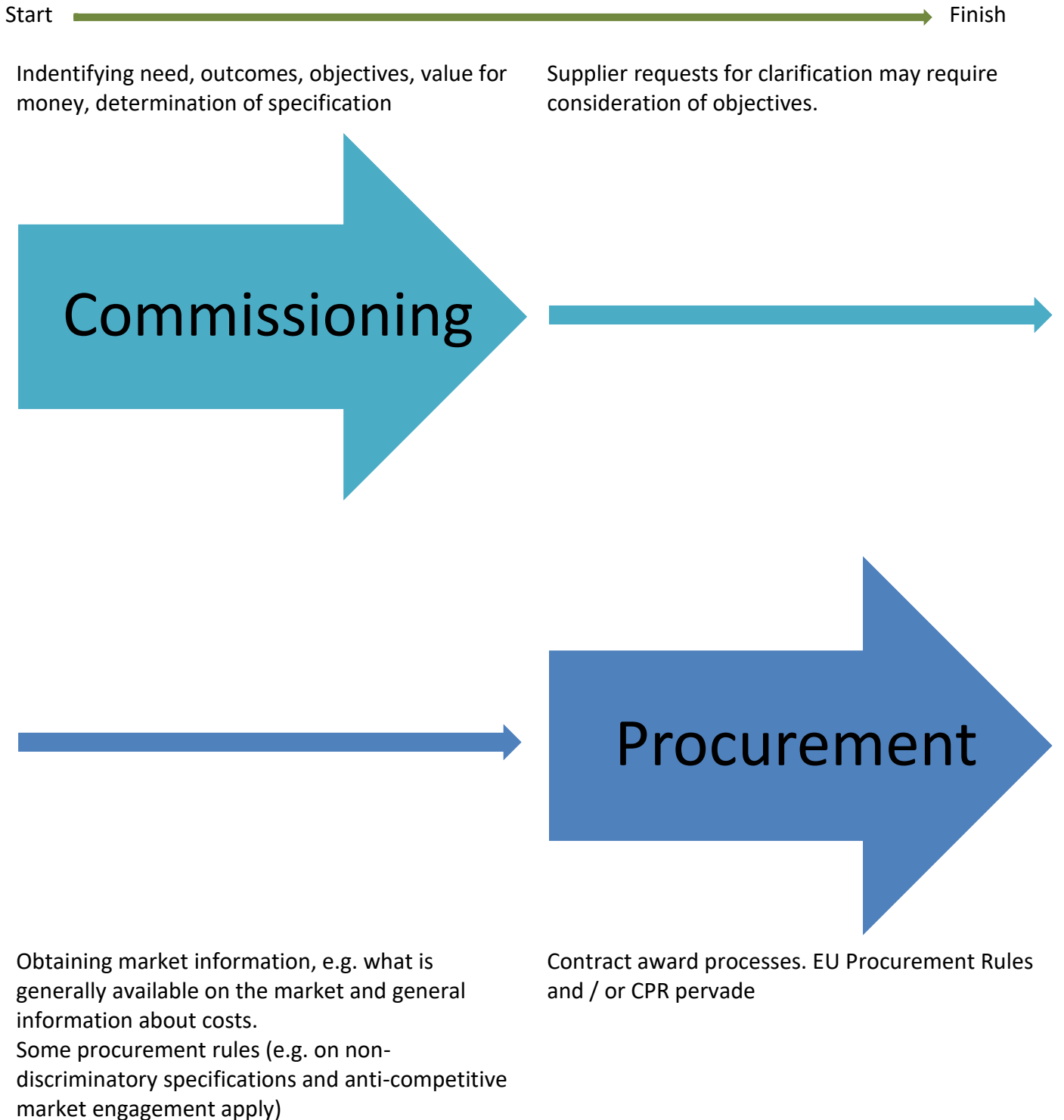
	Information	When
A.	Details of all contracts awarded for Supplies of £100,000 or above following a competitive process including the name of the Supplier, and amount of the Quotation and if the chosen supplier was not the cheapest, then the	When Requested

	same information in relation to unsuccessful Suppliers, and the reason why the successful Supplier was chosen.	
B.	Details of all contracts awarded for Supplies of £100,000 or above, which result from negotiation including the reason for negotiation and the name of the successful Supplier and value of the contract.	When Requested
C.	Details of all contracts awarded for supplies of £250,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue of CPR 7.1, including the reason for the exemption.	When Requested
D.	Contracts with a value of £5,000 or more (see CPR 11.1), with the following information: <ol style="list-style-type: none"> <li>1. reference number</li> <li>2. title of agreement</li> <li>3. local authority department responsible</li> <li>4. description of the goods and/or services being provided</li> <li>5. Supplier name and details</li> <li>6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract)</li> <li>7. Value Added Tax that cannot be recovered</li> <li>8. start, end and review dates</li> <li>9. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and</li> <li>10. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number</li> </ol>	In All Cases On Contract Award
E.	all other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases On Request
F.	Copies of Regulation 84 reports	All cases where the EU Procurement Rules apply On Contract Award

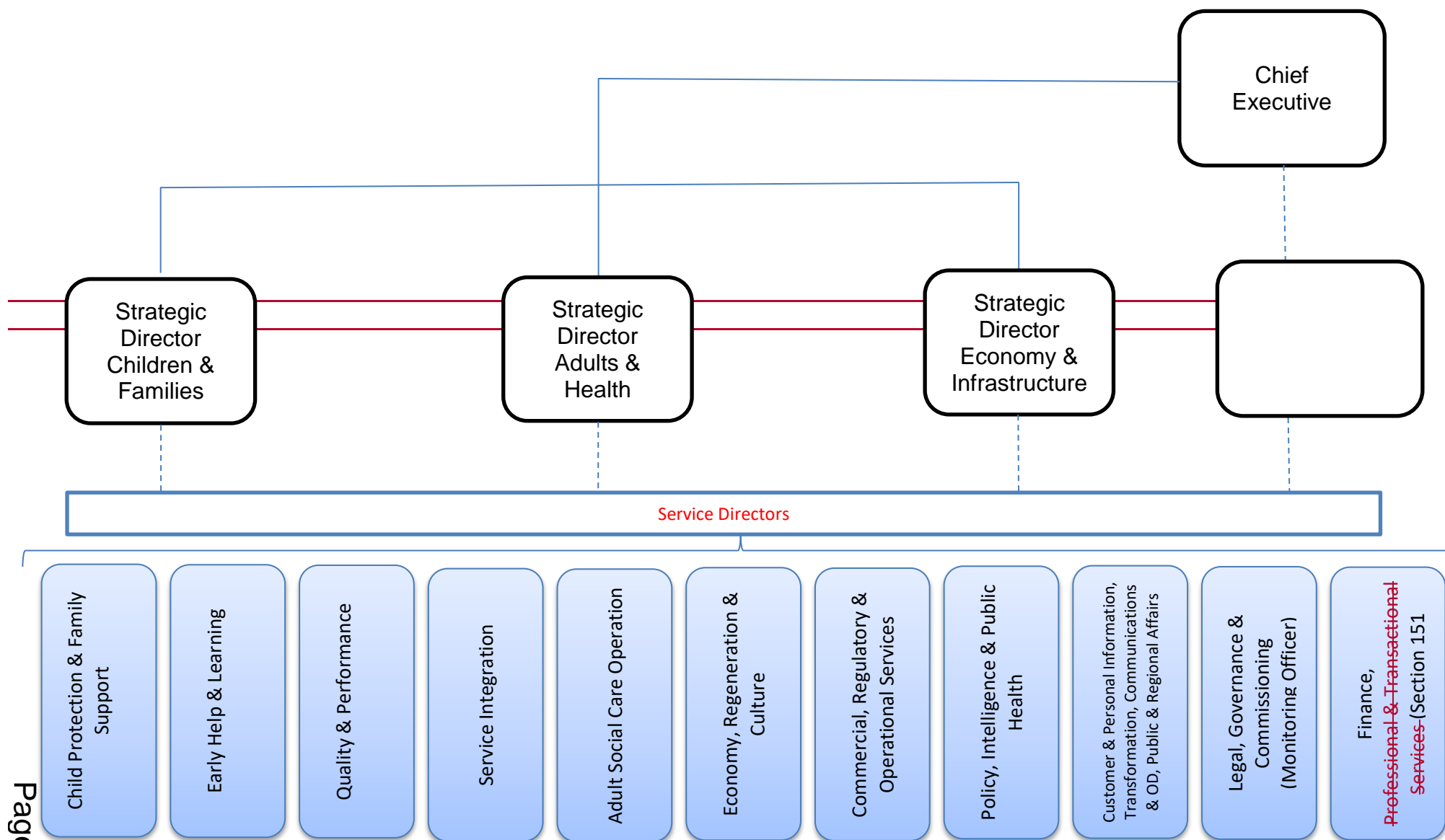
## Appendix 4

### Relationship between Commissioning and Procurement

The arrows indicate the stages of the whole resourcing process



**Appendix 5  
Council Structure as at 1 April 2019~~7~~**



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**Name of meeting: Corporate Governance & Audit Committee**

**Date: 26<sup>th</sup> April 2019**

**Title of report: Proposed Revisions to Financial Procedure Rules**

**Purpose of report; To provide information on proposed changes to Financial Procedure Rules for the municipal year 2019/20**

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)?</a>	Not applicable
The Decision - Is it eligible for "call in" by Scrutiny?	Not applicable
Date signed off by Director & name	J Muscroft Service Director - Legal Governance and Commissioning
Is it also signed off by the Service Director for Finance, IT & Transactional Services	Yes ( CFO)
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Yes
Cabinet member portfolio	Not applicable

**Electoral wards affected: All**

**Ward councillors consulted: Not applicable**

**Have you considered GDPR; Yes  
Public**

## 1. Summary

- 1.1 This report sets out information on proposed changes to Financial Procedure Rules.
- 1.2 The main areas proposed for amendment relate to procedures relating capital management and income management. These are marked on the attached documents.

## 2. Information required to take a decision

- 2.1 The detail is contained within the attachment. Some paragraphs are renumbered, and numbers slightly differ between the track changed and clean versions attached. A large section of part 11(income) has been fully rewritten, and the former text is not shown by track change, although the text below indicates the key changes.

### 2.2

Section	Proposal
1.12	Minor changes to words to reflect a requirement that subsidiaries and associated parties need Governance arrangements that align with those of the Council
2.20	The words "Virements must recognise funding

	arrangements” are considered to be superfluous following paragraph reformatting
3.1/2	This is a new section making clear what Capital is, which incorporates the former 3.1
3.10(2)	The authority of Cabinet to transfer resources between projects and programmes be increased from £1.0m to £2.0m. (which more closely aligns with Revenue budget virement rules)
3.10(3)	This is a new paragraph entitling Cabinet to transfer resources between years, although this is still subject to control by the Chief finance officer
3.11	The authority of Directors to transfer resources between projects and programmes be increased from £0.5m to £1.0m. (which more closely aligns with Revenue budget virement rules)
3.16/17	The delegations to KNH and other subsidiary organisations are removed. Decisions will hence be taken by Cabinet, or as delegated to officers
3.24	This is a new paragraph that recognises that complex projects (usually related to major developments) can be delegated to officers, and that the Chief Finance Officer and Service Director Legal Governance & Commissioning must be consulted
3.25/6	This is an additional section reflecting the fact that accounting rules now require all leased assets to be incorporated on the councils balance sheet, and thus require an approval process as for other capital expenditure. 3.26 is as the previous 7.15
7.15	Edited version of previous text, mainly now at 3.26
11.6	A redrafted section designed to strengthen arrangements to prevent money laundering
11.14 & 11.15	Additional words to put timescales into this process, and to increase the authority of the Chief Finance Officer
20.11	Amended to £180,000 to align more closely with other legal agreements
Minor word changes	2.4, 2.34, 3.15, 3.22, 4.2,

### 3. Implications for the Council

- 3.1 **Working with People** – None directly
- 3.2 **Working with Partners** – None directly
- 3.3 **Place Based Working** – None directly
- 3.4 **Improving outcomes for children**– None directly
- 3.5 **Other (eg Legal/Financial or Human Resources)**- Although each of the sub categorisations above suggest no direct implications, these Procedure Rules covers all aspects of the councils operations,.

### 4. Consultees and their opinions

- 4.1 The chief finance officer, and heads of service, have been involved in the drafting of these proposals.

**5. Next steps & Timelines**

5.1 This matter will go forward to Annual Council for consideration.

**6. Officer recommendations and reasons**

6.1 Members are asked to consider the proposed changes to Financial Procedure Rules and recommend them to Annual Council for approval.

**7. Cabinet portfolio holder recommendation**

7.1 Not applicable.

**8. Contact officer**

Martin Dearnley, Head of Risk (01484 221000; x 73672)

**9. Background Papers and History of Decisions**

The attached document includes track changes, and a clean (new) version. The 2018 version of FPRs is available as a part of the council constitution

**10. Service Director responsible**

Service Directors of Legal Governance & Commissioning, and , Finance.

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# KIRKLEES COUNCIL

## FINANCIAL PROCEDURE RULES

June 20198

## **Financial Procedure Rules**

### **Introduction**

These Financial Procedure Rules set out the framework which the Council will use in managing its financial affairs. They set out levels of responsibility and give authority to the Cabinet, Members and Officers and are intended to promote good practice in the use of public funds.

A guide to the Financial Procedure Rules will be published on the Intranet to help users understand and implement good financial management. Users should contact the Chief Finance Officer or their staff if assistance or clarification is needed.

### **Contents**

1. Financial Governance
2. Revenue Budget Preparation and Management Revenue Budget
3. Capital Investment Plan Preparation and Management
4. Financial Systems, Procedures and Grants
5. Internal Audit
6. Insurance
7. Assets
8. Security
9. Treasury Management
10. Banking Arrangements, Cheque Signing and Imprest Accounts
11. Income
12. Payment of Invoices
13. Payment Cards
14. Salaries, Wages and Pensions
15. Travel, Subsistence and other Allowances
16. Taxation
17. Gifts and Hospitality
18. Working with Clients and Contractors
19. Unofficial and Voluntary Funds
20. Financial Control of Partnerships, Joint Ventures, Associated Organisations and Similar Arrangements.
21. Purchasing of Works, Goods and Services

**Financial Procedure Rules**  
**Definitions**

Activity	A standard sub division of a Strategic Director's budgets; normally equivalent to the service portfolio operationally managed at Service Director level;
Asset	An item belonging to the Council that has a value ; It can include buildings, equipment, vehicles, stocks, stores, money and items of intellectual value
Associated Organisation	An organisation in which the Council has a majority or substantial shareholding, or exercises substantial influence through its funding of the organisation.
Business Case	A written document, setting out the reasons for a project, including analysis of options, risks and resources needed.
Cabinet Member	A single member of the Cabinet.
Central Budget	A budget which is held centrally and for which statutory Chief Finance Officer is accountable (in accordance with any rules established in these procedures, or by Council, or Cabinet)
Chief Finance Officer	The person so designated as the section 151 of the Local Government Act 1972 from time to time by the Chief Executive.
Controllable Budget	A budget which is allocated to a Director , and for which the Director is accountable, in accordance with any rules established in these procedures, or by the Chief Finance Officer, or by Council, or Cabinet
Directorate	The consolidated group of Service plans and activity budgets that fall within the responsibility of any one Strategic Director, including the Chief Executive
Executive Team	The Council's most senior officer leadership team
Fixed Asset	Any physical item having a long term value –such as a vehicle, or property.
Head of Risk	The officer currently holding the role of Head of Internal Audit , as required by Public Sector Internal Audit Standards.
His or her Nominees	Refers to the 'Head of Service level' to which Service Directors, including the Chief Finance Officer can nominate on their behalf, to enact Service Director delegated authorities as set out in these FPR's
Irregularity	An unexpected or inappropriate event or behaviour
Land Asset	Means the property of the Council that is freehold or leasehold property (including any buildings on it), rights of possession of land, easements and/or other estates or interests in land.
Medium Term Financial Plan (MTFP)	Revenue Budget Plan, normally between 2 and 4 years, and Capital Investment Plan, up to 5 years
Monitoring Officer	The person appointed under section 5 of the Local Government & Housing Act 1989, currently the Service Director, Legal, Governance & Commissioning

Named Project	A project (forming part of a Capital Programme) identified by Cabinet (or any other body or person so authorised by Cabinet) for inclusion in the Capital Plan.
Officer	An employee of the Council or other person contracted to carry out functions where these Financial Procedure Rules
Partnership	Any organisation with which the Council has a formal or informal agreement to act together.
Programme Area	A group of projects having a similar purpose in the Capital Investment Plan, or a major project listed separately within the Capital investment Plan
Project	A single scheme included separately in the Capital Investment Plan, or as a part of a programme area.
Rollover	A mechanism for transferring budgets between financial years.
Service Director	The person responsible for the proper compliance with these procedures whose name is included on a schedule approved by the Chief Executive.
Service Plan	A statement of objectives plans, performance measures and the use of resources for a Service.
Specified Project	A project specified by Council for inclusion in the Capital Plan.
Strategic Director	The person responsible for the commissioning of activity at a Directorate level, and includes the Chief Executive
Virement	The transfer of resources from one budget to another.



## **1. FINANCIAL GOVERNANCE**

- 1.1 The Council has a statutory duty to make arrangements for the proper administration of its financial affairs and to secure that one of its officers has responsibility for the administration of those affairs. The Council has resolved that the Chief Finance Officer is the responsible officer.
- 1.2 The Council will approve Financial Procedure Rules to be used by all members and officers.
- 1.3 The Corporate Governance & Audit Committee is responsible for approving the Council's Annual Statement of Accounts
- 1.4 The Cabinet is responsible for ensuring that the Financial Procedure Rules are followed across the Council. The Corporate Governance & Audit Committee is also responsible for reviewing the Financial Procedure Rules annually and for making recommendations for any changes to the Council.
- 1.5 The Corporate Governance & Audit Committee is responsible for approving the Council's risk management policy statement and strategy and for reviewing the effectiveness of risk management arrangements. The Cabinet is responsible for assessing the risk of activity undertaken by the Council.
- 1.6 The Chief Finance Officer is responsible for the proper administration of the Council's financial affairs, and particularly for:-
  - a) Providing financial advice and information to members and officers;
  - b) Setting standards for good financial management and monitoring compliance with those standards;
  - c) Advising on the key financial controls necessary to secure sound financial management;
  - d) Ensuring that proper systems of internal control are operated;
  - e) Coordinating the preparation of the Revenue Budgets and the Capital Investment Plan;
  - f) Determining the accounting policies and financial procedures and records for the Council;
  - g) Preparing the annual financial statements in accordance with the relevant accounting standards and codes of practice;
  - h) Treasury management activities;
  - i) Preparing a risk management policy statement and promoting it throughout the Council;
  - j) Maintaining an effective internal audit function, jointly with the Chief Executive,
  - k) Ensuring proper professional practices are maintained within the finance function; and
  - l) Managing the Council's taxation affairs.

1.7 The Chief Finance Officer must report to the Council's Monitoring Officer and to the Council if:-

- a) A decision has been made, or is about to be made, which involves the incurring of expenditure which is unlawful; or
- b) There has been, or is about to be, an unlawful action resulting in a financial loss to the Council;

and the Council's Monitoring Officer will take all appropriate and necessary steps to deal with the matter.

1.8 The Chief Finance Officer may issue any instruction intended to fulfil these responsibilities and is entitled to any information or explanations as he/she may require. The Head of Risk, and the Service Director Legal, Governance & Commissioning may also issue instructions or guidance in relation to these financial procedure rules.

1.9 Service Directors must ensure that financial systems and procedures used in their service areas are adequate to record and control all transactions and to achieve adequate levels of internal check and control.

1.10 Service Directors must make arrangements to ensure that all officers involved in financial matters are aware of, and competent in the use of, these Financial Procedure Rules. The extent of delegated authority to officers must be recorded.

1.11 Strategic Directors must ensure that any report to Cabinet contains the financial implications of any proposals. These financial implications must be agreed with the Chief Finance Officer.

~~4.141.12~~ 1.12 Where, as a result of legislation or decision of the Council, part of the Council's functions are delivered by an associated organisation including any partnerships of which the Council is a member or participant, funded partly or wholly by the Council, the organisation must submit for approval by the agree with the Council its own arrangements for corporate governance, by way of an initial proposal. Subsequent authority to approve changes may be delegated to a strategic director. ~~These All partnership~~ arrangements will incorporate the spirit of the Council's Financial Procedure Rules, and will include the Council's right of access to financial information about the associated organisation.

~~4.121.13~~ 1.13 Schools with delegated budgets are subject to, and must comply with , the 'Kirklees Scheme for Financing Schools', which has tailored these Financial Procedure Rules for use in those Schools.

~~4.131.14~~ 1.14 A reference in the Financial Procedure Rules:-

- a) To the Cabinet includes Cabinet Committees;
- b) To a Strategic Director includes where appropriate the Chief Executive.

- c) To a Service Director includes his or her nominees (except where otherwise specifically forbidden);
- d) To the Chief Finance Officer includes his or her nominees; and
- e) To an officer means any employee of the Council, or other persons contracted to carry out functions where these Financial Procedure Rules apply.

## 2. **REVENUE BUDGET PREPARATION AND MANAGEMENT**

### **Responsibilities**

The Council is responsible for determining the Council's Medium Term Financial Plan (MTFP) comprising a multi-year General Fund Revenue Budget Plan, which will normally cover a period between 2 and 4 years (including the revenue consequences from the Capital Investment Plan), a multi-year capital budget plan of up to 5 years, and setting the level of Council Tax for the following financial year.

- 2.1 The Cabinet is responsible for recommending to the Council a Medium Term Financial Plan comprising a multi-year General Fund Revenue Budget Plan and Capital Investment Plan and for implementing it when determined.
- 2.2 The Cabinet is responsible for approving the setting of Council Tenant Rents, and other rents and service charges within the Housing Revenue Account (HRA), each year, within the scope of existing HRA rent and charging policies.

### **Budget Preparation**

- 2.3 The Cabinet will submit no later than the October meeting of the Council each year a provisional budget strategy, for a period of between 2 years and 4 years. The starting point will be the existing multi-year plans rolled forward from the previous year, including a high level review of Council funding and spend assumptions. Any resultant gap between funding and spend forecasts will inform target spending controls over the new MTFP period.
- 2.4 The Chief Finance Officer is responsible for establishing budget procedures, including determination of the following:
  - i) target spending controls for the Council budget over the MTFP, and their allocation to [Strategic](#) Directors, as appropriate,
  - ii) the format for budget documentation,
  - iii) a corporate budget timetable, and
  - iv) to report on any amendments put forward as part of the Council's budget process
- 2.5 The provisional budget strategy will include arrangements for wider public engagement on budget options being considered.
- 2.6 Strategic Directors will produce draft budget proposals to meet target spending controls for Council budgets over the MTFP, in accordance with budget procedures and the annual budget timetable as set out by the Chief

Finance Officer. These draft budget proposals will show how resources are to be allocated across activities, taking into account any service changes, performance targets, and the specific requirements of any relevant legislation, including service equalities impacts, in formulating budget options for Cabinet consideration.

- 2.7 The Cabinet will consider these proposals in detail and make its recommendations to the Council at least 14 days before the date set for the meeting of the Council which will determine the Council's Budget for the next financial year.
- 2.8 The Chief Finance Officer will advise the Cabinet and the Council on the overall budget, the levels of Council Tax, the use of reserves and the need for contingency budgets, and on the risks involved in the forecasts of spending levels and income. The annual budget report must make reference to all matters required by legislation or appropriate professional guidance.

### **Budget Management**

- 2.9 The Cabinet is responsible for implementing the Corporate Plan within the resources allocated in the Revenue Budget. The Cabinet will provide summary revenue monitoring information to the Council at least twice per year.
- 2.10 The Chief Finance Officer will determine which budgets are "controllable" by Strategic Directors, and will allocate the specific budgets that each Strategic Director has responsibility to manage.
- 2.11 These budgets will normally align with the Directorate structure of the Council, but may also reflect the cross council (transformational) structure of the Council. The Chief Finance Officer will determine which budgets may be considered together for the purposes of delegated virement authority (per FPR 2.20 to 2.24 below).
- 2.12 Service Directors are responsible for managing controllable budgets within their delegated authority and should exercise proper budgetary control in order to achieve Corporate Plan and Service Plan objectives.
- 2.13 Service Directors are authorised to incur any expenditure included in the approved revenue budget, as amended by any virement including obtaining and accepting quotations and providing grants and loans, subject to other requirements of CPRs and FPRs.
- 2.14 Service Directors must report on budget management. They must take action to avoid overspending budgets and report any difficulties to the appropriate Strategic Director and the Chief Finance Officer. These reports must be in a format and to a timetable prescribed by the Chief Finance Officer.
- 2.15 Where a Service Director is reporting a projected overspending of more than £500,000 on an activity that cannot be addressed through budget virement, this will be highlighted by the Chief Finance Officer as part of the report to the Cabinet on the overall management of the Revenue Budget on a quarterly

basis through the year, setting out the reasons for the overspending and management options for eliminating or reducing the overspending.

The Cabinet is responsible for reviewing management options and for recommending such further steps as are necessary to align activity with resources.

- 2.16 The Chief Finance Officer is accountable for all central budgets, which will be managed in the same way as activity budgets.
- 2.17 The Chief Finance Officer has delegated authority to review the requirement for existing Council Provisions and earmarked Reserves, in-year, and to report any new Reserves or Provisions requirements to Cabinet.
- 2.18 Service Directors should delegate authority to commit budgets to the appropriate level of management, make arrangements to set out clearly the extent of authority of managers, and review the performance of managers in managing these budgets.

### **Virements**

- 2.19 Service Directors are authorised to transfer resources within an activity budget without limit providing the Service Plan for the activity is not changed in a material way.
- 2.20 Virement which is associated with a change in the level of service from that set out in the service plan must be approved by the Cabinet.

### **Virements must recognise funding arrangements**

- 2.21 Virement is not permitted between HRA funded and General Fund funding streams
- 2.22 Strategic Directors, in consultation with the appropriate executive member(s), are authorised to transfer resources between controllable activity budgets subject only to the cumulative Virements on any one activity not exceeding 10% of the original net controllable Directorate budget or £1,000,000, whichever is the smaller.
- 2.23 The Cabinet is authorised to transfer resources (undertake a Virement) of more than £1,000,000 between activity budgets, subject only to the cumulative Virements on any one Directorate not exceeding 10% of the original gross budget, or £2m, whichever is the smaller. Cumulative Virements above these thresholds requires Council approval.
- 2.24 The transfer of revenue resources in any one financial year from the revenue budget to add additional resources to the capital plan, will only be allowed if:
  - (a) there is explicit prior year approval as part of the approved budget plans of the Council, for the following financial year; or
  - (b) Service Directors can identify, from the revenue budget (up to £500,000 cumulative virement in any one financial year) to add additional resources to

the capital plan, in respect of approved programmes and projects, and subject to approval by the Executive Team and the Chief Finance Officer; and compliance with FPR 3.17 and 3.18

- 2.25 Virement is specifically not allowed where the transfer of resources is from budgets for capital charges, Council support functions or statutory taxes and levies.
- 2.26 All Virements will be recorded in a way prescribed by the Chief Finance Officer who will arrange for Virements to be incorporated into subsequent financial monitoring reported to the Cabinet.

### **Rollover**

- 2.27 Rollover is a mechanism for transferring budget provisions from one year to the next, or vice versa. Rollover arrangements apply equally to the General Fund and the Housing Revenue Account.
- 2.28 The Council, in determining the Revenue Budget for a particular year, will also determine the arrangements for rollover for that year. The Council will determine changes to the Council's Revenue Budget arising from the rollover process.
- 2.29 The Cabinet is responsible for recommending changes to the Revenue Budget arising from the rollover process.
- 2.30 In the rollover process, the overall level of resources available to support rollover proposals will not exceed any reported net underspend of the Council as a whole for that year. If the Council as a whole does not have a reported under spend, the presumption is that there will be no revenue rollover for that year.
- 2.31 Subject to the parameters set out in FPR 2.29 above, rollover proposals will be considered at Executive Team in the first instance.

### **Other**

- 2.32 Where during any year a material change of funding (and or any change associated activity) arises this must be reported to Cabinet along with a statement of any associated change in the risk profile (for example a change from outsourced to direct employment may have the same overall cost, but may significantly increase the Council's risk).
- 2.33 Where, as a result of a mistake or error by an officer, the Council becomes liable for any charges, penalties or additional expenses, such costs will be met by the activity in which the error is made.
- 2.34 Whenever the Cabinet becomes aware –following a report from the Chief  
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Financial Officer- that a reduction in resources during the current or future years may impact on the Council's financial position, it may take such steps as it considers necessary to reduce activity immediately or at a stage prior to the next budget Council in order to address this.

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~~factor.~~

2.35 The Chief Finance Officer will report to the Cabinet on the overall management of the Revenue Budget on a quarterly basis through the year. At least a summary of this information will be published on the council website.

2.36 After the end of each financial year, the Chief Finance Officer will report to the Cabinet and the Council on the outturn financial performance and any proposed rollover, subject to the parameters set out in FPR 2.29-304 above.

2.37 The Chief Finance Officer is permitted to make variations to revenue funding as necessary in order to ensure that the council funding position is optimised, subject to reporting such actions to Cabinet and Council.

### 3. **CAPITAL INVESTMENT PLAN PREPARATION AND MANAGEMENT**

#### **General**

3.1 For the purposes of capital investment plan preparation and management, "capital" must meet the following criteria-:

(a) -the definition for capital as set out in relevant CIPFA accounting guidance and accounting standards, and any other statutory Government guidance as set from time to time ;

(b) Subject to (a) above, a minimum threshold or 'de minimus' -to be considered capital at an individual project level, as determined by the Chief Finance Officer. (The usual de minimus level is £10,000)

~~3.13.2~~ All capital investment must also be made in recognition of the CIPFA 'Prudential Code for Capital Expenditure with regard to prudence, affordability and sustainability, and any associated statutory Government guidance'. Council must approve an annual Investment Capital Strategy and annual (Non-Treasury) Investment Strategy in line with the guidance.

#### **Responsibilities**

~~3.23.3~~ The Council is responsible for determining the Council's Capital Investment Plan and approving the prudential indicators and limits that support the capital investment.

~~3.33.4~~ The Cabinet is responsible for recommending to the Council at the same time as the proposed Revenue Budget, a multi-year Capital Investment Plan and the prudential indicators and limits that support the recommended capital investment.

~~3.43.5~~ The Council will determine allocations of capital resources to programme areas, or to specified projects.



~~3.53.6~~ The Cabinet is responsible for implementing the Capital Plan approved by Council, in line with any stated Council policies, or strategies

~~3.63.7~~ The Chief Finance Officer will advise the Cabinet and the Council on the overall Capital Investment Plan and levels of funding available. The Chief Finance Officer must confirm the robustness of the capital plan and assess and report to Cabinet on the revenue effects of the capital plan (financing, additional running costs, savings and income) and indicating the prudential indicators and limits that support the capital investment.

### **Capital Investment Plan Preparation.**

~~3.7~~ The Chief Finance Officer will prepare draft investment plans in accordance (where set) with the planning totals. Service Directors are responsible for providing details of all programmes and projects in a format prescribed by the Chief Finance Officer.

3.8

### **Plan Management**

3.9 Where the Council has allocated resources to a programme area, the Cabinet will determine the allocation of resources from the programme area to named projects.

3.10 The Cabinet is authorised to;

(1) Transfer resources within a programme area without restrictions.

~~(2)~~ Transfer resources between any project or programme area up to a maximum of £24,000,000 in any financial year.

~~(2)~~~~(3)~~ Transfer resources within programme areas between any year within the approved capital plan, subject to the overall resource limits of the approved capital plan not being exceeded in any single year, and compliance with 3.13 and 3.15

3.11 Service Directors are responsible for managing programmes and projects, and must make appropriate arrangements to control projects and avoid overspending.

~~3.124~~ Service Directors are authorised to transfer resources to or from any project, or to or from any unallocated resources within a programme area up to a maximum of £5001,000,000 in any financial year, subject to the approval of the Chief Finance Officer and notification to the relevant Cabinet Member and appropriate ward Members.

~~3.13~~ Transfers under ~~3.109 to and~~ ~~3.120~~ require the approval of the Chief Finance Officer who must be satisfied that there is no impact on capital funding stream as a result of the changes.

~~3.14~~ The transfer of revenue resources in any one financial year from the revenue budget to add additional resources to the capital plan, will only be

\_\_\_\_\_ allowed if ;

(a) ~~(a)~~ there is explicit prior year approval as part of the approved budget plans of the Council for the following financial year; or

(b) ~~Service Directors can identify from the revenue budget (up to £500,000 cumulative virement in any one financial year) to add additional resources to the capital plan, in respect of approved programmes and projects, but subject to approval by the Executive Team and the Chief Finance Officer; and compliance with FPR 3.1987 and 3.20198.~~

3.15 Transfer of resources must recognise funding arrangements. Transfer is not permitted between HRA funded and General Fund funding streams, nor in respect of any project (or programme) to the extent that it is funded by a project (or programme) specific third party grant.

3.16 The Cabinet may delegate its authority under Financial Procedure Rules 3.109 and 3.110 ~~to the Board of Kirklees Neighbourhood Housing Limited. The Cabinet may also allow additional delegated authority~~ to Service Directors. This is to be agreed on an annual basis.

3.17 Any decision on resource allocation by Cabinet, Strategic and Service Directors ~~or Subsidiary Organisations (3.109 to 3.152)~~ must recognise any policy decisions of Council. Any decision on resource allocation by Strategic and Service Directors or Subsidiary Organisations (3.110-3.152) must recognise any policy decisions of Cabinet.

3.18 The Chief Finance Officer will report to the Cabinet on the overall management of the Capital Investment Plan on a quarterly basis through the year (including the reporting of virements in respect of transfer of resources within or between programmes. The Cabinet will provide summary monitoring information to the Council at least twice per year

### **Initiating and Progressing Investment Decisions**

3.19 The Chief Executive will establish arrangements, delegated as appropriate to a lead Strategic Director in conjunction with the Chief Finance Officer, to ensure effective deployment of capital resources, ensuring that these align with council priorities and including the preparation of business cases and/or option appraisals designed to ensure project effectiveness and value for money, and to assist Council to determine its Capital Investment Plan, and assist Cabinet with the allocation of programme area budgets to specific projects. For these purposes the Strategic Director and Chief Finance Officer may approve the incurring of fees for option appraisal or initial design fees, subject to the identification of an appropriate funding source.

3.20 A capital outlay report will be prepared for each specific project. It will be signed off by the relevant programme manager and approved by the Chief Finance Officer, who will grant approval to each specific project

when satisfied that:

- a)            The project appears on a schedule of named projects (approved by Council or Cabinet, or by officers under a scheme approved by Cabinet).
-

- a) \_\_\_\_\_
- b) \_\_\_\_\_ That the total costs of a project are estimated to be less than or equal to the amount approved in the Capital Investment Plan;
- b) \_\_\_\_\_  
or  
Where the total costs of a project exceed the amount approved in the Capital Investment Plan the appropriate additional resources has been approved; (3.10 to 9, 3.150),
- c) Any necessary external approval have been obtained;
- d) The project will not lead to any unexpected or unplanned costs, not envisaged by the business case or optional appraisal.

3.21 Service Directors have authority to progress projects once the approvals at 3.20 has been given. They must ensure compliance also with Contract = Procedure Rules.

~~Service Directors have authority to progress projects once the approvals at 3.20 has been given. They must ensure compliance also with Contract Procedure Rules.~~

3.22 Strategic Directors are responsible for post implementation reviews of capital projects to assess the outcome of investment programmes and projects, and the extent to which these achieved the planned objectives set out in the business case, this assessment to be used in summary to Cabinet and Council as a part of the capital-overall financial reporting and monitoring investment-planning process.

3.23 The Chief Finance Officer is permitted to make variations to capital funding as necessary in order to ensure that the council funding position is optimised, subject to reporting such actions to Cabinet and Council.

### **Complex Projects**

3.24 Cabinet may delegate decisions in relation to complex projects or schemes of projects(which might relate to expenditure, income, the creation of subsidiary or related organisations) to the Chief Executive( who may further delegate decisions to a Strategic Director, or as appropriate the Chief Finance Officer or Service Director Legal, Governance & Commissioning. The Chief Finance Officer and Service Director Legal, Governance & Commissioning must be consulted on any decision made by such a delegated party.

### **Leased Assets**

3.25 Accounting regulations (IFRS 16) makes an ongoing presumption that all leases (including those previously defined as operating leases) will need to be included on the Council's Balance Sheet. All lease arrangement need to follow

the same procedures, and have the same authority and approval, as for other items of capital expenditure

3.26 In respect of any item acquired by lease (other than a Land Asset) the inventory must be marked with the name of the leasing company and the date of expiry of the lease agreement. When requested by the leasing company the item must be suitably marked as the property of that company.

#### **4. FINANCIAL SYSTEMS, PROCEDURES AND GRANTS**

- 4.1 The Chief Finance Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes to the existing financial systems or the establishment of new systems must be approved by the Chief Finance Officer.
- 4.2 Any exceptions to financial procedures to meet the specific needs of a Service must be agreed between the Service Director and the Chief Finance Officer.
- 4.3 Service Directors must ensure that officers understand and are competent to undertake their financial responsibilities and receive relevant financial training that has been approved by the Chief Finance Officer.
- 4.4 Service Directors are responsible for the proper operation of financial processes in their own activity and must ensure that all financial, costing, and other statistical information is recorded fully and accurately.
- 4.5 Service Directors must ensure that financial documents are retained in accordance with the Council's approved retention schedule.
- 4.6 As far as practicable, Service Directors must make arrangements for the separation of duties between the carrying out of transactions and the examining and checking of transactions.
- 4.7 Service Directors in consultation with the appropriate Strategic Director and Cabinet Members may apply for grants from any funding body, providing the proposed activity is consistent with the approved service plan and Council policy.
- 4.8 Service Directors must ensure a detailed business case is prepared, in consultation with the Chief Finance Officer, in respect of any grant offer. Any material grant conditions must be agreed with the Service Director Legal Governance & Commissioning
- 4.9 Service Directors are authorised to accept any offer of grant and subsequent grant conditions up to a maximum of £100,000. Strategic Directors are authorised to accept a grant of up to 5% of the gross revenue budget (or for capital projects, up to 5% of the activity capital plan where the grant funding is for capital purposes) for the activity. (This includes grants from government and third parties which do not involve an application process)
- 4.10 The Chief Finance Officer in consultation with the Service Director Legal Governance & Commissioning and the appropriate Strategic Director is

authorised to apply for, and or approve the acceptance of grants in all other circumstances.

- 4.11 Grant claims, financial returns and submissions must be completed by the relevant Service Director and the Chief Finance Officer for submission to the relevant government department, agency or organisation.

~~3.12~~

## 5 **INTERNAL AUDIT**

### **Responsibility & Authority**

- 5.1 The Chief Executive, (in consultation with the Chief Finance Officer and Monitoring Officer) must arrange a continuous internal audit, which is an independent review of the accounting, financial and other operations of the Council.
- 5.2 The Head of Risk will report directly to the Chief Executive, the Chair of the Corporate Governance & Audit Committee or the External Auditor in any circumstance where the functions and responsibilities of the Chief Finance Officer are being reviewed. (Other than routine reporting of work carried out)
- 5.3 The Head of Risk has authority to:-
- (a) Enter at all times any Council premises or land or location from which Council services are provided;
  - (b) Have access to all property, records, documents and correspondence relating to all activities of the Council;
  - (c) Require and receive explanations concerning any matter; and
  - (d) Require any employee of the Council, without prior notice, to produce cash, stores or any other property for which they are responsible.

The Chief Finance Officer has the same authority for any accounting or associated purpose.

### **Planning & Reporting**

- 5.4 The Head of Risk must plan and report (in accordance with the approved Audit Strategy and Charter, Public Sector Internal Audit Standards and any instruction from the Councils Corporate Governance & Audit Committee) upon:-
- a) The risks inherent in and associated with each system;
  - b) The soundness, adequacy and application of the financial and other management controls and systems within each Service;

- c) The extent of compliance with, and the financial effects of, established policies, plans and procedures;
- d) The extent to which the organisation's assets and interests are accounted for and safeguarded from losses of all kinds arising from fraud, other offences, waste, extravagance and inefficient administration, poor value for money and other cause;
- e) The suitability, accuracy and reliability of financial and other management data within the organisation; and
- f) Value for money aspects of service provision.

5.5 In respect of any audit report or communication issued, the Director must reply within 4 weeks indicating the action proposed or taken, by whom and including target dates. Where a draft report is issued for initial comments a reply must be made within 2 weeks of issue.

5.6 The Head of Audit & Risk will provide a written summary of the activities of the Internal Audit function to the Corporate Governance & Audit Committee at least four times per year and an Annual Report produced for consideration by, Cabinet and Corporate Governance & Audit Committee, including an audit opinion on the adequacy and effectiveness of the Council's risk management systems and internal control environment.

The Head of Risk will review the system of internal audit on an annual basis (and arrange for an external assessment once every 5 years) and report the outcome to the Corporate Governance & Audit Committee.

### **Investigations and Suspected Fraud, Corruption or Bribery.**

5.7 The Chief Executive and Directors must ensure that all Members and employees are:-

- a) Aware of the Council's Anti-Fraud, Anti-Corruption and Anti-Bribery Strategy;
- b) Aware of the Whistleblowing Strategy; and
- c) Operating in a way that maximises internal check against inappropriate behaviour.

The Head of Risk is responsible for the development and maintenance of the Anti-Fraud, Anti-Corruption and Anti Bribery Strategy and Whistleblowing Strategy and for directing the Council's efforts in fraud investigation.

5.8 It is the duty of any officer who suspects or becomes aware of any matter which may involve loss or irregularity concerning cash, stores or other property of the Council or any suspected irregularity in the operations or exercise of the functions of the Council to immediately advise the Director. The Director

concerned must immediately notify the Head of Risk who may take action by way of investigation and report.

- 5.9 Where, following investigation, the Head of Audit & -Risk considers that there are reasonable grounds for suspecting that a loss has occurred as a result of misappropriation, irregular expenditure or fraud, consultations will be held with the Director on the relevant courses of action, including the possibility of police involvement and the invoking of any internal disciplinary procedure in accordance with the relevant conditions of service.

\_\_\_\_\_(Claimant fraud in respect of Housing Benefit and Council Tax Reduction and Discounts (where the claimant is not an employee or Member of the Council) is currently investigated by the Revenues & Benefits Service).

## 6 **INSURANCE**

- 6.1 The Service Director Legal, Governance & Commissioning, in consultation with Service Directors is responsible for assessing insurable risks and for arranging all insurance cover, including the management and control of the insurance fund. He/she will control all claims and maintain records of them. He/she has authority to receive or make claims on behalf of the council and negotiate and agree all settlements.
- 6.2 Service Directors must promptly notify the Service Director Legal, Governance & Commissioning in writing of all new risks or Assets to be insured and of any alterations affecting existing insurances. All insurances held must be reviewed on an annual basis.
- 6.3 In the event of any insurance claim or occurrence Service Directors must:-
- a) Not admit liability where this may prejudice the outcome of any settlement;
  - b) Promptly notify the Insurance Team, in writing, of any loss, liability, damage or any event likely to lead to a claim; and
  - c) Inform the Police in the case of loss or malicious damage to Council property.
- 6.4 Service Directors must consult the Service Director Legal Governance & Commissioning as to the terms of any indemnity the Council is required to give.
- 6.5 The Service Director in consultation with the Insurance Team will determine the extent of insurance cover which must be provided for in any external contract for the supply of goods, works or services. The Service Director, in consultation with the Service Director Legal Governance & Commissioning, may reduce the cover requirements in respect of specific contracts.

## 7 **ASSETS**

- 7.1 Service Directors are responsible for the care and custody of all current and Fixed Assets of the relevant service (including stocks, stores, inventory items



and all other items used for the Council's purposes, including property). These items must only be used for the authorised purposes of the Council.

- 7.2 Service Directors must ensure that contingency plans exist for the security of Assets and the continuity of service in the event of any disaster, significant event, or system failure.

### **Disposal of Assets**

- 7.3 Surplus or obsolete goods, materials and inventory items are to be disposed of by agreed transfer to another Service, or disposal in accordance with Contract Procedure Rules, except when the Cabinet instructs otherwise.
- 7.4 Leased items (excluding Land Assets) should only be disposed of in accordance with instructions of the lessor.

### **Stores**

- 7.5 Service Directors must keep records of all stock held. The Chief Finance Officer will determine which items will be subject to stock accounting, the methods of recording and valuation. An appropriate system of continuous stock taking must be agreed with the Chief Finance Officer.
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- 7.6 Service Directors must arrange periodical or continuous checks of stock. This should be by persons independent of the management of the stock. These arrangements must ensure that all items of stock are checked at least once per year. The Chief Finance Officer will be notified of any discrepancies revealed by periodic checks, and is authorised to amend records accordingly.
- 7.7 Stock holdings should be kept at minimum levels consistent with normal working practices

### **Inventories**

- 7.8 Service Directors are responsible for ensuring that detailed inventories of all land, buildings, equipment, specialist furniture, specialist fittings, vehicles, plant and machinery are compiled and kept up-to-date. New inventory items must be entered promptly and redundant items (other than Land Assets) deleted and disposed of in accordance with Financial Procedure Rule 7.3. The form of inventory and the type of Assets recorded thereon will be determined by the Chief Finance Officer after consultation with the appropriate Service Director.
- 7.9 The inventory should include:-
- a) The nature, type, model, serial number, location, quantity, value, date of acquisition;
  - b) All items valued at, more than £100;
  - c) Items of a lesser value which are portable and attractive; and
  - d) Evidence to indicate an inspection has been carried out.

- 7.10 Service Directors are responsible for ensuring that inventory items owned by another Directorate, but used operationally by their service areas are subject to an appropriate risk based level of control. When Assets are loaned to employees, or other organisations, the Service Director must record the reason for the loan, date/periods and name of the receiver, and ensure recovery at the end of the period at which the purpose of the loan has expired.
- 7.11 Inventory items must (where appropriate) be security marked, stamped or engraved with the Council's name.
- 7.12 Each Service Director is responsible for ensuring risk based checking of the inventory and must notify the Chief Finance Officer, and the Head of Internal Risk of any discrepancies revealed by these checks.

### **Fixed Assets Register**

- 7.13 The Chief Finance Officer must ensure that a Register of Fixed Assets is maintained.
- 3.12 Each Service Director must notify the Chief Finance Officer of the:
- (1) Acquisition of any land, property or vehicle and any other assets having a value of more than £10,000.
  - (2) Disposal (or transfer to another Service) of any Asset (or part of any Asset) which is included on the Register of Fixed Assets.
- 7.15 ~~Leased assets must also be included in this record (see part 3.25, 3.26) In respect of any item acquired by lease (other than a Land Asset) the inventory must be marked with the name of the leasing company and the date of expiry of the lease agreement. When requested by the leasing company the item must be suitably marked as the property of that company.~~

### **Land Assets**

- 7.16 The Service Director responsible must maintain a detailed record of all Land Assets owned by the Council (except dwellings provided for general letting) and is responsible for the security and custody of all title deeds and must maintain a suitable register of Land Assets.
- 7.17 The disposal of Land Assets is dealt with in the Contract Procedure Rules.

### **Information Assets**

- 7.18 Service Directors are responsible for ensuring that inventories of all information Assets are compiled and kept up-to-date. New inventory items must be entered promptly and redundant items deleted and disposed of in accordance with the Council's Information Security Policy Records Management Policy and the appropriate Retention and Disposal Schedule. The form of inventory and the type of Assets recorded thereon will be determined by the Chief Finance Officer

## 8 **SECURITY**

### **Security of Assets**

- 8.1 Service Directors are responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash and any other assets for which they are responsible. The Chief Finance Officer must be consulted to establish adequate security arrangements except in relation to Land Assets that are the responsibility of the Service Director responsible for them, 8.2 All keys to safes and other places containing money, goods or other valuables are to be the responsibility of specified officers who must retain possession of such keys at all times.
- 8.2 A register of keys and their holders must be maintained by each Service Director. The loss of any key must be reported immediately to the Service Director who must record details of the circumstances of the loss, and take such action as is necessary to protect the property of the Council.
- 8.3 Maximum levels for cash holdings in each separate location are to be established in line with insurance limits.

### **Security of Information**

- 8.4 Service Directors must maintain proper security, privacy and use of data and information held in any media including, but not inclusively, documents, magnetic, digital,(such as laptop and tablet computers, mobile phones, memory cards)

Service Directors must ensure that:-

- a) All employees are aware of and comply with the Council's Information Security and Records Management policies;
- b) All sensitive information is protected from unauthorised disclosure;
- c) The accuracy and completeness of information and software is safeguarded;
- d) Software and other intellectual property is used only in accordance with licensing agreements;
- e) Data Protection legislation is complied with;
- f) The Freedom of Information Act is complied with;
- g) Proper controls to system and physical access are in place; and
- h) The Councils intellectual property rights are protected.

## **Security of Property Relating to Clients and Customers**

- 8.5 Service Directors must provide detailed written instructions on the collection, custody, investment, recording, safekeeping and disposal of customer/clients'

property (including instructions on the disposal of property of deceased clients) for all staff whose duty is to administer, in any way, the property of clients. Due care should be exercised in the management of a customer or clients' money in order to maximise the benefits to the customer/client.

- 8.6 The Council is responsible for taking reasonable care of all items of property found by staff or members of the public on Council premises until the items are reclaimed or disposed of. Each Service Director must nominate officers who are responsible for the custody of lost property and keep a register of such property received, detailing the item, date, time, name and address of finder and how and to whom the property is returned or disposed of.
- 8.7 Service Directors may seek approval from the appropriate Strategic Director and Executive Member, on how lost property will be dealt with. Otherwise, if the lost property is not claimed within three months the Service Director will then determine if the item is of value for use by the Council, and arrange for its use for this purpose. All other items are to be disposed of in accordance with Contract Procedure Rules and the proceeds allocated to an appropriate council income code.

## 9 **TREASURY MANAGEMENT**

### **Policies and Strategies**

- 9.1 The Council will adopt both the Code of Practice for Treasury Management in the Public Services, published by the Chartered Institute of Public Finance and Accountancy, and any associated statutory Government guidance, as issued from time to time.
- 9.2 The Council is responsible for adopting a treasury management policy statement, setting out the policies and objectives of its treasury management activities, and treasury management practices, setting out how those policies and objectives will be achieved and how treasury management will be managed and controlled.
- 9.3 The Cabinet is responsible for the implementation and monitoring of the treasury management policies, practices and performance. The Corporate Governance & Audit Committee has responsibility for scrutinizing treasury management policies and practices.
- 9.4 The Chief Finance Officer is responsible for the execution and administration of treasury management decisions in accordance with the policy statement and agreed practices.

- 9.5 The Chief Finance Officer will report to the Council (via the Corporate Governance & Audit Committee and Cabinet);
- (a) before each financial year recommending a treasury management strategy and plan;
  - (b) at least once in relation to treasury management activity during the year;
  - (c) by way of an annual report after the end of the year.

This will include the planned and actual performance in respect of the prudential indicators and limits

### **Administration**

- 9.6 All money under the management of the Council is to be aggregated for the purposes of treasury management and will be controlled by the Chief Finance Officer
- 9.7 Investments other than bearer securities are to be in the name of the Council or nominee approved by the Cabinet. All borrowings are to be in the name of the Council.
- 9.8 The Chief Finance Officer will select the Council's Registrar of stocks, bonds and mortgages and must maintain records of all borrowings by the Council.
- 9.9 A suitable register must be maintained in respect of all investments, securities, bearer securities and borrowings.
- 9.10 The Chief Finance Officer will arrange all loans and leases including operating leases. [\(see also 3.25, 3.26\)](#)

### **Trust Funds**

- 9.11 All trust funds are to be, wherever possible, in the name of the Council, except where charities legislation dictates otherwise. Officers acting as trustees by virtue of their official position must deposit all documents of title relating to the trust with the Service Director, Legal Governance & Commissioning (unless the Trust Deed otherwise directs) who must maintain a register of all such documents deposited.

## **10 BANKING ARRANGEMENTS, CHEQUE SIGNING AND IMPREST ACCOUNTS**

### **Banking Arrangements**

- 10.1 All of the Council's banking arrangements are to be approved by the Chief Finance Officer, who is authorised to operate such bank accounts as he or she considers appropriate.

- 10.2 Bank accounts must not be opened without the approval of the Chief Finance Officer. Where a bank account is opened, the account name must describe the purpose of the account. All new accounts should be named in the format 'KC, XYZ Unit Account'.

**Cheques and Electronic Payments**

- 10.3 Payments to suppliers and employees will be made by electronic means unless there are good reasons to use a different method.



- 10.4 All cheques are to be ordered only in accordance with arrangements approved by the Chief Finance Officer, who is to ensure their safe custody. Cheques drawn on the Council's main bank accounts must either bear the facsimile signature of the Chief Finance Officer or be signed in manuscript by him/her or other authorised officers. All alterations and amendments are to be signed in manuscript by the Chief Finance Officer, or other authorised officers.
- 10.5 Banking arrangements made for authorisation of payments to be made or received under electronic transfer are to be in a form approved by the Chief Finance Officer.
- 10.6 Service Directors must maintain a register of all officers authorised to sign cheques and other bank documents together with specimen signatures

### **Imprest Accounts**

- 10.7 Service Directors will determine what amount is appropriate for an individual imprest account and keep a record of every imprest issued, including the name of the imprest holder, amount and location.
- 10.8 Any imprest holder (or sub imprest - see rule 10.10) must at any time account for the total imprest if requested to do so by the Chief Finance Officer and keep adequate records in a form approved by the Chief Finance Officer and supported by valid (VAT) receipts. On ceasing to be responsible for an imprest account the officer must account promptly to the Service Director for the amount advanced.
- 10.9 Payments from imprest accounts are to be limited to minor items of expenditure and to any other items approved by the Chief Finance Officer
- 10.10 Where deemed appropriate by an imprest account holder a sub-imprest may be provided to another officer for which the main imprest account holder must obtain and retain an acknowledgement. In all cases where this occurs the main imprest holder must notify the Service Director.

## 11 **INCOME**

- 11.1 Fees and charges must be reviewed at least once per annum. Service Directors have authority to amend fees and charges to achieve budget targets and in line with the annual budget strategy, and are permitted to freeze or raise charges by an amount up to the equivalent to the consumer price index. Changes to charges may also reflect reasonable rounding to relevant prices which might in some cases mean that certain prices rise by more than the consumer price index or the budget strategy

Service Directors may make amendments to existing Fees and Charges during the financial year to account for changes in legislation, market conditions or to support the local communities or local business following the completion of an appropriate business case, in consultation with the appropriate Strategic Director, relevant Portfolio Holder and Chief Finance Officer.

Any proposal to implement new fees or charges must be approved by Cabinet.(unless the making and quantum of the charge is a statutory obligation). See also Contract Procedure Rules.

- 11.2 The methods of collecting, recording and banking of all income due to the Council are to be approved by the Chief Finance Officer.
- 11.3 The Chief Finance Officer must be notified, in accordance with practices agreed with the relevant Service Director, of all income due to the Council and of contracts, leases and other agreements and arrangements entered into which involve the receipt of money by the Council.
- 11.4 Service Directors must ensure that to the maximum extent possible income is collected by electronic means. This means that positive action should be taken to promote the use of customer payment by direct debit at the point of order for one off items, and continuous debit arrangements for ongoing services provision. Service Directors must ensure full compliance with all practices necessary to fully protect the banking data of the council's customers.

### **Collection and Banking of Income**

- 11.5 Service Directors must make appropriate arrangements for the control and issue of all receipt forms, books, tickets, ticket machines or other acknowledgements for money.
- 11.6 All income received by the Council must be acknowledged by the issue of an official receipt or by another approved method indicating payment has been received. In order to ensure compliance with [the Anti-Money Laundering Procedures](#), [relevant money laundering regulations](#), [Service Directorsthe-Council](#) must not accept any cash payment in excess of 15,000 euros (£11,700) in respect of one single transaction on one occasion. [Any reasonable concerns about the source of monies to be paid to the Council](#)

should be raised in accordance with the Procedures. The exception to this rule is that in the case of a disposal of a Land Asset by way of public auction, or under auction conditions, the Council may accept a cash payment in excess of 15,000 Euros where the Land Asset being disposed of exceeds a sale price of 150,000 Euros. If there is any doubt about whether or not to proceed with a transaction, a decision must not be taken until relevant approval has been obtained under the Procedures. Anti-money laundering compliance is the responsibility of the Service Director of Legal Governance & Commissioning who is entitled to issue instruction relating to this matter.

- 11.7 All money received by an officer on behalf of the Council must either be paid to the Chief Finance Officer or to the Council's bank account as the Chief Finance Officer may determine, at intervals taking account of the security of the premises. No deductions are to be made from such monies unless specifically authorised by the Chief Finance Officer. Personal cheques must not be cashed out of monies held on behalf of the Council. Refunds must be made through the payments system.
- 11.8 Arrangements for opening incoming mail must ensure that any money so received is immediately recorded.
- 11.9 Every transfer of official money from one officer to another must be evidenced in the records of the Services concerned by the signature of the receiving officer

### **Cash discrepancies**

- 11.10 Each Director must maintain a detailed record of all cash surpluses and deficiencies in a manner approved by the Chief Finance Officer.
- 11.11 The Service Director must investigate any apparent patterns of discrepancies
- 11.12 Where such discrepancies are in excess of £100 individually, or in total within any period of 1 month, the Director concerned must immediately investigate and notify the Head of Risk who may undertake such investigations as he/she deems appropriate.

### **Debtors**

- 11.13 Wherever possible, payment should be obtained in advance, or at the time of provision of a service, goods, letting or works. Where credit is given, Service Directors must ensure that the credit status of each customer is satisfactory. Service Directors are responsible for issuing debtor accounts in a form approved by the Chief Finance Officer immediately a debt falls due. Each Service Director, in conjunction with the Chief Finance Officer must maintain adequate records to ensure that all credit income due to the Council is promptly recovered.
- 11.14 The Chief Finance Officer must be satisfied that Service Directors are taking appropriate measures to recover credit income due in a timely and efficient manner. The Chief Finance Officer, will take appropriate steps to monitor and review the effectiveness of recovery procedures in services, and in

conjunction with the relevant Service Director, implement any further actions as required to maximise income recovery within service to appropriate levels.

- 11.15 Service Directors must regularly ~~consider~~ review debts due and ensure adequate year end provisions for bad and doubtful debts. Service Directors are authorised to review and recommend for write off all individual bad debts in a timely manner, as a minimum every 6 months, and subject to the approval of the Chief Finance Officer. A report on the details of all debts written off under delegated authority must be prepared and formally noted by the Service Director in consultation with the Cabinet Member. The Chief Finance Officer, must prepare an annual consolidated report of all debts written off for consideration by the Corporate Governance & Audit Committee. Service Directors must ensure that appropriate accounting entries are made following write off actions, in a manner prescribed by the Chief Finance Officer.
- 11.16 The 'writing off' of a debt does not absolve a Service Director of the responsibility to collect such debts, and the position in relation to such debtors is to be monitored by the Service Director.

## 12 **PAYMENT OF INVOICES**

- \_\_\_\_\_ All payments must be made through the councils accounting system (SAP) and should be made by electronic transfer except where there are substantial over riding reasons for alternative means of payment. Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.
- 12.1 Service Directors must ensure that all valid invoices are paid within 30 days of receipt.
- 12.2 The Chief Finance Officer will determine the method and frequency of payment from one of the Council's main bank accounts, except for
- Petty cash and other imprest accounts
  - Delegated bank accounts approved by the Chief Finance Officer
- \_\_\_\_\_

### **Automated Payments**

- 12.3 When an invoice is matched through the automated procurement and payment system, it will be paid in line with the councils determined procedures.
- 12.4 Any invoices rejected by the automated system must be subject to thorough checking by the Director to determine the reason for variance, and the cause recorded.

### **Certification & Processing (paper records)**

- 12.5 Service Directors must approve a schedule of officers authorised to certify invoices, (names and specimen signatures). This must be supplied if requested to the Chief Finance Officer. The schedule must be reviewed at least once per year.
- 12.6 All invoices- that are not the subject of automated processing- must be certified in manuscript, unless an alternative method is expressly authorised by the Chief Finance Officer.

By certifying an account for payment the authorised officer indicates that satisfactory checks have been carried out to ensure that:-

- (a) The work, goods or services to which the account relates have been received or carried out, examined and approved;
  - (b) Prices, extensions, calculations, discounts, other allowances and tax are correct;
  - (c) There is a proper tax invoice when appropriate;
  - (d) The relevant expenditure has been properly incurred, is within budget, and is charged to the appropriate budget;
  - (e) Entries have been made in Asset registers, inventories, stores and other records as appropriate; and
  - (f) The account has not previously been paid.
- 12.7 Where errors on an invoice are detected manual adjustments which reduce the total payment are permissible, provided that this does not change the total amount of VAT payable. In all cases where the amount due increases, or changes the amount of VAT, a replacement invoice and/or credit note must be obtained before payment is made.

- 12.8 The Service Director must where possible achieve an adequate level of internal check. At least two officers should be involved. The officer certifying the account for payment should not be the same officer who received or checked the items, goods, works or services.

No officer may certify any invoice involving payment to himself or herself.

- 12.9 All forms of account submitted for payment to a supplier or contractor other than on the original invoice must be accompanied by a special certification stating that the original invoice has not been paid and will not be paid subsequently. The certificate must be signed by an officer authorised to certify accounts for payment.
- 12.10 The Chief Finance Officer may withhold payment of any invoice where there is evidence to suggest that it is not in order. The Chief Finance Officer must establish rules that control the use of pro-forma invoices, to ensure that these are not used to circumvent council procedures,

### **Advance Payments**

- 12.11 The council should not pay for any goods or service prior to receipt of the items, and not without an invoice. Where a supplier or contractor requires payment prior to the dispatch of goods or the provision of services, an official order signed by a duly authorised officer and clearly marked that payment is to be made before receipt of the goods or services must be completed. Whenever possible a supplier's invoice must be obtained, and payment made on this. In exceptional circumstances only, a pro forma invoice or supplier's order form detailing fully the goods/service to be obtained may be used. This must be approved by an officer authorised to certify invoices and retained as a record of the payment made, Where VAT features in the advance payment, the issuing officer must then obtain a VAT invoice or authenticated receipt for the transaction, and arrange for its processing to facilitate the recovery of VAT.

### **Discounts**

- 12.12 All discounts available from a supplier are to be taken as a deduction against the cost of goods purchased and must appear on the invoice. Where a supplier provides any free item, or discount is available in the form of goods these are the property of the Council, as are loyalty or bonus points or other rewards earned.

### **Payment by Direct Debit/Standing Order**

- 12.13 The Service Director (or Designated Finance Officer) must approve all requests for creation of a Direct Debit mandate, and supply to the Chief Finance Officer such information as is deemed necessary (e.g. codes, profit centre(s) to be charged, a copy of a recent bill, showing signatory certification, for the account in question). If the payment method is Standing Order, the requestor must also specify the frequency of payment and, where appropriate, a termination date.

- 12.14 The Service Director must inform the Chief Finance Officer when any payment is to be terminated.
- 12.15 Services must retain all statements relating to accounts paid by Direct Debit/Standing Order for current plus three previous financial years in order to substantiate the authority's claim for VAT on these accounts.

### **13. PURCHASING CARDS**

- 13.1 All arrangements regarding purchasing cards must be approved by the Chief Finance Officer.(as set out in the Purchasing Card Procedure Manual)
- 13.2 Service Directors in conjunction with the Chief Finance Officer will determine the monthly credit limit, any cash limits and permissible purchasing categories for individual payment and procurement cards.
- 13.3 Each cardholder must ensure safe custody of the card at all times.
- 13.4 Cards may be used only in accordance with the approved scheme and for legitimate expenses incurred by the cardholder in the course of official Council business.

They must not be used:-

- a) To avoid any corporate rules on procurement and purchasing (for example to purchase only from approved suppliers)
  - b) To circumvent the procedures for the ordering of and payment for, goods and services under these regulations; or
  - c) To purchase items for the private or personal use of cardholders.
- 13.5 Each cardholder must ensure that all expenditure incurred using a purchasing card is supported by adequate records and a VAT receipt is obtained to support all expenditure.

### **14. SALARIES, WAGES AND PENSIONS**

Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.

- 14.1 All payments of salaries, wages, pensions, compensations, gratuities, allowances and other emoluments to current or former employees are to be made by the Chief Finance Officer in accordance with information supplied by the Director. All payroll transactions must be processed through the Council's SAP payroll system.

- 14.2 Service Directors must ensure that appointments of all employees are in accordance with the appropriate Conditions of Service of the Council or any approved scheme of delegation, and within the approved budgets, grades and rates of pay. Any variations of terms and conditions must be in accordance with arrangements approved by the Cabinet.

### **Records**

- 14.3 Service Directors must maintain adequate records to notify the Chief Finance Officer of all appointments, resignations, dismissals, and retirements together with changes in pay rates, bonuses due, overtime worked and other matters affecting remuneration, and provide all information to ensure that the correct adjustments are made in respect of absences, pensions, income tax, national insurance, sickness and maternity pay and any other additions to or deductions from pay. Service Directors must also advise the Chief Finance Officer of any employee benefit in kind to enable reporting for taxation purposes.
- 14.4 All officers must complete a time record of actual times of attendance at work, except where a time clock is used. Paper records should be signed by the officer as a correct statement. It is the responsibility of each manager to check time records of officers for which that manager has responsibility.
- 14.5 Time records and other pay documents must be maintained in a manner approved by the Chief Finance Officer and be certified by the Service Director or other authorised officers. The Service Director must maintain a list of officers who are permitted to certify payroll documentation –either electronically or by manuscript (and their specimen signatures) and these authorisations must be reviewed at least annually by the Service Director. Details of officers authorised must be supplied to the Chief Finance Officer

### **Overpayments**

- 14.6 The Service Director, in consultation with the Head of Human Resources, is entitled to write off any employee debt on compassionate grounds. All other overpayments of pay must be treated for the purposes of recovery and write off in accordance with Financial Procedure Rule 11.

## **15 TRAVEL, SUBSISTENCE AND OTHER ALLOWANCES**

- 15.1 Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.
- 15.2 Payment of all claims must be in accordance with Schemes of Conditions of Service adopted in respect of the employee to which the payment relates, and will be paid through the councils SAP payroll system unless otherwise agreed by the Chief Finance Officer.



- 15.3 All claims for payment of car allowances, subsistence allowances, travelling and incidental expenses must be made electronically, or where authorised, on a paper form approved by Chief Finance Officer. The form must provide for certification in manuscript by the Service Director or authorised officer.
- 15.4 The Service Director must maintain a list of officers who are permitted to authorise expenses claims electronically and by paper (and their specimen signatures) and these authorisations must be reviewed at least annually by the Service Director. Details of officers authorised to sign such expense claims must be supplied to the Chief Finance Officer on request.
- 15.5 The certification (or electronic approval) of a claim by or on behalf of a Service Director is taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.

## 16 **TAXATION**

- 16.1 The Chief Finance Officer is responsible for advising the Council on all taxation issues that affect the Council.
- 16.2 Each Director must ensure taxation is treated correctly and consult with the Chief Finance Officer in the event of any uncertainty as to any taxation treatment.
- 16.3 The Chief Finance Officer will lead and co-ordinate discussion or negotiations with HM Revenue and Customs about any taxation matter.
- 16.4 The Chief Finance Officer will complete all of the Council's tax returns.

## 17. **GIFTS AND HOSPITALITY**

- 17.1 Officers must ensure that it is apparent that no cause could reasonably arise for adverse criticism or suggestion of improper influence about the acceptance of any gift or hospitality. They must ensure that in accepting any offer of gifts and or hospitality to do so would not infringe the requirements of the Bribery Act 2010.
- 17.2 Service Directors must maintain a central record of all gifts, invitations and hospitality offered and or received, including items of token value.
- 17.3 The receipt of personal gifts should be discouraged, but if an officer, during the course of, or as a result of, official duties, receives any personal gift, other than one of only token value (less than £25), the matter must be reported to the Service Director who will decide if the item is to be returned or forwarded to some charitable cause, and the Director must inform the donor what has happened to the gift and explain the reason why gifts should not be sent in the future.
- 17.4 Service Directors and other officers with the permission of the Service Director

may accept invitations to events and associated hospitality of any value where this relates to a function promoted by an organisation with which the Council has formal links and attendance constitutes a demonstration of faith in that organisation. It will not normally be appropriate for attendance by a companion. A Service Director must agree that they are satisfied that attendance by the companion is appropriate.

- 17.5 Hospitality must only be given or accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion, not extravagant and justifiable as in the public interest. Particular care must be taken when this involves potential customers or suppliers. The circumstances and the type of hospitality are to be recorded in the central record maintained by the Service Director concerned.

## 18. **WORKING WITH CLIENTS AND CONTRACTORS**

- 18.1 Officers who, in accordance with their conditions of service, are permitted to carry out private or other paid work must not do so during Council time, and must not use any Council premises, resources or facilities for the execution of such work. No stationery or publicity material is to indicate that the person is a Council employee nor should the address or any telephone number of the Council be stated. Officers must declare to their Service Director in writing the nature and duration of such private work.
- 18.2 Officers must declare to their Service Director any circumstance where they believe that they may have a pecuniary or non-pecuniary interest in any proposed supply contract, grant award or other transaction for which they have involvement or responsibility.
- 18.3 Officers must not work for any current or prospective supplier or contractor to the Council.
- 18.4 All intellectual property created by employees in the course of their duties is, and remains, the property of the Council. The copyright or equivalent of any material cannot be sold without the permission of Cabinet. Any article, book or similar material for publication that is prepared in the Council's time is the property of the Council. Any disposal of intellectual property must be made in accordance with contract procedure rules. Any article, book or similar material for publication prepared by an employee (relating to their official duties) requires the written approval of the Service Director prior to publication.

## 19. **UNOFFICIAL AND VOLUNTARY FUNDS**

*These regulations relate to funds administered by officers of the Council, the accounts of which are not included in the Authority's accounts.*

- 19.1 Any proposed unofficial funds require the prior approval of the Director concerned who must maintain a record of all such funds and ensure that officers are appointed to administer each fund.

- 19.2 A separate bank account must be maintained for each fund (in the name of the fund) and fund monies must be kept separate from Council monies. Alternatively, the fund may be administered through the Council's bank account and general ledger but should be separately identifiable.
- 19.3 Where a separate bank account is maintained, directors must ensure that they receive a copy of the accounts of each fund and a certificate in the prescribed form from the auditors or independent examiners of each fund that has to be audited or independently examined. Such accounts are to be prepared annually, and at the completion of the purpose for which the fund was set up.
- 19.4 The Chief Finance Officer is to have access to any records relating to such funds, and be immediately informed of any irregularities which arise in connection with them.

**20. FINANCIAL CONTROL OF PARTNERSHIPS, JOINT VENTURES  
ASSOCIATED ORGANISATIONS AND SIMILAR ARRANGEMENTS**

**Working in Partnership with Associated Organisations**

- 20.1 The Chief Finance Officer is responsible for promoting and maintaining the same high standards of financial administration in partnerships that apply throughout the Council, or advising the Cabinet where he/she is aware that arrangements within a partnership are in conflict or are uncertain compared with the practices adopted by the Council.
- 20.2 The Chief Finance Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory, and must:-
- a) Consider the overall corporate governance arrangements and legal issues when arranging contracts with the partner/joint venture or associated organisation.
  - b) Ensure that the risks have been fully appraised before agreements are entered into with the partner/joint venture or associated organisation.
- 20.3 Service Directors must ensure that in all grant agreements, contribution to partnerships and where appropriate in agreed contracts for the supply of works, goods and services the Chief Finance Officer has access to the accounts, records and all other documentation, and is entitled to seek explanations from Officers of the funded organisation regarding the deployment of the Council's funding payment.

**Working for Other Organisations**

- 20.4 Service Directors are responsible for ensuring that approval is obtained from the Chief Finance Officer and the Service Director Legal Governance & Commissioning before any negotiations commence in relation to the provision of new or additional works or services to other organisations expected to exceed £20,000.

- 20.5 The Cabinet is responsible for approving any arrangements for any new work for other organisations expected to exceed £100,000 per annum. The Chief Finance Officer may agree contractual arrangements below this level
- 20.6 Service Directors must ensure that any proposed arrangement to work for other organisations does not impact adversely upon the Services provided to or by the Council. All agreements, contracts or arrangements must be properly documented and appropriate information must be provided to the Chief Finance Officer to enable a note to be entered into the Council Statement of Accounts concerning material items.

### **Grants and Loans to Other Organisations**

20.7 Except where the Chief Finance Officer agrees otherwise competitive procurement aligning with the councils contract procedure rules must be used In respect of any goods, works or services obtained by another organisation, where the Council is providing a loan or making a grant contribution of £100,000 or more.

20.8 A Service Director may issue a:

- a) Grant or loan of any value provided that it is offered fully in accordance with a scheme of grants or loans that has been approved by the Cabinet.

Or

- b) A grant or grants of up to £10,000 cumulative in any one year for any single purpose

Subject to:

- c) There is sufficient budget provision.
- d) Grants awarded under clause (b) above in aggregate may not exceed
- e) £10,000 in any one financial year for the same beneficiary (either jointly or individually)

20.9 Where a Service Director proposes to offer a grant, or loan to any organisation which is not covered by 20.8 above he/she may do so only following:

- a) A full financial appraisal of the project to which the grant or loan relates, by the Chief Finance Officer;
- b) A full financial appraisal of the organisation to which the grant or loan is to be granted, by the Chief Finance Officer;

- c) The preparation of a written report that establishes the justification for the financial assistance.
- d) Consultation with the Executive Member responsible for the budget area which is to offer the grant or loan.

And

- e) Establishing that there is sufficient budget provision.

In carrying out the evaluation at (a) and (b) above the Chief Finance Officer will consider if any surety (legal charges on assets, bonds and or guarantees) is required of the applicant (see 20.10)

20.10 A District Committee- or other member lead forum- may issue a grant of any value provided that;

- a) It accords with, or is not in contravention of, any general scheme rules which are established by the Cabinet;

And

- b) There is sufficient budget provision.

20.11 The Service Director Legal Governance & Commissioning will execute any legal agreement in respect of any grant or loan exceeding £1860,000.

The Service Director who is offering the grant or loan may issue any grant or loan agreement below this value (using standard documents where required by the Service Director Legal Governance & Commissioning), except where the Chief Finance Officer considers that a loan or grant should be subject to a surety from the applicant. In such cases grants or loans must then be executed by the Service Director Legal Governance & Commissioning

The Service Director Legal Governance & Commissioning has discretion to delegate the right to enter into such agreements as they think appropriate.

20.12 When offering grants or other forms of assistance to entities that operate on a commercial basis Service Directors must ensure that no assistance will infringe EU Procurement or State Aid requirements. In the event of any doubt about the matter advice must be sought from the Service Director Legal Governance & Commissioning.

20.13 Service Directors must ensure that appropriate records are retained to publish details of grants in accordance with the Local Government Transparency Code.

20.14 In some cases, an agreed asset transfer, or the transfer of a right to a third party may constitute a form of grant, and these types of transactions must accord both with these FPRs and CPR 10.

## 21. **PURCHASING OF WORKS, GOODS AND SERVICES**

Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.

These procedure rules must be read alongside the Contract Procedure Rules which establish the framework that controls the Council's arrangements for procurement

### **Orders**

- 21.1 Before any official order is issued for works, goods or services, the Service Director or other authorised officer must ensure that:-
- (a) The works, goods or services, are necessary for the discharge of the responsibilities of the Council;
  - (b) Sufficient budget is available to fund the expenditure; and
  - (c) The Contract Procedure Rules (which apply to all purchasing decisions irrespective of value) have been complied with.
- 21.2 Service Directors are responsible for all orders issued. Order will be issued electronically using the SAP system. Paper orders must only be used when authorised by the Chief Finance Officer. Paper orders may only be issued and signed in manuscript by officers authorised by the Service Director. The items, quantities and prices must be accurately recorded.
- 21.3 Service Directors must keep a record of who is authorised to sign order documentation or issue orders electronically and the extent of this authority. This list must be reviewed at least once per year.
- 21.4 Except where there is a formal contract, in which case work instructions and orders must conform with the provisions of the contract, official orders will be issued for all works, goods or services to be supplied to the Council, except for supplies of continuous services (such as gas), and statutory taxes, for petty cash purchases and other exceptions as the Chief Finance Officer may approve. Orders must clearly indicate the nature and quantity of the work/services/items/supplies required, any related contract or agreed prices, discounts receivable and dates or periods of delivery, and where applicable make specific requirements to obligations placed on the contractor, such as those relating to Data Protection
- 21.5 Verbal orders must be kept to a minimum and be confirmed either the same or next working day by written orders which must be marked as a confirmatory order.

- 21.6 Records of all non-computerised order books must be kept by the Director. Copies of orders must be retained. All copies of spoiled, incorrect or un-issued orders must be appropriately marked and retained in any order book.
- 21.7 The Service Director must record the receipt of the goods, works or services electronically (or where applicable on paper) and (where applicable) all payments made in respect of an order. All Goods Received Notes must be retained.

### **Management of Suppliers**

- 21.8 In respect of each order or contract for construction work, and any order or contract for services exceeding £20,000 the Service Director responsible must appoint an authorised officer, directly employed or otherwise to carry out supervision of the contract. All orders must provide for the reasonable inspection of progression of activity at any stage that the council (acting reasonably) chooses.

### **Specification**

- 21.9 In respect of each order or contract exceeding £20,000 the Service Director must prepare or agree a written brief stating the objective of the order or contract and the sources of funding to meet the estimated cost of the project and appoint an authorised officer.
- 21.10 Unless otherwise agreed with the Chief Finance Officer, the authorised officer must prepare a specification which will indicate relevant issues for the supply, (for example type, quantity, quality, time, location, occasions), and the risks and obligations placed on the supplier including data protection and management where applicable.. Specifications should set outcomes or outputs, and be prepared on a generic basis and not include named products except where this can be justified on technical grounds. They should be prepared in a way which is likely to bring about the most economically advantageous solution whilst ensuring compliance with minimum statutory requirements and Council policy. The specification may only be altered on the basis of written instructions from the Service Director, who must justify the reason for change and sources of funding.

### **Variations**

- 21.11 The authorised officer may, subject to the provisions of the contract, make any variations essential to the achievement of the objectives of the contract but must have regard to the budget provision. The authorised officer must not issue any variation likely to increase the approved cost of the project without the written agreement of the Service Director responsible, who must state the authority and source of financial provision for the additional expenditure.
- 21.12 Every variation must be immediately recorded in writing by the authorised officer.

### **Overspending**

21.13 Any variation to a contract which results or will result in additional costs being incurred on a contract of more than 5% of the contract sum will be reported to the budget holding Service Director and Chief Finance Officer as soon as practicable.

### **Recording of Contractual Payments**

21.14 Service Directors must ensure that a Contract Register is kept which shows details of all payments made against any contract. Any payments on account to contractors against a formal contract are to be made only on an approved certificate issued and checked by the authorised officer which must be passed to the Chief Finance Officer.

21.15 The certificate authorising final financial settlement of any contract will not be issued until the appropriate officer has produced a detailed statement of account and all necessary supporting documents, and these have been checked in accordance with arrangements approved by the Chief Finance Officer and the final payment agreed by the budget holding Director.

### **Claims**

#### **21.16**

~~21.16~~ All claims (or prospective claims) from contractors for loss and expense will be considered by the authorised officer who will immediately advise the client Director and they will jointly consider methods for cost reduction to achieve the budgetary provision.



21.17 The budget holding Director and the Chief Finance Officer must be consulted in respect of any claim (or prospective claim) from a contractor for loss and expense in excess of £10,000.

21.18 The Service Director will report in detail to the Cabinet if the financial consequences of the claim cannot be accommodated within the approved project budget.

21.19 Any claim from a contractor outside the terms of the contract, or under any statutory instrument or any claim for an ex-gratia payment will be jointly considered by the Service Director Legal Governance & Commissioning, Chief Finance Officer and Service Director(s) of the appropriate Service(s) before any recommendation is made to the Cabinet.

### **Codes of Practice**

21.20 All procurement must accord with the Contract Procedure Rules, Procurement Policy and all relevant Procedure Guidelines.

*Approved by Council*  
~~23 May 2018~~

*MED*

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**Name of meeting: Corporate Governance & Audit Committee**  
**Date: 26th April 2019**

**Title of report: Annual Report of Internal Audit 2018/19 & issues for 2019/20**

**Purpose of report; To provide information about Internal Audit activity and the effectiveness of the system of internal control, and conclusions on the control environment and assurance provided in 2018/19, and on matters that relate to Internal Audit activity in 2019/20**

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)</a> ?	Not applicable
The Decision - Is it eligible for "call in" by Scrutiny?	Not applicable
Date signed off by Director & name Is it also signed off by the Service Director for Finance?  Is it also signed off by the Service Director for Legal, Governance & Commissioning?	Not applicable
Cabinet member portfolio	Not applicable

**Electoral wards affected: All**  
**Ward councillors consulted: Not applicable**  
**Have you considered GDPR; Yes**  
**Public**

## 1. Summary

- 1.1 To provide information about Internal Audit activity in the year to 31st March 2019 and note the outcome of the annual review of the effectiveness of the Council's system of internal control.
- 1.2 To provide an "opinion" on the adequacy and effectiveness of the Council's framework of governance, risk management and internal control.
- 1.3 To indicate compliance with the requirements of the Public Sector Internal Audit Standards (PSIAS) and Code of Ethics.
- 1.4 To provide an Audit Plan for 2019/20 and to indicate priorities for the year.
- 1.5 To approve a 2019 Audit Charter.

## **2. Information required to take a decision**

- 2.1 Based on an objective assessment of the Council's framework of governance, risk management and control it is concluded that overall the Council has sound arrangements to operate its business effectively. This is however based on the relatively limited coverage of planned audit activity, but formed in the knowledge of an absence of issues raised or identified in respect of other areas of operation.
- 2.2 However there are a number of observations and qualifications which are highlighted in the report which should be addressed.
- 2.3 This Committee also needs to review, and indicate that it is content as regards, the effectiveness of the system of internal control. The attached report contains material intended to assist the Committee in reaching a decision.
- 2.4 The report notes that following the external assessment undertaken at the end of the 2017/18 year (which attributed the operation with the highest standard which is "generally conforms"), assessment against the Public Sector Internal Audit Standards (PSIAS) and Code of Ethics has been undertaken this year internally by the Head of Risk as Head of Internal Audit. The assessment has been undertaken against the (slightly revised) CIPFA recommended assessment criteria, and the outcomes from this assessment are included in the report.
- 2.5 Each year the Committee needs to consider and approve an Internal Audit Strategy & Charter. A proposed 2019 version is attached.
- 2.6 The Committee needs to note that following restructuring, the responsibilities for internal audit at Kirklees Neighbourhood Housing Ltd (KNH) have passed to this Committee.
- 2.7 A draft audit plan is included within the papers. Before finalisation, it is necessary to consider any observations from the KNH Board, and it is appropriate, to similarly, acknowledge that further suggestions may be forthcoming from Kirklees Strategic Directors

## **3. Implications for the Council**

- 3.1 **Working with People** – None directly
- 3.2 **Working with Partners** – None directly
- 3.3 **Place Based Working** – None directly
- 3.4 **Improving outcomes for children**– None directly
- 3.5 **Other (e.g. Legal/Financial or Human Resources)**- Although each of the sub-categorisations above suggest no direct implications, the work of internal audit covers all aspects of the Council's operations, including elements of the above, either specifically, indirectly or on a commissioned basis. The main issues relate to those areas highlighted above - where there are risks associated with basic processing arrangements, and delivering sound governance and control.

## **4. Consultees and their opinions**

- 4.1 Not applicable, although Executive team have been consulted collectively and individually on the draft plan.

## **5. Next steps & Timelines**

- 5.1 This report informs the preparation of the Annual Governance Statement for 2018/19.
- 5.2 Audit activity in 2019/20 will concentrate on major areas of risk and control, based on a prioritised risk assessment. Resources will remain available to investigate significant areas of concern on a reactive basis.

**6. Officer recommendations and reasons**

The Committee is asked to confirm it is content with the:

- (a) Effectiveness of its internal audit function, and to note its conformance with Public Sector Internal Audit Standards and Code of Ethics;
- (b) Effectiveness of the Council's overall system of internal control
- (c) Effectiveness of the broader control environment, risk management and governance arrangements of the Council (subject to the observations contained within the report);
- (d) Proposed audit plans (subject to confirmation by the KNH Board in relation to control matters related to KNH Ltd and potentially further consultation with strategic directors); and
- (e) 2019 Internal Audit Strategy and Charter and approve this document

**7. Cabinet portfolio holder recommendation**

Not applicable.

**8. Contact officer**

Martin Dearnley, Head of Risk 01484 221000 (73672)

**9. Background Papers and History of Decisions**

The Annual Report of Internal Audit 2017/18 is attached.

**10. Service Director responsible**

Not applicable.

## **KIRKLEES COUNCIL**

### **CORPORATE SERVICES: RISK SERVICE**

#### **INTERNAL AUDIT**

#### **ANNUAL REPORT OF INTERNAL AUDIT 2018/19 & ISSUES FOR 2019/20**

##### **1. Introduction**

- 1.1 This report assesses the adequacy and effectiveness of the Council's governance, risk management and control environment arrangements during 2018/19 and provides a summary of the activities and performance of Internal Audit during the year. The report also recommends a risk based Audit Plan for 2019/20 and discusses other issues that relate to the year.

##### **2. About Internal Audit**

- 2.1 The scope of Internal Audit's activity is established by the Council's Financial Procedure Rules and the Internal Audit Strategy and Charter. These rules include a right for Internal Audit to have free and unrestricted access to carry out work as is considered appropriate by the Head of Internal Audit (the Head of Risk)
- 2.2 Internal Audit reviews the Council's assurance framework for governance, risk management and business systems and controls. Some assurance is obtained through the work of other agencies - such as health and safety. Internal Audit time is spent;
- (a) Assessing arrangements for financial control.
  - (b) Assessing arrangements for other business and organisational controls – such as IT.
  - (c) Investigating allegations that the Council's business activities may not be operating in the ways intended.
  - (d) On work related to contracting strategy and contractor appraisals.
  - (e) (To a fairly limited extent) on value for money.
  - (f) Resolving a range of finance and control related issues (the most significant of which are reported in the quarterly reports).
  - (g) On aspects of fraud prevention - such as the biennial National Fraud Initiative (although customer fraud is currently investigated by others).
  - (h) Contributing generally, and providing advice to Council wide and Service specific matters related to governance, risk, financial and business control. Whilst Internal Audit work can provide some assurance about business processes, it is not resourced in a way to assess the judgement of other professionals.
- 2.3 Quarterly Reports on the activities of Internal Audit have been provided to the Corporate Governance and Audit Committee. These reports provide
- (i) an opinion about the level of assurance that can be taken from each planned audit on the arrangements in operation at the time of each audit.

- (ii) an opinion about follow up of earlier Internal Audit work.
  - (iii) information about investigations, and other internal audit activity.
- Implementation of the agreed recommendations should provide a satisfactory degree of control in all cases.

3. **Summary of Audit Work in 2018/19**

3.1 Most audit work concludes with an assurance based opinion,

Opinion	% in year	
Substantial assurance	35	Positive
Adequate assurance	43	
Limited assurance	21	Adverse
No assurance	1	

3.2 22% of work concluded with an adverse opinion against a corporate target of 20%. This was the same as 2017/18.

3.3 There were some areas of significant operation about which only limited assurance could be provided this year. These included:

- SAP Security & User Access Controls (follow up) - although following this audit a much improved structured action plan to address shortcomings was agreed and is in the process of being implemented.
- Safeguarding (Family Support & Child Protection) - although progress had been made, there were concerns about slippage in the Improvement Plan especially regarding contracted services / external placements and training
- Mandatory training - about evidencing, enforcing and record keeping particularly
- Corporate compliance and assurance through the Health & Safety function
- Corporate Performance information not aligned as true measures of entity performance.

Based on an assessment of whistleblowing and ongoing investigations there are potential concerns also about school governance.

3.4 Information on reported audit opinions in the last five years is shown in the table below

	2018/19	2017/18	2016/17	2015/16	2014/15
Days spent on audit work	894	976	1,372	1,745	1,844
Financial and business processes and systems examined	25	28	54	80	67
Location, establishment, schools audits undertaken.	34	38	48	55	70
Follow up audit work	9	18	19	18	13
Investigations into irregularity	2	5	5	6	8
Management, governance or value for money studies Grant audits, consultancy, projects	19	15	26	10	8
Completed formal tasks	89	104	152	169	166
<b>Overall proportion of work offering limited or no assurance</b> ("unsatisfactory" in 2014/15 and earlier)	<b>22%</b> 21% limited assurance 1% no assurance	<b>22%</b> All limited assurance	<b>19%</b> 17% limited assurance 2% no assurance	<b>24%</b> All limited assurance	<b>8%</b> All unsatisfactory

See also Appendix 5

3.5 Assessing only the new work on Council operations the level of activity found to be inadequate was 17%.

3.6 Only 44% of follow up work achieved a substantial or adequate assurance outcome (it was 56% in 2017/18). This is a disappointing response to agreed actions by parts of management. More positively, work was undertaken to identify if recommendations made as a part of work that identifies a positive outcome are implemented. The work completed suggested that this is substantially the case.

3.7 An additional audit carried out at the request of management related to salary overpayments. This found scope to improve arrangements, although some arise through the practice of partial salary payments in advance. There was a small number of investigations reported during the year.

3.8 Audit time has also been spent on:

- Support to governance and control arrangements generally.
- Preparation of the Annual Governance Statement and monitoring progress in relation to matters identified.
- Monitoring and updating Contract Procedure Rules (CPRs) and Financial Procedure Rules (FPRs).
- Financial appraisal and scoring of applicants for contracts and other aspects of assessing or approving the Council's contractual arrangements.



- Support to the Information Governance Board, and implementation of GDPR /Data Protection Act 2018
- National Fraud Initiative 2018/19.
- Forming a part of the Whistleblowing assessment process by carrying out initial assessment of whistleblowing to decide on the extent to which an allegation may have sufficient merit to justify further investigation.
- Verification/certification relating to grants, such as Highways Incentive Funds.
- Support to waste management project
- Assessing write off arrangements/testing proposed debt write-offs.

3.9 The Council has started to implement its new Risk Management Statement and generates a list of strategic and generic risks that would impact on the corporate organisation, and has a process for identifying emerging high to medium impact risks. However, this emerging risk escalation process still requires further development, and risk recording is still not fully implemented at Directorate/Service level. Good practice expects that any Internal Audit planning will recognise the risk management processes of the organisation. However, where risk management arrangements are under developed, audit planning is adjusted to recognise this.

3.10 Although the Council used a risk based audit plan in achieving the coverage of business and activity areas, on which this opinion is based, the assurance framework delivered by Internal Audit is necessarily not comprehensive. Whilst coverage of financial (and commercial) business process and governance is risk based, in particular it does not assess the areas that involve professional judgement, particularly in relation to care related services and some other assessments that relate to individual needs. The Corporate Governance & Audit Committee can, and does, gain wider governance assurance from these other sources, although not all have routine arrangements for reporting and this arrangement is not formally documented and reviewed.

3.11 Internal Audit work in relation to public housing services was subject to a specific audit plan related to both the Housing Revenue Account and Kirklees Neighbourhood Housing (KNH) (a wholly owned Council subsidiary) – which includes also Property Services- which carries out building maintenance on Council housing and public buildings. KNH had their own audit committee (Risk & Audit Committee) until the Company was restructured during early 2019.

The 2018/19 work plan was agreed by this Committee but responsibility for implementation and management was with KNH service management (and the oversight by the KNH Risk & Audit Committee.) Internal Audit work carried out and its assessed status has been included, separately, in each quarterly report.

Core systems and arrangements operated by KNH are broadly sound. There have been a number of investigations during the year.

3.12 Work continues to be performed for Kirklees Active Leisure. Outcomes are reported to KAL's own Audit Committee.

- 3.13 There has been some limited working with Calderdale Council's Internal Audit team during the year.
- 3.14 The intention had been to complete 91 planned audit tasks this year (last year 93 actual). The number of planned tasks achieved was 74, in addition to which 15 formal and initially unplanned tasks were completed. Not all of these attracted an audit opinion. There were 5 planned pieces of work in progress at the year end which will be reported in 2019/20.
- 3.15 During the year a number of experienced staff left the team, and it has proved difficult to identify a full set of replacements. Reflecting matters raised by the external assessment report (3.17), a trainee auditor is currently being recruited.
- 3.16 As noted in 2.1, the Financial Procedure Rules and the Audit Strategy and Charter document allow Internal Audit unrestricted access to consider areas of activity as they see fit in providing this audit opinion. At no point during the year has any officer or Member sought to influence or restrict the scope or areas of activity of any piece of work. The conclusions reached in the work are those of Internal Audit.
- 3.17 The function was subject to an external assessment at the end of the financial year 2017/18. The assessment concluded that the activity operated at the highest standard –“generally conforms” to the PSIAS and Code of Ethics. The written report of the assessor was not received until summer 2018, and this was reported to this Committee (8 September 2018, and updated 25 January 2019). Issues raised related to the time devoted by the head of internal audit, the post holders role in relation to risk management, training and skills, and performance indicators, including customer feedback.(see appendix 2)
- 3.18 From work during 2018/19 the vast majority of the assessments of the Council's governance, risk management, financial and business controls that were examined were sound and effective, and whilst coverage this year has been quite limited- reflecting on resource availability, and the timings, particularly of basic financial systems audits-few fell in this year - it is concluded that (subject to the observations above) the Council can be considered to have an adequate control environment.

#### 4. **Performance Measures of Internal Audit**

- 4.1 There is very little comparative benchmarking available about the costs of Internal Audit. Comparison of staffing numbers locally suggest that taking account of Council (and other) activity, the Kirklees IA team is somewhat smaller than others, some of which have recently looked to strengthen their internal audit coverage.

4.2 The main performance statistics for the year are:

	Target 18/19	Actual 18/19	Actual 17/18	Actual 16/17	Actual 15/16
Work completed within time allowed	80%	50%	77%	87%	77%
Draft reports issued within 10 days	85%	92%	93%	90%	91%

There were two other performance targets:

Target - 90% of the Audit Plan achieved. Actual was 81% (98% if unplanned and substitute audits included).

Target - 90% customer satisfaction. The processes for collecting information were not entirely successful during the year. However, there were no complaints about the quality or any other aspect of work and the 9 questionnaires returned were all positive. A new online/email based system is currently being trialled in the hope of improving customer feedback.

A sample of work is checked against the achievement of a number of standards. Variances are noted and investigated/corrected, although a piece of work can achieve the standard without every feature being correct. The work tested (10% sample) during 2018/19 met the overall standard.

## **5 Effectiveness of the system of Internal Control**

- 5.1 The Accounts & Audit Regulations (England) 2015 require an Authority to conduct an annual review of the effectiveness of their system of internal control. An understanding of the arrangements of Internal Audit supports the ability to utilise the opinion of the Head of Internal Audit on the internal control environment as a key source of evidence in the Annual Governance Statement. As noted previously, the systems of assurance about internal control come from a wider source than just internal audit, although it is a primary source of assurance.
- 5.2 Financial Procedure Rule 5.6 requires the Head of Audit & Risk to review the systems of Internal Audit on an annual basis. The Public Sector Internal Audit Standards (PSIAS) make it a responsibility of the Head of Internal Audit to carry out periodic internal reviews (see Appendix 2) and every 5 years have an external review of the Internal Audit function and report these to this Committee. The standard is complex and the recommended evaluation criteria (as codified by CIPFA) are quite cumbersome, and some are difficult to evaluate.
- 5.3 Members can gain assurance from a number of routes including their assessment of this and other reports (particularly the four quarterly reports). They can also gain assurance using factors such as performance indicators,

quality assurance and consultation with senior management, although it is acknowledged that for this year that information is quite limited.

## 6. **Internal Audit in 2019/20**

- 6.1 As agreed and successfully implemented since 2017/18, there are now no Service specific audit plans, although operational staff, heads of service and directors are still expected to participate in audit planning, delivery and response to findings. The draft proposed Audit Plan is attached at Appendix 1.

The performance targets for Internal Audit are at Appendix 3. The schedule of key systems, organisational and business controls is attached as Appendix 4.

Following the restructuring of Kirklees Neighbourhood Housing Ltd,(KNH) it no longer has its own Audit Committee, and the Council's Corporate Governance & Audit Committee performs these functions in relation to internal audit. The Board of KNH still considers that they need some information and involvement, such as to have an influence over the audit plan agreed in respect of the company. Internal Audit will deal with KNH and the housing client as if they were a service department of the Council.

- 6.2 Priorities for 2019/20 will be;
- a) To look at high value or high risk activity and core systems and its basic financial operations against the strategic long term audit plan. (Every activity is still potentially in view but this will no longer be achievable within a 5 year horizon.)
  - b) Identify and document the wider assurance environment that operates across the organisation, and determining if additional processes are needed to achieve a full set of entity control and assurance.
  - c) Work to ensure that the new approach to risk management provides evidence of understanding of service risks, and adequate escalation
  - d) Activity to ensure basic compliance with processes.
  - e) Carrying out work contributing to the organisational objective of understanding and improving value for money.
  - f) Identifying an appropriate approach to corporate reporting and investigation of potential fraud and similar, including clear instructions to senior and operational managers about reporting such matters.
- 6.3 The overall resources available to Internal Audit were consistent with the Audit Plan 2018/19. Increasingly only a reduced level of assurance can be provided, and the organisation needs to consider, on a risk based approach, what alternative assurance is desirable and achievable. Whilst the scope will still exist to carry out some significant investigations and consultancy tasks, there is an overriding need to achieve sufficient assurance based coverage, as is a requirement of the Public Sector Internal Audit Standards. This may mean that there has to be discussion about additional resources in the event of serious multiple demands for activity.
- 6.4 Internal Audit will continue to work with the Calderdale Internal Audit team where appropriate and likely to bring mutual advantage (or to share skills or

experiences), in 2019/20 a joint review of a shared partnership organisation is planned.

- 6.5 There are some changes to the Public Sector Internal Audit Standards for 2019. These are of a minor nature. The CIPFA (Chartered Institute of Public Finance & Accountancy) recommended assessment criteria have been revised, although they have not been simplified or improved.
- 6.6 CIPFA will launch a new statement on the Role of the Head of Internal Audit early in 2019/20. Should this require or recommend alterations in the Council and Internal Audit's current practices, this will be referred for consideration by the Corporate Governance & Audit Committee.
- 6.7 Audit work will be performed in accordance with the Audit Strategy and Charter, the 2019 version is shown at Appendix 6 for approval.

## 7. **Conclusions**

- 7.1 This report has summarised the activities of Internal Audit during 2018/19. Detailed information has been provided to Corporate Governance & Audit Committee during the year.
- 7.2 There is sufficient evidence to demonstrate that the Council's system of governance, risk management and internal control is effective and that the opinion of the Head of Internal Audit on the internal control environment can be relied upon as a key source of evidence in the compilation of the Annual Governance Statement, although there are caveats;
  - (a) That the assurance coverage is risk based and not absolute across the entire range of organisational activity
  - (b) Corporate risk management arrangements do not fully support the Council's governance processes.
  - (c) Other matters as described in this report.
- 7.3 The proportion of audit work which resulted in an assessment providing at least adequate assurance is 78%. The remaining 22% consists of 21% "limited assurance" and 1% "no assurance".
- 7.4 There are no areas where, following audit recommendations, management have formally chosen to refuse to implement recommendations for action (and accordingly overtly accepted the potential consequences as a risk).
- 7.5 The opinion from the work performed - the scope of which does not presently cover every area of entity risk - is that, although there are some weaknesses in some systems of control, the overall framework of the Council's governance, risk, business and financial systems, processes, controls, and its management of assets, remains sound.
- 7.6 It is concluded that overall the Council has an adequate and effective control environment.

## 8. **Annual Governance Statement**

- 8.1 Information generated by Internal Audit forms a key part of the Council's assessment of the quality of its organisational and business controls and the degree of assurance that can be placed upon their operational effectiveness. This information is used in preparing the Council's Annual Governance Statement which accompanies the Statement of Accounts.
- 8.2 The positive opinion that the Council's arrangements provide an adequate and effective control environment needs to be considered in the context of the breadth of assurance provided by Internal Audit, and the comments contained in this report. There are a number of areas that might appropriately be escalated to the Annual Statement of Governance and these are covered in the separate report to be considered by the Committee.

Contact Officer

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## **Appendix 1**

### **DRAFT INTERNAL AUDIT PLAN 2019/20 (97 new audits, 5+b/fwd\*)**

#### **CORPORATE (4)**

Assurance Mapping  
No Recourse to Public Funds  
Capital Plan Delivery  
Fire Safety\*

#### **ADULTS & HEALTH**

##### **Adults Social Care Operation (10)**

Third Party Payments (Domiciliary Care)  
Assessed Contributions  
Assessment of Care  
Deferred Charges (follow up)  
Home Care Charges (follow up)  
Payments to Private Homes  
Service Users Monies  
Debtors  
Direct Payments\*\*  
Fees and Charges

##### **Integration, Access & Community Plus (1)**

Digital Transformation\*

## **CHILDREN & FAMILIES**

### **Child Protection and Family Support (4)**

External Residential Placements  
Direct Payments\*\*  
Emergency Duty Team  
Safeguarding (follow up) / Improvement Plan (evidential assurance)

### **Learning and Early Support (33)**

High Schools x 2  
Primary Schools x 25  
Troubled Families Grant Claims  
Calderdale & Kirklees Careers Service (with Calderdale MBC Internal Audit)  
School Admissions & Appeals System  
Associate Framework Contract (follow up)  
Special Educational Needs and Disabilities  
School Exclusion Pathway

## **CORPORATE STRATEGY, COMMISSIONING & PUBLIC HEALTH**

### **Policy, Intelligence & Public Health (3)**

Performance Management (follow up)++  
Prevent/Counter Extremism/Community Tensions  
Corporate Health & Safety (follow up)++

### **Strategic Communications (1)**

Protecting Brand & Reputation

### **Information Technology (4)**

Environmental Controls (follow up)  
Document Solutions (follow up)  
Cyber Security Policy\* ++  
Software Licencing

### **People Services (8)**

Anti-Discrimination & Staff Inequality  
Mandatory Staff Training (follow up)  
Agency Labour  
SAP Payroll Key Controls  
SAP Creditors Key Controls  
SAP Security/Access Controls ++  
Direct Debit Payments (follow up)  
Employee & Agency Staff References & Qualifications

### **Policy, Partnerships & Transformation (1)**

Partnership Governance ++

## **ECONOMY & INFRASTRUCTURE**

### **Environment (11)**

Asbestos Management  
Parking Enforcement  
Structures Safety

Winter Maintenance  
Highways Stores / Use of Materials  
Commercial Rents & Charges  
Sale of Land/Property  
Highways Network Self-Assessment  
Town Halls Booking and Income Reconciliation  
Greenspace Action Team  
Taxi Licensing\*

### **Growth & Housing (11)**

#### **KNH**

Van Stores  
Repairs  
Procurement of Works (Sub Contractors)  
Materials Procurement  
Plant & Equipment Hire  
Voids Management  
Write Offs  
Leaseholder Service Charges  
District Heating  
Building Services Charges\*

Planning Consent & Enforcement

### **FINANCE**

### **Revenues and Benefits (5)**

Income System  
Claims Processing  
Recovery & Enforcement  
Corporate Complaints  
Whistleblowing

### **LEGAL & GOVERNANCE (6)**

Decision Making per the Constitution  
GDPR Compliance ++  
Information Governance Toolkit

#### **Procurement**

Contract Procedure Rule Compliance – Tenders/Quotes ++

#### **Risk**

Risk Management (follow up) ++  
Anti-Fraud, Bribery & Corruption

#### **Notes**

- The draft plan has been prepared in accordance with the Public Sector Internal Audit Standards
- Follow up audits relate to audits in 2018/19 which produced a *Limited Assurance* opinion. There may be additional audits in year that acquire this criteria)



- Audits marked ++relate to Significant Governance Issues in the 2018/19 AGS
- The audit planning process is risk based and attributes a score to each activity in the audit universe (using a 4x3 matrix). Audits are then undertaken on up to a 5 year cycle. Each of the audits proposed above has a risk score of 9 and above. 20 audits in the next two risk level scores (8 and 6) are due for review in 2019/20 but these have not been prioritised with current resources (most of these areas that are not new ones will not now have been reviewed for 5+ years):

Risk Score 8

Workforce Planning  
 Equality Impact Assessments  
 SAP Ledger and Journals  
 Implementing the People Strategy  
 IT Third Party Defensibility  
 Implementing the Democracy Commission Recommendations

Risk Score 6

Urban Traffic Control – Traffic Signal Repair & Maintenance  
 Highway Construction Contractors Insurance Claims  
 Energy Procurement & Use  
 Members' Allowances & Expenses  
 Civic Silver  
 FOI Compliance  
 Bank Contract  
 Trade Refuse Income  
 Fuel Procurement & Control  
 Forestry  
 Watercourse/Flood Management  
 Waste Management Contract Payments  
 Kirklees Supply Service

Risk Score 4 34 audits

Risk Score 3 2 audits

Risk Score 2 33 audits

Risk Score 1 17 audits

\* b/fwd from 2018/19

\*\*To do as a combined review

## Appendix 2

### Recommendations from the External Assessment of Internal Audit 2018

Actions linked to these matters was reported to Corporate Governance & Audit Committee on 25<sup>th</sup> January 2019

	Recommendations	Progress
1	Time devoted by the head of internal audit to the strategic and operational management of the function.	This is very similar to that produced in January 2019 See table that follows
2	Promoting a split between the creation and management of risk information, and the separate roles of internal audit in challenging entity risk identification and assessment and supporting this Committee in its role in overseeing risk arrangements.	Head of Risk continues to have role in risk management. A follow up audit report being produced in relation to risk management
3	Accessing the skills necessary to address speciality work areas (e.g. cyber IT) and more generally to secure a sustainable workforce. (2.1).	Recognition that super speciality skills not practically available, but as a recognition of workforce development trainee auditor/accountant being recruited
4	Increasing the number of performance measures that are used to assess the effectiveness of internal audit (3.1)	Discussed, and no new measures agreed, but additional information for this report.
5	The need to improve feedback/ client engagement information (4.2)	New survey arrangements being trialled
6	Making sure that process documentation is fully completed.(8.1)	Ongoing supervisions

Time spent analysis by Head of Audit & Risk		2017/18 % all year	2018/19 % all year
Specific IA projects and investigations		6	17
General Advice	Childrens	3	3
	Adults & Public Health	8	3
	Place	6	12
	Corporate	8	3
	KNH	4	4
Procurement & FPRs & CPRs		8	7
Risk Management		10	8
Trust Funds		8	11
CGAC advice		4	5
Management & Supervision		35	27

### Annual Review of Internal Audit - 2019

	Recommendations	Actions	Date	Progress
1	Need to be sure that the Audit Plan (for 19/20) is acknowledged and contributed to by Senior Management	Draft plan to be shared with Executive Team	April 2019	Draft plan shared with Executive Team, and plan modified as a consequence
2	Ensure all internal audit staff are familiar with the obligations contained within the Public Sector Internal Audit Standards, particularly in relation to ethical standards	Training of all staff	April 2019	Training carried out. Will be replicated for new employees, and refreshed appropriately

### Appendix 3

#### **INTERNAL AUDIT PERFORMANCE TARGETS 2019/20**

<b><u>Objectives</u></b>	<b><u>Performance Measures</u></b>
Achieve planned audit work; as adjusted	90% of planned priority audits achieved
Achieve each planned audit within budgeted time allowed	80% of planned work achieved within initial time budget
Achieve high level of work quality and customer satisfaction	90% good or better responses to customer questionnaires
Delivery of completed audit work	85% of draft reports issued within 10 days of completion of site work

### Appendix 4

#### **KEY CORPORATE SYSTEMS 2019/20**

##### **Financial Systems & Controls**

Payroll (SAP)  
Housing Rents  
Debtors (SAP)  
Procurement / Creditors (SAP)  
Payments for Social Care  
School Payments  
Treasury Management  
Council Tax  
NDR  
Council Tax Reduction Scheme (residual Benefits)  
Internal Recharging

##### **Key Organisation & Business Controls**

Code of Corporate Governance  
Contract Procedure Rules  
Financial Procedure Rules  
Contract Management  
HR Operations  
Risk Management  
IT Controls  
Performance Management Systems  
Partnership Governance  
Emergency & Business Continuity Planning  
Information Security  
Health & Safety  
Fraud, Bribery & Corruption Risk  
Corporate Complaints  
Whistleblowing

## Appendix 5

### DETAILED PERFORMANCE STATISTICS FOR 5 YEARS

	2018/19	2017/18	2016/17	2015/16	2014/15
Number of days spent on planned and unplanned audit work	894	976	1,372	1,745	1,844
Number of financial processes and systems examined	11	16	42	55	55
Percentage offering limited assurance/ *unsatisfactory.	27%	44%	19%	20%	*11%
Number of location/ establishment audits undertaken.	0	3	14	23	26
Percentage offering limited assurance/ *unsatisfactory.	n/a	0%	21%	13%	*8%
Number of school audits undertaken	34	35	34	32	44
Percentage offering limited assurance/ *unsatisfactory.	6%	3%	18%	28%	*7%
Follow up audit work carried out	9	18	19	18	13
Percentage offering limited assurance/ *unsatisfactory.	55%	44%	21%	33%	*8%
Number of business control audits undertaken	14	12	12	25	12
Percentage offering limited assurance/ *unsatisfactory.	36%	18%	17%	28%	*0%
Number of investigations into irregularity	2	5	5	6	8
Number of management, governance or value for money studies	0	4	26	2	1
Number of grant audits, consultancy, projects	19	11		8	7
Completed formal tasks	89	104	152	169	166
<b>Overall percentage of reported audits providing only limited assurance/ *unsatisfactory (corporate target 20%)</b>	<b>22%</b>	<b>22%</b>	<b>19%</b>	<b>24%</b>	<b>*8%</b>

# **KIRKLEES COUNCIL**

## **INTERNAL AUDIT** **STRATEGY & CHARTER**

**20198-20**

## **EXECUTIVE SUMMARY- INTERNAL AUDIT STRATEGY & CHARTER**

1. Internal Audit supports the organisation, and its management in achieving its objectives. Its work will involve;
  - a) Assurance about the internal financial and (other) business controls, and the councils' broader assurance framework.
  - b) 'Consultancy' work, as commissioned, relating to business, financial and process controls and value for money, efficiency and effectiveness.
  - c) Development of anti-fraud, anti-corruption and anti-bribery measures and investigation of any suspicions of inappropriate behaviour.
  - d) Information, advice, advocacy and training in respect of best practice in achieving a high level of internal control, including Financial and Contract Procedure Rules.
  - e) Contributing to corporate/high impact projects, particularly those involving partnership and procurement.

Internal Audit coverage will apply to all of the Council's direct operations, all wholly owned or controlled organisations or subsidiaries, including limited companies, and other partnership bodies (where the Council so determines).

2. Internal Audit work will address all of the business controls of the organisation, prioritised on the basis of risk. This involves a full coverage of all aspect of the Council's operation, including financial systems, processes and activities, risk management, governance arrangements, information management and appropriate use of technology-
3. Internal Audit activity will be planned, carried out and reported within a general philosophy of providing evidence based analysis and helpful advice to all levels of management and achieving positive consequential progress.
4. Except where otherwise agreed, written reports will provide summary information, detail on any findings of note, conclusions and recommendations to advise and inform managers of all levels.
5. Establishing effective systems of operation and implementation of audit recommendations is the responsibility of management. It is not the role of Internal Audit to act as a proxy for appropriate performance management of, or by, senior management.
6. Internal Audit will follow up the implementation of accepted recommendations in all cases where there were concerns about a system, process or activity,

or where recommendations arose as a result of an investigation. Other agreed recommendations may be followed up on a sample basis

7. Internal Audit will co-ordinate the overall corporate assessment of business controls and risk management. It will help develop and monitor the Risk Management Strategy.
8. Internal Audit will operate in accordance with the (mandatory) Public Sector Internal Audit Standards (PSIAS) and the supplementary CIPFA guidance. In particular internal audit officers will act with independence, objectivity and integrity and respect the confidentiality of organisational information.

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Appendix 1 Control Environment (definition)

Appendix 2 Financial Procedure Rules (extract)

Appendix 3 Role of the Audit Committee

Appendix 4 Audit Planning, Resourcing & Reporting (detail)

Appendix 5 Public Sector Internal Audit Standards

Appendix 6 Statement of the Responsibilities of Management

## **1. INTRODUCTION**

- 1.1 Local Authorities are required under the Local Government Acts and the Accounts and Audit Regulations 2015 to have a continuous internal audit of their financial and other business controls. It will be delivered in compliance with the Public Sector Internal Audit Standards (PSIAS). This is mandatory guidance which states the fundamental requirements for the professional practice of internal auditing and for evaluating the effectiveness of Internal Audit's performance. These standards in local authorities are supplemented by additional guidance from CIPFA that has regulatory authority for local government in the UK.
- 1.2 The PSIAS require that there is a formal Internal Audit Charter defining its purpose, authority and responsibilities, which must be consistent with its definition of internal audit, code of ethics and professional standards.
- 1.3 The main purpose of Internal Audit is to support the organisation in achieving its objectives, and particularly to play a key role in the Council's Corporate Governance arrangements in ensuring Members and Corporate Managers have adequate assurance that they are meeting their responsibilities.
- 1.4 This document has been prepared to set out:
- The objectives of Internal Audit
  - The scope of its operation
  - Its rights and responsibilities
  - The responsibility of others
  - The Audit planning process
  - The Audit reporting process
- 1.5 This Strategy and Charter will be regularly presented to senior management, and reviewed regularly by the Corporate Governance & Audit Committee. Its purpose is to set out the purpose, nature, objectives, outcomes and responsibilities of the internal audit service.

## **2. OBJECTIVES OF INTERNAL AUDIT**

- 2.1 Internal Audit's objectives can be defined as:

"Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes".(PSIAS)

This definition goes beyond basic compliance by evaluating and improving the effectiveness of the entire risk, control and governance arrangements



(including financial and non financial control systems). As an independent appraisal function Internal Audit can offer assurance on the effectiveness of internal control arrangements, contributing to the efficient use of resources and generally helping management to monitor performance, improve operational efficiency and target objectives. These actions will add value by supporting the organisation in achievement of the Council's objectives.

## 2.2 Specifically the role is to provide:

- *Assurance, principally by a review of the control environment* - The 'control environment' comprises the business systems which are operated to implement the Council's statutory obligations and its policies and objectives. This includes systems and processes, governance and decision making, and risk identification and management. It involves the review of all the major financial and accounting systems and practices, and also controls of other kinds (such as purchasing and human resources). For financial controls it involves a more detailed review of information, records, assets and other resources to identify appropriate financial stewardship (See Appendix 1). It also includes matters relating to organisational ethics, use of technology and matters such as management of data and information
- *Consultancy* - Undertake, when commissioned, other reviews and projects which use investigative, analytical and consultancy skills. This work can be specific or involve on-going advice, and may include value for money related activity. Where this advice is provided it is given notwithstanding the responsibility to provide assurance as above. Any work performed will be accepted only within the competencies of staffing.
- *Assurance and Investigation into suspected Fraud, Corruption and Bribery*- It is essential that Internal Audit has awareness of issues of fraud, bribery and corruption, as a part of gaining assurance about the control environment (as above). In some circumstances it may be appropriate for Internal Audit to undertake investigations into suspected irregularity, fraud, or corruption. Internal Audit also prepares and maintains the Corporate Anti-Fraud, Anti-Corruption and Anti-Bribery Strategy, and provides guidance for managers and Members and thus helps promote good corporate governance and the highest ethical standards. It also coordinates the Council's approach to the mandatory national fraud initiative.(NFI).
- *Advice* - Provide operational advice on the development of processes and systems and on the interpretation of the Council's rules (principally Financial Procedure Rules and Contract Procedure Rules).

2.3 Audit advice and recommendations are given in all cases without prejudice to the right of Internal Audit to review the relevant policies, procedures and operations at a later date.

2.4 The Council is responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements. Internal Audit advises the Council on whether effective and efficient arrangements exist, cumulating in the annual opinion of the Head of Internal Audit, which informs the Annual Governance

Statement. Optimum benefit to the Council should arise when Internal Audit work in partnership with management to improve the control environment and assist in achieving objectives.

### **3. INDEPENDENCE, RESPONSIBILITIES AND AUTHORITY**

An effective internal audit function must be independent, objective and unbiased.

#### **3.1 Authority**

Internal Audit has authority to:

- Enter at all times any Council premises or land or location from which Council services are provided;(including those of partners and contractors)
- Have access to all property, records, documents, correspondence, data (in all forms) relating to all activities of the Council;
- Require and receive explanations concerning in respect of any matter; and
- Require any employee of the Council, without prior notice, to produce cash, stores or any other property for which they are responsible.

The rights and responsibilities of Internal Audit are set out in Financial Procedure Rules (an extract is included at Appendix 2)

#### **3.2 Responsibilities of the Head of Internal Audit**

(The Head of Internal Audit has the formal title in the councils structure of Head of Risk)

The Head of Internal Audit;

- Reports functionally to the Corporate Governance & Audit Committee which operates as the Audit Committee of the Council, and issues reports under his own name.
- Reports managerially to the Chief Executive, Service Director for Finance and Service Director, Legal Governance & Commissioning (Monitoring Officer) and for supervisory purposes to the Service Director, Legal Governance & Commissioning
- Has the right to communicate directly with any Strategic or Service Director, or any other Council officer as he considers necessary. The Head of Internal Audit may also communicate as he considers necessary with any Cabinet Member or Councillor, or other person.
- Has the right to communicate confidentially with the Chair of the Corporate Governance & Audit Committee on any matter where he considers this necessary.

- Must advise the Corporate Governance & Audit Committee on any matter where any significant risk or threat to the organisation, identified through audit assurance work, has not been adequately addressed by management.
- Is responsible for the delivery of the internal audit function and achievement of the standards described within this document.

The Head of Internal Audit has responsibility for ensuring compliance with statutory requirements, in particular of the Data Protection and Freedom of Information Acts, and Council Policy concerning records management in operation of the internal audit activity. All audit work will be done in accordance with the principles of this legislation, unless certain exemptions apply to individual circumstances, so that, for example, personal data will be kept securely and disposed of correctly when it is no longer required for audit purposes. Information collected by way of audit work will be stored on paper and or electronically. Permanent file data, such as system notes will be kept until it is no longer valid. Reports, correspondence working papers and supporting evidence will be kept up to 6 years, but normally until after the next audit of the activity is completed, (or longer where an Audit Manager considers that this is necessary to facilitate service provision).

The Head of Internal Audit will ensure that audit work is shared with Strategic Directors, Service Directors and other senior managers and their appointees, and commissioning officers for investigations and reviews. Additionally summaries will be provided to the Corporate Governance & Audit Committee, individual members or others (e.g. whistle-blowers) who refer matters to Internal Audit, the external auditor and to other authorities and agencies to facilitate joint and partnership working as appropriate. Audit work will (except when otherwise agreed) be treated as confidential, but in certain circumstances may be wholly or partially subject to disclosure under the Freedom of Information Act.

Operationally, Internal Audit ~~lies within the Office of the Chief Executive, with reporting lines as described above. This includes~~ reporting to the chief executive, statutory chief financial officer and monitoring officer.

~~Internal Audit work at for Kirklees Neighbourhood Housing Ltd (KNH), a wholly owned and controlled (tecal) subsidiary of the Council, -and in respect of the Housing Revenue Account will be under the initial responsibility of the KNH Audit Committee, although there will be a report back mechanism to the is carried out in the same way as a Council service, and is under the direction of the Council Corporate Governance & Audit Committee, with management input by officers of the company, as with a council service, and some involvement by the Board of KNH, as necessary to enable them to discharge their responsibilities as directors.~~

### 3.3 Responsibilities of Internal Audit

The responsibilities and objectives of Internal Audit are as follows:

- To provide soundly based assurances to management on the adequacy and effectiveness of their internal control, risk and governance arrangements, including; ethics, information management and technology.
- To review, appraise and report on the extent to which the assets and interests of the Authority are accounted for and safeguarded from loss.
- To review, appraise and report on the suitability and reliability of financial and other management data and information.
- To assess the adequacy and effectiveness of the Authority's procurement, contract and partnership arrangements.
- To support schools in achieving high standards of control and governance.
- To assess the corporate risk management processes.
- To evaluate the risk of fraud and how it is managed and controlled. To provide corporate fraud and irregularity prevention, detection and investigation services in accordance with the Anti-Fraud, Anti-Corruption and Anti-Bribery Strategy.
- To reach conclusions about the effectiveness of the Council's control environment, and to recommend improvements to management.
- To contribute to assurances in relation to the robustness and reliability of internal controls and governance to support the Annual Governance Statement (AGS).
- To support the achievement of efficiency, value for money and effective change management.
- To provide advisory and consultancy services intended to add value and improve value for money, governance, risk management and control processes.
- To provide advice in respect of the development of new or significant changes to existing programmes and processes including the design of appropriate controls. This is usually through membership of groups, boards or working parties as well as direct contact with officers within Services.
- To support effective procurement.
- To support activities of the Corporate Governance & Audit Committee to discharge its responsibilities.
- To support the [Service](#) Director of Finance as the Council's Chief Financial (s151) Officer and all senior management in meeting their corporate responsibilities.
- To monitor the implementation of agreed recommendations;
- To plan, manage and operate the internal audit function in an efficient and effective manner.

### 3.4 Responsibilities and expectations of Internal Auditors

Internal Auditors must exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined, working with honesty, diligence and responsibility. They must at all times observe the law and respect and contribute to the legitimate and ethical objectives of the Council.

#### **Objectivity:**

Internal Auditors must make a balanced assessment of all the relevant circumstances and not be, or appear to be, unduly influenced. This means;

- Not taking part in any activity or relationship that may impair or be presumed to impair their unbiased assessment;
- Declaring any real or perceived interests on an annual basis, or at any time that they recognise any impairment to the objectivity;
- Not accepting anything that may impair or be presumed to impair their professional judgement such as gifts, hospitality, inducements or other benefits from employees, clients, suppliers or other third parties;
- Disclosing all material facts known to them that, if not disclosed, may distort the reporting of activities under review;
- Not using information obtained during the course of duties for personal gain and;
- Complying with the Bribery Act 2010.

#### **Confidentiality:**

Internal Auditors must;

- Act prudently when using information acquired in the course of their duties and protecting that information and;
- Not use information (derived or obtained through their official role) for any personal gain.

All records, documentation and information accessed in the course of undertaking internal audit activities are to be used solely for the conduct of these activities. The Head of Internal Audit and all internal audit staff are responsible and accountable for maintaining the confidentiality of the information they receive during the course of their work.

#### **Integrity:**

In the conduct of audit work, Internal Audit staff will:

- Comply with relevant professional standards of conduct and perform their work with honesty, diligence and responsibility.

#### **Competency:**

Internal Auditors are expected to be competent in their role by:

- Possessing the knowledge, skills and technical proficiency relevant to the performance of their duties;
- Being skilled in dealing with people and communicating audit, risk management and related issues effectively;
- Maintaining their technical competence through a programme of continuous professional development;
- Exercising due professional care in performing their duties and;
- Complying with all requirements of the PSIAS.

**Awareness:**

- Being alert to the issue of fraud and corruption.

Internal Audit staff must declare any conflict of interest, or potential conflicts of interest, actual or perceived, to their Manager.

### 3.5 **Statement of pre-existing areas of conflict in current audit activity**

The Head of Internal Audit – as “Head of Risk” has direct operational responsibility for the Insurance, and Risk Management functions and provides input into certain procurement functions. When audits are required of these areas, the Audit Manager reports direct to the Service Director Legal, Governance & Commissioning. This arrangement helps maintain independence and avoid any conflicts of interest.

On a Consultancy basis, but as a matter of routine, Internal Audit staff provide advice about the methods of financial evaluation of contracts and contractors, and carry out on a task specific basis financial evaluation of prospective suppliers to the Council, and attend tender opening.

With the exception of these activities, the Internal Audit function has no responsibility for developing or implementing procedures or systems and does not prepare records or engage in processing functions or business activities. ~~(Head of Internal Audit has some ongoing responsibilities for performance management; it is envisaged that this will cease early in the year 2017/8).~~

Otherwise, Internal Auditors are not involved in undertaking non audit activities and an Auditor will not be involved in the audit of any system or process for which they had previous operational responsibility (or advised in a consultancy capacity) for a period of two years.

Audit responsibilities are periodically rotated to avoid over-familiarity and complacency and also to provide for service continuity and resilience.

## 4. **PERFORMANCE MANAGEMENT AND QUALITY CONTROL**

#### 4.1 Performance Management

The Corporate Governance & Audit Committee will establish performance measures for the Council, in respect of the control environment, and for the Internal Audit function and consider performance against those measures in reviewing the activity of Internal Audit.

#### 4.2 Quality Control

The PSIAS requires the operation of quality assessment and review mechanisms, which must be assessed internally at least annually, and by an external assessor at least every 5 years.

The Head of internal Audit is responsible for advising the Committee on the appropriateness of measures and targets, and on collecting this information.

The Head of Internal Audit will establish internal quality control and review practices consistent with the requirements of the PSIAS, and report on the outcome of this review work to the Corporate Governance & Audit Committee as a part of the Annual Report.

Quality control will include direction and supervision of work performed, the retention of appropriate reliable and relevant evidence to justify findings and conclusions and recommendations, and the internal review and assessment of work, including its preparation in accordance with detailed standards, and compliance with the requirements of PSIAS and CIPFA.

The Head of Internal Audit is responsible for arranging for the external assessment, providing the necessary information, and acting on any outcomes from the assessment. This will be done under the oversight of the Chair of the Corporate Governance & Audit Committee.

The external auditor and other external review agencies may evaluate the work of Internal Audit as part of their assessment of Council activity.

### 5. REPORTING

The Head of Audit and Risk will report to the Corporate Governance & Audit Committee;

- Quarterly on each piece of work completed in the period, the opinion arising from that work and performance of internal audit (achievement of the annual audit plan (as revised when required), ~~issuing reports on time, completing work within time allocated~~, client satisfaction and quality assessment)
- Annually on the overall achievement and assessment of the Council's internal audit work programme, including an opinion on the control system, risk management and governance arrangements, and performance

information, such as –issuing reports on time, completing work within time allocated

- Annually on the overall risk environment and the overall planned work on assurance in the forthcoming year, plus any investigative and consultancy tasks. This will include an assessment on the availability of resources, and any impact this may have on the ability to assess the control environment.
- As necessary on any matter impacting on the overall integrity of the Council's control environment, typically indicated by a "no aAssurance" audit opinion, -or on any operational matter that seriously impacts on the delivery of the audit plan, or resourcing of the internal audit function.

Internal Audit reports to all levels of management, with reporting of detailed operational work usually being to Service-Directors. The All-Directors and the Chief Executive and strategic directors receive the full Council wide summary of activity.

## **6. INTERNAL AUDIT DELIVERY.**

- 6.1 The Head of Internal Audit is responsible for the effective use of resources to deliver the Audit Plan.
- 6.2 Delivery is by direct employees of the Council, including trainees and secondees and where necessary temporary and casual employees. The use of specialist consultancy and contractors will be considered if necessary to deliver specific elements of the workload.
- 6.3 At least annually, the Head of Internal Audit will submit to the Corporate Governance and Audit Committee a risk based Internal Audit Plan for review and approval. The plan will consist of a schedule of planned assurance and consultancy work (including some contingency) which will establish resource requirements for the next financial year. This will be balanced between resource requirement and capacity. The standard requires the Head of Internal Audit to advise the Corporate Governance & Audit Committee if the amount of resources available compromises the ability to offer appropriate levels of assurance.
- 6.4 The internal audit plan is based on a risk based assessment. The current standard (in 2018/19) is to potentially cover all areas of activity from the most significant to the most minor, although prioritisation is to ensuring that assurance coverage concentrates on those areas of highest risk in terms of potential exposure or likelihood of failure, covering both financial and other business controls (where assurance work utilise the responsibilities and processes for control effected by other teams such as Health & Safety).
- 6.5 Necessary material variations from the approved Internal Audit Plan are reported to and approved by the Corporate Governance & Audit Committee.



## **7. PARTNERSHIP, OBTAINING & PROVIDING ASSURANCE TO OTHERS**

- 7.1 In respect of operations through partnership and semi-independent organisations:
- (i) Usually, the Council will require its internal auditors to have access to property, records, documents and correspondence, in respect of any activity operated or controlled by the organisation working for the Council, and for its auditors to be provided with explanations by officers of the organisation. Contracts and agreement documents will set out these rights where it is appropriate.
  - (ii) The Council (through agreement by the Head of Internal Audit) may agree that alternative review arrangements operated by or on behalf of the organisation, or independently, will provide sufficient evidence to enable the Council to secure assurance conclusions about the aspects of the effectiveness of the Council's control environment to which the partnership relates, although the Council will retain an ultimate right to review any activity dependent on the Council's funding. In this context the Head of Internal Audit will seek to develop relationships, formalised where practical, with internal auditors and other review agencies to facilitate this. This may include obtaining all or some elements of assurance from the internal auditors employed by the organisation, and or participating with other internal auditors (e.g. employed by local authorities in the sub region) to evaluate the procedures operated by shared partners (such as a regional wide public body) and using such assurance instead of obtaining direct assurance.
  - (iii) The Council will, when requested and appropriate, provide assurance (based on work performed) to other partner organisations.
- 7.2 The Council's external auditor has full and free access to any records and work performed by Internal Audit. Action will be taken to coordinate work to avoid any duplication, and to ensure effective mutual working.
- 7.3 The Council provides Internal Audit services to the wholly owned Kirklees Neighbourhood Housing Ltd ~~(in their role as operators of the Councils' public housing stock/building maintenance services) The work on the company, and the Council's Housing Revenue Account is delivered by way of a combined joint audit plan that is approved by and reported to the KNH Audit Committee and Council Corporate Governance & Audit Committee~~  
The Council provides Internal Audit services to Kirklees Active Leisure, which is a charitable trust under a service level agreement. Although the Council is the main partner of KAL, audit accountability and reporting is to Kirklees Active Leisure only.

The Council provides Internal Audit services to the West Yorkshire Fire & Rescue Authority, which is a separate public body. This organisation makes significant use of the Council's financial systems. Audit accountability and reporting is to West Yorkshire Fire & Rescue Service only.

The Council provides some Internal Audit services (on a task commissioned basis) to the Kirklees College Corporation, which is a separate public body. Audit accountability and reporting is to the College Audit Committee only.

## Appendix 1

### **CONTROL ENVIRONMENT - AUDIT WORK**

The Control Environment comprises the Council's policies, procedures and operations in place to:

- a) Establish, and monitor the achievement of the organisation's objectives;
- b) Identify, assess and manage the risks to achieving organisational objectives;
- c) Facilitate policy and decision making;
- d) Ensure the economical, effective and efficient use of resources;
- e) Ensure compliance with established policies (including behavioural and ethical expectation), procedures, laws and regulations;
- f) Safeguard assets and interests from losses of all kinds, including those arising from fraud, irregularity or corruption; and
- g) Ensure the integrity and reliability of information, accounts and data, including internal and external reporting and accountability processes. This encompasses elements of corporate governance and risk management.

Control Environment audit work utilises a risk based, systematic approach for all control environment work to:

- i) Identify and record the objectives, controls and risks of the system or process;
- ii) Establish the congruence of operational objectives with higher-level corporate objectives;
- iii) Evaluate and review the application of risk management processes and documentation;

- iv) Evaluate the controls in principle to decide whether, or not, they are appropriate and can be reasonably relied upon to achieve their purpose;
- v) Identify any instances of over-control;
- vi) Determine and undertake appropriate tests of the effectiveness of controls, ie through compliance or substantive testing;
- vii) Arrive at conclusions and recommendations; and
- viii) Provide a written opinion on the effectiveness of the control environment.

EXTRACT OF FINANCIAL PROCEDURE RULES  
Appendix 2

5. **INTERNAL AUDIT**

**Responsibility & Authority**

5.1 *The Chief Executive (in consultation with the Chief Finance Officer and Monitoring Officer) must arrange and direct a continuous internal audit, which is an independent review of the accounting, financial and other operations of the Council.*

5.2 *The Head of Risk will report directly to the Chief Executive, the Chair of the Corporate Governance & Audit Committee or the External Auditor in any circumstance where the functions and responsibilities of the chief finance officer are being reviewed.(other than routine reporting of work carried out )*

5.3 *The Head of Risk has authority to:-*

- (a) *Enter at all times any Council premises or land or location from which Council services are provided;*
- (b) *have access to all property, records, documents and correspondence relating to all activities of the Council;*
- (c) *require and receive explanations concerning any matter; and*
- (d) *Require any employee of the Council, without prior notice, to produce cash, stores or any other property for which they are responsible.*

*The chief finance officer has the same authority for any accounting or associated purpose.*

**Planning & Reporting**

5.4 *The Head of Risk must plan and report (in accordance with the approved Audit Strategy and Charter , Public Sector Internal Audit Standards and any instructions from the Councils Corporate Governance & Audit Committee) upon:-*

- a) *The risks inherent in and associated with each system;*
- b) *The soundness, adequacy and application of the financial and other management controls and systems within each Service;*
- c) *The extent of compliance with, and the financial effects of, established policies, plans and procedures;*
- d) *The extent to which the organisation's Assets and interests are accounted for and safeguarded from losses of all kinds arising from fraud, other offences, waste, extravagance and inefficient administration, poor value for money and other cause;*
- e) *The suitability, accuracy and reliability of financial and other management data within the organisation; and*
- f) *Value for money aspects of service provision.*

5.5 *In respect of any audit report or communication issued, the Director must*

reply within 4 weeks indicating the action proposed or taken, by whom and including target dates. Where a draft report is issued for initial comments a reply must be made within 2 weeks of issue.

- 5.6 The Head of Risk will provide a written summary of the activities of the Internal Audit function to the Cabinet and Corporate Governance & Audit Committee at least four times per year and an Annual Report produced for consideration by Management Board, Cabinet and Corporate Governance & Audit Committee, including an audit opinion on the adequacy and effectiveness of the Council's risk management systems and internal control environment.

The Head of Risk will review the system of internal audit on an annual basis and report the outcome to the Corporate Governance & Audit Committee.

#### **Investigations and Suspected Fraud, Corruption or Bribery.**

5.7 The Chief Executive and Directors must ensure that all Members and employees are:-

- a) Aware of the Council's Anti-Fraud, Anti-Corruption and Anti Bribery Strategy;
- b) Aware of the Whistleblowing Strategy; and
- c) Operating in a way that maximises internal check against inappropriate behaviour.

The Head of Risk is responsible for the development and maintenance of the Anti-Fraud, Anti-Corruption and Anti Bribery Strategy and Whistleblowing Strategy and for directing the Council's efforts in fraud investigation.

- 5.8 It is the duty of any officer who suspects or becomes aware of any matter which may involve loss or irregularity concerning cash, stores or other property of the Council or any suspected irregularity in the operations or exercise of the functions of the Council to immediately advise the Director. The Director concerned must immediately notify the Head of Risk who may take action by way of investigation and report.

- 5.9 Where, following investigation, the Head of Risk considers that there are reasonable grounds for suspecting that a loss has occurred as a result of misappropriation, irregular expenditure or fraud, consultations will be held with the Director on the relevant courses of action, including the possibility of police involvement and the invoking of any internal disciplinary procedure in accordance with the relevant conditions of service. (Claimant fraud in respect of Housing Benefit and Council Tax Reduction and Discounts (where the claimant is not an employee or Member of the Council) is investigated by the Revenue & Benefits Service).

## ROLE OF THE “AUDIT COMMITTEE”

Extract from Terms of Reference of Corporate Governance & Audit Committee (May 2018) from the Council Constitution ;

6. To consider the council's arrangements relating to internal audit requirements including:
  - (a) considering the Annual Internal Audit report, reviewing and making recommendations on issues contained therein
  - (b) monitoring the performance of internal audit
  - (c) agreeing and reviewing the nature and scope of the Annual Audit Plan
7. To review the adequacy of the council's Corporate Governance arrangements (including matters such as internal control and risk management) and including to review and approve the annual statement of Corporate Governance.
8. To agree and update regularly the council's Code of Corporate Governance, monitoring its operation and compliance with it, and using it as a benchmark against performance for the annual Statement of Corporate Governance.

Monitoring the performance of Internal Audit might include:-

- i) Reviewing the scope, effectiveness and resourcing of the Internal Audit function;(including ensuring its budget is sufficient to achieve the work programme that the Committee considers to be necessary)
- ii) Assessing the balance between routine/unplanned/investigative work and systems /process/probity/unit/investigations/vfm studies/best value review/other work;
- iii) Appraising the accuracy and coverage of the work carried out; iv) Reviewing issues arising out of Internal Audit work;
- v) Reviewing management commitment to implementing audit recommendations;
- vi) Performance Management of Internal Audit work.

The Corporate Governance & Audit Committee can in support of its role:

- i) Call for Internal Audit reports to be submitted to it for consideration;
- ii) Commission specific pieces of Internal Audit work; and
- iii) Summon officers, members or other persons to explain their actions, or inactions, in relation to Internal Audit work.

## **AUDIT PLANNING, RESOURCING AND REPORTING (Detail) 1**

### **Corporate Audit Planning**

1.1 The Head of Internal Audit is responsible for appropriate planning and deployment of Internal Audit resources by production of:

A Strategic Statement of Areas of Auditable Activities and risk.;  
A detailed Annual Audit Plan setting out the specific assignments -planned for the year, reflecting risk and priorities and matched to the available resources.

1.2 The Annual Audit Plan will identify the work which is necessary to fulfil the following obligations:

- (i) Assurance on effectiveness of internal controls to deliver efficient operations, safeguard the Council's assets and ensure compliance with relevant legislation, regulations, policies and procedures
- (ii) Assurance on key internal controls (isn't this the same as i) above;
- (iii) Assurance on financial processes and systems;
- (iv) General assurance on other business systems and processes.
- (v) Opinion on Risk Management
- (vi) Opinion on Governance Arrangements

1.3 The level of resources allocated and work planned need to be balanced, to provide the levels of assurance, and other activities, that are expected as outcomes.

## **2 Risk Assessment**

2.1 Both of these Plans are prepared on the basis of an assessment of risk. Although this can be made ostensibly scientific, at its heart is professional judgement about the:-

- i) Importance of a risk area;
- ii) Existing level of internal control and risk management;
- iii) Materiality;
- iv) Significance in terms of organisational impact, sensitivity and accountability;
- v) Previous coverage and experience and knowledge gained by Internal Audit; and
- vi) Coverage by other review agencies.

2.2 The key financial systems will usually be subject to trbiennial review. The frequency of review of other business, governance and major and medium risk financial systems and processes will typically be between 3 and 54 years.-Some operational units and minor financial and business processes will be subject to audit work less frequently than every 5 years.

2.3 Any consultancy work will be separate from the control environment work and be based against specific objectives agreed with the Director responsible before the work commences.

### **3 Other Audit Work**

3.1 Internal Audit will have the opportunity to determine if they wish to investigate any suspected irregularity or inappropriate behaviour by officers of the Council, its partners, suppliers or Service users which involves the potential misuse or loss of the Council's resources, including cash, stores, or other amounts. The Anti-Fraud, Anti- Corruption & Anti-Bribery Strategy and the Financial Procedure Rules set down a procedure for investigation, reporting and decision making. The exceptions to this are the investigation of customer claims for Council Tax Reduction, Housing Benefit, Blue Badges, Right to Buy and other means tested care provision (which are the responsibility of the Investigation Team, Revenue & Benefits Service) and investigations into the misuse of Council paid time (e.g. inappropriate absence from work) which, along with non- resource based disciplinary matters, are the responsibility of Service management.

3.2 In order to test compliance by management in implementing agreed recommendations Internal Audit will follow up all cases where planned audit work identified that a system or process was considered to offer only limited assurance , or no assurance (see tables 6.3 and 6.4) and in a sample of other cases. In the case of investigations, or consultancy, any outcome which results in agreed recommendations for improvements to process will also be subject to further review

### **4 Audit Resources**

4.1 The Strategic Audit Plan includes a schedule of risks areas with an assessment of their nature and potential severity in terms of probability and impact.

4.2 At the start of each year, an annual plan will be prepared that looks at the degree of risk, based on the extent of assessed severity, and the date and findings of the previous work.

4.3 The Annual Plan needs to be interactively monitored against emerging risks, with the Plan being amended to reflect need, to ensure that resources are deployed on a priority basis.



- 4.4 The Head of Internal Audit will have the authority to change the plan to achieve this objective, and report back as a part of quarterly reporting of any significant changes made.
- 4.5 The Head of Internal Audit must monitor to ensure that there is sufficient resource to enable adequate coverage, and report at least annually on this.
- 4.5 The Annual Plan will include an allocation of days for each assignment (based on an expectation of an adequate arrangement)
- 4.6    In addition to the programmed audit work there needs to be time allowed
  - i) As a contingency for dealing with unexpected issues/delays in planned work.
  - ii) To allow for un-programmed work and investigations.

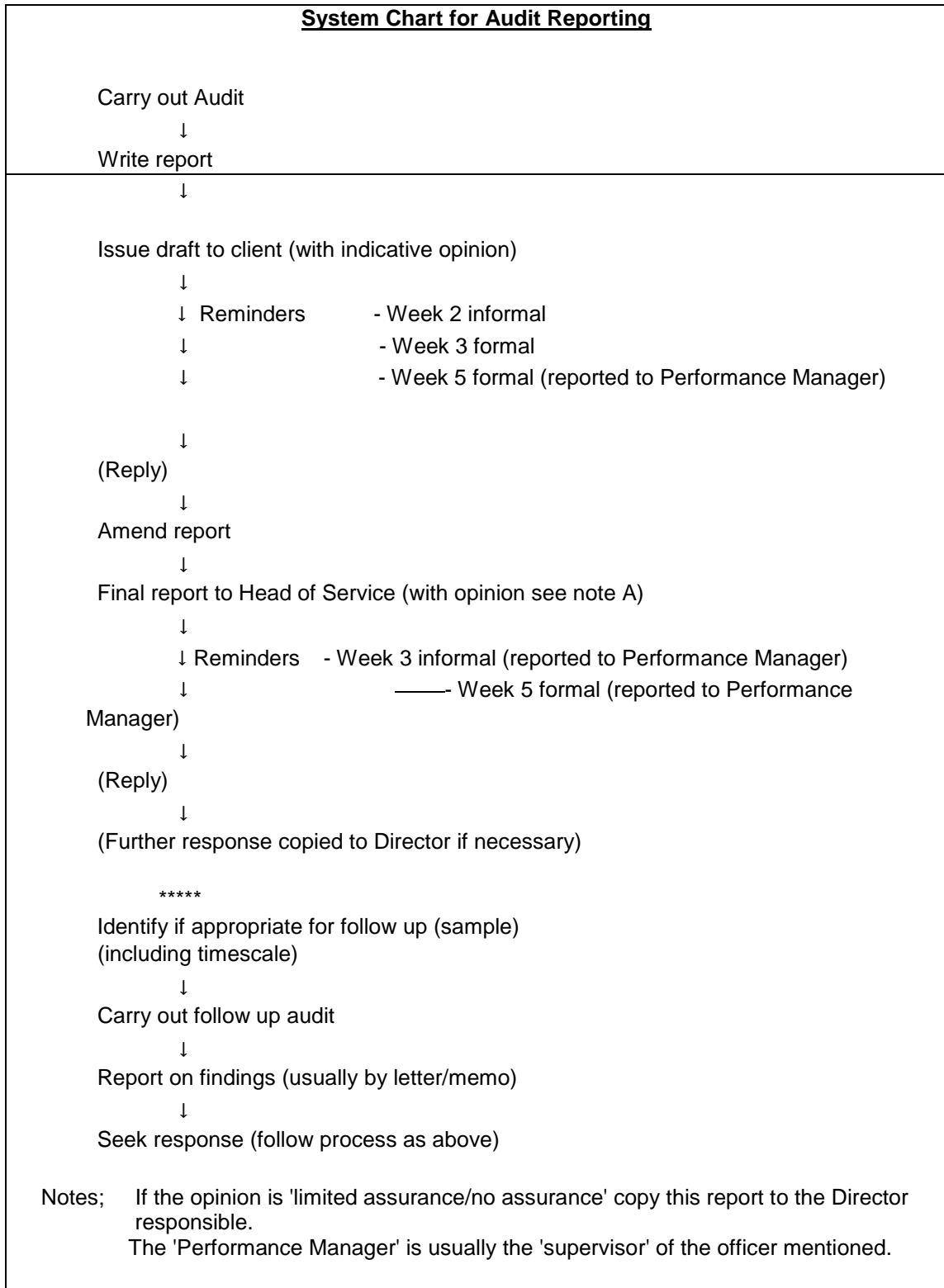
## 5 Audit Assignments

- 5.1 Each specific Internal Audit assignment will identify its objectives and a time allocation and be either:
  - (i) Subject to a routine audit programme developed in relation to the activity; or
  - (ii) Subject to a specific audit brief developed for the specific task and agreed with the client. (This can be either an infrequent piece of assurance work, or a unique piece of consultancy).
- 5.2 Prior to the commencement of routine audits, Internal Audit will usually inform the manager responsible for the Service area under review about the purpose, scope and expected timing of the work. However, for some types of audit, such as special investigations, advance warning of the audit visit may not be appropriate and this is at the discretion of the Head of Internal Audit.
- 5.3 Internal audit work will look to assess and provide information on the:
  - ~~i) Commissioning (Monitoring Officer) and for supervisory purposes to the Service Director, Legal Governance & Commissioning~~
  - ii) Soundness, adequacy and application of the financial and other management controls and systems within each Service;
  - iii) Extent of compliance with, and the financial effects of, established policies, plans and procedures;
  - iv) Extent to which the organisation's assets and interests are accounted for and safeguarded from losses of all kinds arising from fraud, other offences, waste, extravagance, and inefficient administration, poor value for money and other cause;

- ~~v)~~iv) \_\_\_\_\_ Suitability, accuracy and reliability of financial and other management data within the organisation; and (where applicable)
- ~~vi)~~v) \_\_\_\_\_ Value for money aspects of service provision

- 5.4 During the conduct of reviews, Internal Audit staff will consult, orally and/or in writing, with relevant officers to:
- i) Ensure information gathered is accurate and properly interpreted;
  - ii) Allow management to put their case to ensure that a balanced assessment is made;
  - iii) Keep management informed on the progress of the audit;
  - iv) Ensure recommendations are cost effective and practicable; and
  - v) Ensure that all recommendations agreed are followed up and that action has been taken leading to implementation.
- 5.5 Whatever the source of the evidence, Internal Audit must be satisfied as to its nature, reliability, completeness and relevance before drawing conclusions.
- 5.6 Internal Audit working papers will contain the principal evidence to support reports and they also provide the basis for review of work by documenting:-
- i) Planning;
  - ii) Examination and evaluation of the adequacy and effectiveness of internal controls;
  - iii) The audit procedures employed, the information obtained and the conclusions reached;
  - iv) The management review
  - v) The report; and (as applicable, if any)
  - vi) Follow up.
- 5.7. The Auditor and Audit Manager will use their best endeavours to deliver the completed assignment within the time allocated and the timescale determined. This may not be possible due to inability to access key staff, other programming difficulties, the state of the records and information presented.

## 6 Audit Reporting



### 6.1 Internal Audit Reports

In respect of each assignment Internal Audit will produce a written report. This will usually set out summary information about the objectives and the work performed, providing detail of any adverse findings on an "exception only

basis" setting out the extent to which operations fail to conform to the established standard , and other important matters identified, stating the conclusions reached and recommendations, with an Action Plan to address these recommendations.

Where a report is issued, generally this will initially be in the form of a draft report, issued to the auditee and line manager, for comment on factual accuracy and the potential practicality of draft recommendations. Services can indicate at this stage if they agree with the recommendations and how they intend to action them. This will be issued by email or as hard copy in accordance with the client's request.

In respect of investigative work, the draft report (when produced) will be discussed with the responsible Director (or nominee). For consultancy work, the draft will be discussed with the commissioning manager.

On occasions where there are no adverse findings or recommendations, a report may progress to final stage without a draft being necessary.

The final Internal Audit report will be issued to the Service Director (or where agreed, the Strategic Director). An accompanying letter or email will indicate the Internal Audit opinion on the state of the system / process at the time the audit was undertaken, (and if the report is to feature in detail in subsequent reporting, a summary text).

## 6.2 Management Response

A formal written reply is required. This should indicate specifically:

- i) That the recommendations are accepted and actions are to be taken, including timescale and the names of individual officers who are specifically responsible for their implementation.
- ii) That specific recommendations are not accepted. The reason should be provided, and any alternative actions should be listed.

A reply is not required where there are no recommendations, or when a detailed response was made at draft stage.

At this stage the matter will be considered to be finalised, except where the actions / inactions proposed under (ii) appear unjustified or unclear whereupon if the Head of Internal Audit believes the rejection or alternatives are unreasonable, further discussions will take place, and if necessary the matter will be reported to the relevant Strategic Director, or through the Internal Audit reporting process to the Corporate Governance & Audit Committee.

Management should respond to Internal Audit reports as quickly as possible, and within the following maximum timescales established in FPRs;

Draft Reports :	Within 2 weeks of issue
Final Reports :	Within 4 weeks of issue

Failure to adhere to the above timescales will be reported to Corporate Governance & Audit Committee on a quarterly basis.

### 6.3 Audit Opinion ~~(except Schools & Childrens' institutional operations)~~

The report will express an opinion on the level of assurance that is offered by the system/ process at the time the audit work was undertaken.

In respect of any audit work where the specific objective is to assess value for money, the opinion will reflect the assurance of the extent that current arrangements do or are likely to deliver value for money. Where value for money is one of a number of objectives, a separate opinion will be stated (on the grounds that a system may be highly effective in respect of the controls that it provides, but does not do so in a way that is efficient) ;

<b>Assurance level</b>	<b>Control Adequacy</b>	<b>Control Application</b>
Substantial Assurance	A robust framework of all key controls exist that are likely to ensure that objective will be achieved	Controls are applied continuously or with only minor lapses
Adequate Assurance	A sufficient framework of all key controls exist that are likely to result in objectives being achieved, but the overall control framework could be stronger	Controls are applied with but with some lapses
Limited Assurance	Risk exists of objectives not being achieved due to the absence of a number of key controls in the system	Significant breakdown in the application of a number of key or other controls
No Assurance	Significant risk exists of objectives not being achieved due to the absence of key controls in the system	Serious breakdown in the application of key controls

### 6.4 The assurance is calculated as follows;

<b>Assurance Level</b>	<b>Fundamental</b>	<b>Significant</b>	<b>Merits Attention</b>
	A recommendation, often requiring immediate action that is key to maintaining an appropriate control environment and thereby avoiding exposure to a significant risk to the achievement of the objectives of the system, process or location under review.	A recommendation requiring action that is necessary to improve the control environment and thereby avoid exposure to a risk to the achievement of the objectives of the system, process or location under review.	A recommendation where action is advised to enhance control or improve operational efficiency.

Substantial Assurance	There are no fundamental recommendations	There is no more than 1 significant recommendation	There are no more than 5 merits attention recommendations
Adequate Assurance	There are no fundamental recommendations	There are 2 to 4 significant recommendations	There are 6 to 10 merits attention recommendations
Limited Assurance	There are 1 or more fundamental recommendations	There are more than 4 significant recommendations	There are more than 10 merits attention recommendations
No Assurance	There number of fundamental recommendations made reflect an unacceptable control environment	Not applicable	Not applicable

Although the above is a general assessment model, there will be an element of discretion, as a single fundamental failing can, in certain circumstances, mean that an entire operation offers no assurance.

#### ~~6.5 — Audit Opinion: Schools & Childrens' institutional operations~~

~~To reflect the Council's Childrens' Service senior management belief that schools (and other Children's institutional operations) will understand better an assessment regime that follows the rating system used by Ofsted, the assessment rating for schools (etc) will be as shown below. This translates to the Council general assurance regime, shown in the second column, (and both use the assessment methodology shown in the table at 6.3 and 6.4 above)~~

<b>School assessment</b>	<b>Council assessment</b>
<del>Outstanding</del>	<del>Substantial assurance</del>
<del>Good</del>	<del>Adequate assurance</del>
<del>Requires Improvement</del>	<del>Limited assurance</del>
<del>Inadequate</del>	<del>No assurance</del>

#### 6.6 Prioritisation of Recommendations

Audit recommendations are allocated a priority rating to signify the risk, or level of internal control weaknesses, associated with the issue identified. The ratings used are:-

Priority Rating	Guidance
Fundamental	A recommendation, often requiring immediate action that is key to maintaining an appropriate control environment and thereby avoiding exposure to a significant risk to the achievement of the objectives of the system, process or location under review.
Significant	A recommendation requiring action that is necessary to improve the control environment and thereby avoid exposure to a risk to the achievement of the objectives of the system, process or location under review.
Merits Attention	A recommendation where action is advised to enhance control or improve operational efficiency.

## 6.7 Taking action on Audit Reports

The responsibility for implementation of audit recommendations - and the right to reject Internal Audit advice - lies with the Service Director.

Where audit work identifies that a system or process is unsatisfactory (or the management actions proposed to a system which is generally satisfactory are considered inappropriate) Internal Audit will advise the relevant Director.

## 6.8 Consolidating Information to form overall opinions and advice

In respect of key financial systems the overall opinion on the system will often be informed by a number of discrete pieces of work.

In addition Internal Audit will also analyse various discrete audit assignments to ascertain if information or advice of benefit to a wider audience of managers can be obtained and distributed.

## 6.9 Corporate Management Reporting

Internal Audit will produce

- i) A Quarterly Report on Internal Audit activity
- ii) An Annual Report on Internal Audit activity expressing an opinion on the integrity and appropriateness of all significant financial systems and business control systems.

The Quarterly Report will contain details of work which has been finalised and agreed in the period, including;

- i) Specific details of all investigations, special studies and reviews and non-standard work;
- ii) Summary information on systems and processes reviewed, and key reasons or findings when the system is considered to be providing only 'limited assurance' or 'no assurance';

- iii) Information about all follow up work; and
- iv) Information about any senior managers who have failed to comply with their obligations.

The report will indicate if;

- i) At the time of the audit, the system or process reviewed provided “substantial”, “adequate”, “limited” or “no” assurance
- ii) Management have not agreed the recommendations; and
- iii) In the case of follow up work if agreed recommendations have not been implemented.

The report will be presented to the Chief Executive and Strategic Directors and formally to the Corporate Governance & Audit Committee.

\_\_\_\_\_ The Annual Report will use information from the Quarterly Reports, and analyse this against systems and across Service areas to provide an opinion in respect of those systems and arrangements that have been subject to review during the year of;

- i) All major financial and business systems;
- ii) Other business control systems;
- iii) The overall quality of the operation of control systems in individual Service areas; and
- iv) An overall assessment of risk, and governance.

\_\_\_\_\_ The report will be presented to the Chief Executive and Strategic Directors and formally to the Corporate Governance & Audit Committee.

## **7. Management responsibilities**

- 7.1 It is the responsibility of operational managers, Heads of Service, Service Directors, Strategic Directors and Cabinet Members to implement and operate control systems which accord with statute, Council policy and organisation rules (e.g. Financial Procedure Rules).
- 7.2 They must ensure that appropriate records are kept and maintained as necessary to comply, and demonstrate compliance with their requirements, and ensure that staff employed are suitably skilled and trained.
- 7.3 Managers must ensure that appropriate access is granted for Internal Audit - to employees, premises, and records.
- 7.4 Accountability for the responses to the advice and recommendations of Internal Audit lies with management, who must either accept and implement the advice, offer an alternative action that addresses the deficiency identified (which is acceptable to Internal Audit), or formally reject it.



- 7.5 It is the responsibility of managers to establish systems and procedures to deter, prevent and detect fraud, corruption and bribery and suspected fraud, corruption and bribery.

## Appendix 5

### **The Public Sector Internal Audit Standard (PSIAS)**

The Public Sector Internal Audit Standards took effect from 1 April 2013, and apply to almost all public organisations in the UK. They are based on a development of international standards for internal auditing, largely developed by the Institute of Internal Auditors.

The document produced is mandatory guidance which states the fundamental requirements for the professional practice of internal auditing and for evaluating the effectiveness of Internal Audit's performance.

These standards in local authorities are supplemented by additional guidance from CIPFA that has regulatory authority for local government in the UK. This includes substantial checklists of process and procedure.

The Public Sector Internal Audit Standards uses a number of specific terms. These include terms which in the Council are considered to be as shown below in preparing this charter.

Term in the Public Sector Internal Audit Standards	Interpretation in this Charter Document
Chief Audit Executive	Head of Audit & Risk
Board	Corporate Governance & Audit Committee
Senior Management	Chief Executive and Strategic Directors

The Public Sector Internal Audit Standards document makes a number of statements as regards employment arrangements of the Chief Audit Executive. Whilst the UK standard and CIPFA identifies that some of the stated practices are not relevant to local government, these rules do look to transfer some employment related matters away from purely the executive arm of the organisation, by involving requirement of the Board.

### **Statement of the responsibilities of management**

1. It is the responsibility of management to establish sound and adequate operational systems and processes designed to achieve the organisation's objectives efficiently and effectively. It is their responsibility to organise operations efficiently in a way that achieves required outcomes, statutory compliance and adequate levels of internal control, including as appropriate matters such as the correct management of information. Senior managers must ensure that operational managers understand their role, operate systems as designed and intended, train staff appropriately in the required systems and procedures, and keep and retain adequate records. It is the responsibility of managers to establish systems and procedures to deter, prevent and detect fraud, corruption and bribery
2. In dealing with internal audit managers should ;
  - Arrange appointments for planned audit work promptly;
  - Respond diligently and promptly to any unplanned visit or request for information;
  - Have appropriate records and accesses available as necessary to assist the audit work;
  - Have the appropriate staff available to describe any system or arrangement, and answer questions or resolve queries as the audit work progresses;
  - Be available to discuss the conclusions of audit work and any recommendations;
  - Reply promptly to any draft audit report;
  - Reply promptly to any final audit report;
  - Complete any necessary action plan indicating agreement or otherwise;
  - Implement agreed actions.
3. In respect of assurance, consulting or other activity (such as investigations) it is the role of Internal Audit to assess and report independently on systems and process and the efficiency and effectiveness of an activity. Whilst management will be consulted, and their comments considered, and can seek to offer advice and opinion, the auditor is responsible for production of the report based on the evidence that they have available. Managers are not required to agree with the conclusions reached.
4. Managers are not required to implement audit recommendations. Where they believe that a recommendation is inappropriate they should say why. Where they would prefer an alternative action, they should propose this.
5. Although internal auditors will always attempt to be helpful, their role is to provide assurance and specific consulting, and it is not their prime role to

offer advisory services, although they can often be a useful final arbiter if there is a lack of clarity about appropriateness of a procedure, or interpretation of a rule or requirement.

6. The chief executive, chief financial officer (s 151 officer) and monitoring officer are ultimately responsible for the implementation of matters as required by their statutory responsibilities.

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**Name of meeting: Corporate Governance & Audit Committee**  
**Date: 26th April 2019**

**Title of report: Draft Annual Governance Statement 2018/19**

**Purpose of report: To provide the Committee with details of the latest version of the Statement for information and comment prior to formal approval in conjunction with the Annual Accounts in July.**

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)?</a>	Not applicable
The Decision - Is it eligible for "call in" by Scrutiny?	Not applicable
Date signed off by Director & name Is it also signed off by the Service Director for Finance?	Yes
Is it also signed off by the Service Director for Legal, Governance & Commissioning?	Yes
Cabinet member portfolio	Cllr Shabir Pandor

**Electoral wards affected: All**  
**Ward councillors consulted: Not applicable**  
**Have you considered GDPR; Yes**  
**Public**

## 1. Summary

- 1.1 The Committee is asked to note the latest version of the Draft 2018/19 Annual Governance Statement prior to it being signed off by the Chief Executive and Leader of the Council, in particular to consider whether or not the issues raised reflect the state of the governance and control framework during 2018/19. As the Statement covers the period up until the point at which the Annual Statement of Accounts is approved, at the July meeting of the Committee for 2018/19, there may be a need for revisions to be made in the text to reflect timing changes as well as anything material in the intervening period.
- 1.2 The Statement is a statutory requirement and accompanies the Statement of Accounts in order to provide readers with assurance about the governance and internal control environment in which they have been compiled and to which they relate.
- 1.3 The draft Statement has been compiled following the annual review of the effectiveness of the overall internal control and governance arrangements and

draws on a number of forms of assurance which have been presented to various parts of the Council during the year, including many to this Committee (e.g. annual activity reports), being principally the Annual Report of Internal Audit, reports by the external auditor, Monitoring Officer and from the performance management framework.

- 1.4 The draft Statement highlights a number of what are termed 'Significant Governance Issues', twelve of which are ongoing ones brought forward from the 2017/18 Statement, in the main reflecting the wide ranging nature of the Issues and action required. Five new issues have been identified too. ET are of the view that this collection of Issues is an appropriate balance of self-awareness and prioritisation focus on matters to be addressed within the context of forthcoming corporate peer review.
- 1.5 The actions and controls the Council is taking to address the issues brought forward from last year are contained within an Action Plan that ET and the Committee have received quarterly updates during the year in the Reports from the Head of Audit & Risk and those pertaining to the new issues will be added to this Plan for the coming year to enable progress to be monitored.

## **2. Information required to take a decision**

- 2.1 The detail is contained within the draft Statement.

## **3. Implications for the Council**

- 3.1 **Working with People** – None directly
- 3.2 **Working with Partners** – None directly
- 3.3 **Place Based Working** – None directly
- 3.4 **Improving outcomes for children**– None directly
- 3.5 **Other (e.g. Legal/Financial or Human Resources)** - Although each of the sub categorisations above suggest no direct implications, the review of the effectiveness of the internal control and governance arrangements covers all aspects of the Council's operations, including elements of the above, either specifically, indirectly or on a commissioned basis.

## **4. Consultees and their opinions**

- 4.1 The Chief Executive, Strategic Directors, Service Director Legal, Governance & Commissioning, Service Director Finance, Head of (Audit &) Risk have commented on the draft Statement.

## **5. Next steps & Timelines**

- 5.1 A finalised version of the Statement will be considered by the Committee ahead of the approval of the Annual Accounts at the July meeting. The Action Plan will be revised and updated to enable the Committee to monitor progress in responding to the Significant Issues identified.
- 5.2 Communications will assist in the formatting of the final version.

**6. Officer recommendations and reasons**

Members are asked to note and comment on the draft Statement.

**7. Cabinet portfolio holder recommendation**

Not applicable.

**8. Contact officer**

Simon Straker, Audit Manager 01484 221000 (73726)

**9. Background Papers and History of Decisions**

The Draft 2018/19 Statement is attached.  
2017/18 Statement 2017/18 & Action Plan 2018/19 (included in the Quarterly Reports of Internal Audit).

**10. Service Director responsible**

Chief Executive.

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# Kirklees Council

## Draft Annual Governance Statement 2018/19



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We're  
**Kirklees**

## Overall Conclusion & Opinion

We have been advised on the implications of the annual review of effectiveness of the governance framework by the Corporate Governance and Audit Committee, and are satisfied that overall the arrangements continue to be regarded as fit for purpose in accordance with our governance framework and Code of Corporate Governance.

We propose over the coming year to take steps to address the issues needed to further enhance our governance arrangements as contained in the Action Plan overleaf. We are satisfied that these steps will address the need for improvements that were identified in our review and will monitor their implementation and operation during 2019/20 in conjunction with the Corporate Governance & Audit Committee ahead of next year's review.

Signed:

Cllr. Shabir Pandor, Leader of the Council



Jacqui Gedman, Chief Executive



## Significant Governance Issues

The annual review process identifies and evaluates any ongoing or new Issue and if it meets one or more of the following criteria suggested by CIPFA / SOLACE it is regarded as Significant and included in this Statement:

- it undermines / threatens the achievement of organisational objectives (A)
- it is a significant failure to meet the principles (and sub-principles) of good Governance (B)
- it is an area of significant concern to an inspector, external audit or regulator (C)
- the head of internal audit, one of the statutory officers or the corporate governance & audit committee has recommended it be included (D)
- it is an issue of public or stakeholder concern (E)
- it is an issue that cuts across the organisation and requires cooperation to address it (F)

## Progress with the Issues in last year's Statement

The Executive Team and the Corporate Governance & Audit Committee have received reports to monitor progress during 2018/19. Various parts of each Issue have been resolved during the year and where appropriate this has been reflected in what remains ongoing.

Original Issue / Inclusion Criteria	Progress	Further Action
Strengthen the Corporate Plan with improved linkages to resource allocation and performance measures.  (A, B, F)	<p>A new strengthened Corporate Plan has been produced for 2018-20 which explains the journey from <i>New Council</i> to <i>We're Kirklees</i>, focussed on the whole Borough and seven shared outcomes for residents.</p> <p>3 key principles underpin this</p> <ul style="list-style-type: none"> <li>• Working with our partners</li> <li>• Working with (and not doing to) residents</li> <li>• Working better in places</li> </ul> <p>A shift to longer term strategic planning made in 2018/19 means only relatively minor changes will be made to the Corporate Plan for 2019/20.</p> <p>Reviewing budget setting arrangements for 2019/20 and beyond regarding outcome based budgeting is acknowledged to be a</p>	<p>To develop a more robust, intelligence led performance management mechanism across the organisation aligned with the annual planning cycle to drive resource allocation decisions that are better aligned to priority outcomes and to monitor their delivery.</p> <p>The performance management system needs embedding for both business critical indicators and other service measures used, including the development of more relevant qualitative indicators alongside quantitative ones to better measure outcomes and impacts.</p>

Original Issue / Inclusion Criteria	Progress	Further Action
	<p>work in progress as regards the most recent budget round.</p> <p>A revised quarterly performance monitoring system has been introduced.</p>	
<p>Manage delivery of the Council's Transformation Activities.</p> <p>(A, F)</p>	<p>Dedicated council resources were allocated to add quality, assurance and organisation. The input of an external partner added skills and further rigour.</p> <p>An assessment of the impact of transformation activities in the summer of 2018 also illustrated a number of areas for learning and potential re-focus.</p> <p>The Transformation Team clarified and enhanced its offer to respond to changing demands for a mix of robust project management, innovative business change skills and the ability to challenge and offer new insights.</p> <p>The Council achieved its 2018/19 savings targets, including those associated with the majority of the transformation efforts.</p> <p>Transformation is now focused on the ongoing development and sustainability of public services, which means continuing change and innovation. It is less driven by the large savings targets that will come through services and overall budget monitoring.</p>	<p>Focus on the following areas of priority for allocation of transformation resources:</p> <ol style="list-style-type: none"> <li>1. Organisation Design - Work has started to consider the future shape of the organisation.</li> <li>2. Development of Place-based working - Working with communities and delivering services that recognise the diversity of the different places across Kirklees and their needs.</li> <li>3. Strengthening enabling services.</li> <li>4. High Needs, Placements &amp; Waste - Existing areas of work within services, where Executive Team has identified that a broader approach may be beneficial, hence the input of transformation resources.</li> <li>5. Adult Social Care, Children's Improvement - These are moving beyond transformation into a 'business as usual' state. Transformation resources are being gradually withdrawn as change is embedded into working practice.</li> </ol>
<p>Strengthen Partnership Governance</p> <p>(A, B, F)</p>	<p>The light touch governance review has been completed and is leading to more solid governance structures for the Partnership Executive: a revised executive arrangement is in place with themed meetings throughout the year that draw the partner together on a topic basis.</p>	<p>New governance control and management arrangements have been implemented at KNH. These interim changes need to be embedded effectively and will be reviewed in 12-18 months.</p>

Original Issue / Inclusion Criteria	Progress	Further Action
	<p>Revised governance framework and Partnership agreement with KNH.</p> <p>The Children's Partnership Board arrangements have re-launched recently.</p> <p>Recruited and realigned resources to support partnership working.</p>	<p>There is still scope to increase the effectiveness of some partnership arrangements.</p> <p>Arrangements for the Health &amp; Wellbeing Board are being refreshed with engagement including other local authorities.</p>
<p>Strengthen Risk Management</p> <p>(A, B, D, F)</p>	<p>New Strategy &amp; Risk Panel established.</p> <p>The Corporate Matrix has been regularly updated along with an emerging risk report, and this has been discussed by the Executive Team and Leadership Management Team. The CGAC has commented positively on the Corporate Matrix but expressed concerns about the quality and consistency of the directorate based risk management processes.</p>	<p>This still needs more work, as the quality of directorate based risk arrangements requires improvement, as does risk elevation.</p>
<p>Implement &amp; embed the Children Improvement Plan.</p> <p>(A, C, E)</p>	<p>The new Strategic Director has taken up her role, and following a positive Ofsted outcome the Department for Education have indicated a willingness for the Director to take statutory control, currently held by officers of Leeds CC. Consistency of leadership is very important and there will be a significant handover period with current temporary leaders through the next phase of the improvement plan.</p> <p>Ofsted's latest monitoring visit in December 2018 found significant progress has been made in improving its initial response to children and young people who need help and protection. Improvement is gathering pace and there is now increasing focus on quality as well as ensuring that</p>	<p>Ensure that consistency and quality improves in relation to a timely initial response to cases where children need a social work assessment, and in relation to ensuring that children's records are comprehensive and up to date.</p> <p>A comprehensive core skills programme of training for social workers and managers has commenced in order to support good-quality improvements across the workforce.</p>

Original Issue / Inclusion Criteria	Progress	Further Action
	statutory compliance is met.	
<p>Meeting the challenge of delivering the Council's Medium Term Financial Plan within available resources.</p> <p>(A, D, F)</p>	<p>General fund revenue budget £191m. On track to deliver 77% against planned savings (£12.4m from £16.2m planned). Demand led forecast volatility accurately forecast through the year. Overall forecast overspend at Q3 of just £1.1m (0.4%) but expected to break-even by year end.</p> <p>HRA on track to deliver £2.8m planned savings in-year.</p>	<p>General fund planned savings £10.9m, and HRA planned savings £2.4m in 2019/20.</p> <p>Continuous improvement in the quality and timeliness of financial monitoring information presented at operational management and corporate member levels across the organisation.</p> <p>Ongoing development of more sophisticated modelling and impact analysis across a range of complex demand management activity.</p> <p>Review and strengthening of overall Council capital project management and governance oversight, monitoring and review to ensure it remains fit for purpose in light of the significant scaling up of Council capital investment and other major projects over the medium term, from current.</p>
<p>Improve Information Governance to manage GDPR compliance and Cyber Security.</p> <p>(All)</p>	<p>Work is ongoing with the aim of Data Protection Act 2018 / GDPR compliance by May 2019.</p> <p>Cyber Security Strategy approved.</p> <p>Lead councillor briefed and engaged.</p> <p>Tactical investments have been made around perimeter security and cyber training.</p>	<p>Undertake a second round of Service Director self-assessments to assess progress corporately and identify any Services requiring further support and training from the IG Team.</p> <p>An ongoing programme of work is being pulled together for briefing at IG Board and update for ET.</p>
<p>Improve effectiveness and challenge in governance</p>	<p>CGAC training delivered (Chair in role of audit committee, and all Members in treasury management and effectiveness of audit</p>	<p>Local Government Association Peer Review in July will review our arrangements and provide a challenge to their robustness.</p>

Original Issue / Inclusion Criteria	Progress	Further Action
<p>arrangements.</p> <p>(B)</p>	<p>committee challenge).</p> <p>Corporate Scrutiny Panel member training on the Council's finances.</p> <p>Work on progressing the work streams arising from the Democracy Commission recommendations is continuing at pace, including:</p> <ul style="list-style-type: none"> <li>• The changing role of the councillor and how it is supported,</li> <li>• Putting councillors at the heart of the organisation;</li> <li>• Citizen engagement in the context of place based working,</li> <li>• Networked councillors,</li> <li>• decision making processes, practice and culture and</li> <li>• Improving electoral registration.</li> </ul> <p>This does not currently include a programmed approach to Member Training over and above new councillor induction, core training and specific requests from political groups.</p> <p>A robust governance structure is in place which sees the cross party Member Working Group meeting regularly to oversee the work, supported by an officer Programme Board and a Theme Leads Working Group.</p>	<p>Review the Code of Corporate Governance.</p> <p>Planned externally facilitated Scrutiny Panel training on commercialisation approaches, and refresher training to CGAC on financial statements, treasury management and other training needs as identified by the Committee.</p> <p>Steps / actions from Democracy Commission</p>
<p>Ensure Procurement Rule Awareness and Compliance</p>	<p>Centralised function now almost fully resourced.</p> <p>Training and awareness raising of CPRs continued to be delivered</p>	<p>Work continues on increasing the transparency and visibility of the Council's contracts.</p> <p>Progress continues with the implementation of the new</p>

Original Issue / Inclusion Criteria	Progress	Further Action
(B, F)	<p>throughout the year.</p> <p>All EU procurement evaluations are chaired / overseen by Procurement staff to mitigate risk.</p>	<p>procurement model which continues to highlight compliance and value for money challenges (with plans being put in place to improve this within the categories of spend).</p>
<p>Improve manager capacity and skill base.</p> <p>(A, F)</p>	<p>Work continues on the 3 key strands of the People Strategy (Attraction, Development and Wellbeing). A specific focus is on the 'Development' strand which addresses cultural transformation, developing our workforce, leadership and management and performance. Key activities to date include</p> <ul style="list-style-type: none"> <li>• delivering workshops on promoting emotional intelligence, and</li> <li>• the design of a performance framework based around outcomes based accountability.</li> <li>• a cohort of existing employees that are being developed in a "grown our own" Aspiring Managers programme.</li> </ul>	<p>Complete implementation of the People Strategy and embed across the manager base.</p>
<p>Improve Income Collection</p> <p>(D)</p>	<p>Staff recruitment completed to address historic debt.</p> <p>The need for a more formalised and structured approach and greater Service Director ownership has been identified.</p> <p>Initial analysis of debt created and recovered has identified some key areas to revise process and introduce electronic payment at the point of order as the norm.</p>	<p>Pursue all debt wherever possible, or cancel or write-off if not, in accordance with existing procedures.</p> <p>Revise Financial Procedure Rules to clarify responsibilities and strengthen overall control.</p> <p>Target key areas for improved income collection procedures with regard to commercial activity.</p>



Original Issue / Inclusion Criteria	Progress	Further Action
Some key Medium Term Risks require Decisions in the Short Term, such as Waste Strategy & Management.  (A)	ET has discussed a number of matters contained within the corporate matrix and emerging risk matrix. Management actions are already underway where appropriate, although they are interlinked, in some cases towards wider decisions about policy and strategy (e.g. waste management contract and waste strategy).	Continue to monitor medium term risks and ensure an effective combination of pace and thorough consideration of those with significant long term impact, of which the Waste Strategy, and the renewal on waste disposal arrangements (2023-2028) is one of the most significant.

## New Issues identified in the 2018/19 Review

The current review of governance effectiveness has identified these additional issues:

Issue / Inclusion Criteria	Review Source	Managed Action
Compliance with new Local Government Ethical Standards.  (B, C)	CGAC / Standards Committee	Proposal for addressing best practice advocated by the Committee for Standards in Public Life has been approved by the Standards Committee and changes to some practice and some amendments to strengthen the Code of Conduct in Kirklees will be considered by CGAC and Annual Council. If adopted, further work will keep this under review and monitor compliance.
Governance arrangements need developing to identify and manage circumstances when previous service delivery did not conform with current day expectations and practice, one particular example being historic child sexual exploitation.  To learn from the lessons arising and make sure the issues	Various	Develop a corporate approach that satisfies initial management of such issues and enables organisational reflection and learning.

are addressed.		
Corporate health and safety assurance needs developing. (D)	ARIA / Risk Management	Additional resources have been provided to the Corporate Health & Safety function to enable more frequent and thorough assurance based inspections and advice and support.
School Governance arrangements need review and development (D, E)	ARIA / Whistleblowing	Look to understand what is causing a (historically) large number of complaints about governance and management in schools, and look to identify potential solutions.
SAP Security and User Access Controls need strengthening. (C, D)	External auditor / Annual Report of Internal Audit (ARIA)	While there has been some progress to date from previous recommendations from KPMG, Grant Thornton, the current external auditor's SAP controls review has identified a number of outstanding SAP access control issues that IT, in conjunction with HD-One, have determined to prioritise and resolve by the completion of this year's audit.

A detailed Action Plan sits behind this summary and the Executive Team and Corporate Governance & Audit Committee will monitor progress quarterly.

## Statement Scope

Kirklees Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded, properly accounted for and used economically, efficiently and effectively. The Council also has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised.

Kirklees Council has a Code of Corporate Governance, which is consistent with the principles of the CIPFA / SOLACE framework *Delivering Good Governance in Local Government 2016*. A copy of the Code is available from the Monitoring Officer.

<https://democracy.kirklees.gov.uk/documents/s20587/Item%208D.%20Draft%20Amended%20Code%20of%20Corp%20Governance%2017%20Nov%2017.pdf>

This Statement explains how the Council has complied with the Code during 2018/19 and up to the date that the Statement of Accounts was approved and thus meets the requirements of Accounts and Audit Regulations 2015. It provides assurance about the Council's governance framework, including the other entities in the Group Accounts, a wholly owned subsidiary, Kirklees Neighbourhood Housing Limited and a joint venture, Kirklees Stadium Development

Limited, to enable readers of the consolidated Accounts to be satisfied that proper arrangements are in place to govern spending and safeguard assets. Where specific improvements and/ actions are ongoing or needed, brief information is provided about the key issues and the main areas of work that have been progressed during 2018/19. A more detailed Action Plan is provided at the end.

## The purpose of the governance framework

Corporate governance is a phrase used to describe how organisations direct and control what they do. For local authorities this also includes how a Council relates to the communities that it serves. The governance framework comprises the systems and processes, culture and values by which the Council is directed and controlled and its' activities through which it accounts to, engages with and leads its communities. It enables the Council to monitor the achievement of its' strategic objectives as set out in the Corporate Plan and to consider whether those objectives have led to the delivery of appropriate services and value for money.

The system of internal control is a significant part of that framework and is designed to manage risk to a reasonable level. It cannot eliminate all risk of failure to achieve policies, aims and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness.

## The key parts of the governance framework

- a Code of Corporate Governance overseen by the Service Director Legal, Governance & Commissioning and the Corporate Governance and Audit Committee, to assess operational practice and behaviour, and prepare this Statement.
- a Leader and Cabinet model of governance.
- a governance and scrutiny process as set out in the Constitution
- statutory officer roles performed by the Chief Executive as Head of Paid Service, the Service Director Legal, Governance & Commissioning as Monitoring Officer and the Service Director Finance as Section 151 Officer. During the year the Acting S151 Officer became substantive. The S151 Officer is a professionally qualified accountant and reports directly on financial matters to the Chief Executive as a member of the Executive Team (ET).
- a Corporate Plan that outlines how officers will seek to run the Council to meet our community commitments and objectives  
<https://www.kirklees.gov.uk/beta/delivering-services/pdf/corporate-plan-201820.pdf>
- oversight and delivery of the Council Transformation Programme, including a number of officer boards as described in the Constitution
- a Monitoring Officer who has responsibility for the Constitution and ensuring the legality of Council actions and decision making.
- a S151 Officer who has responsibility for ensuring that the financial management arrangements conform with all of the governance requirements of the five principles that define the core activities and behaviours that belong to the role in the *CIPFA Statement on The Role of the Chief Financial Officer in Local Government (2010)*.
- codes of conduct defining the standards of behaviour for Members and employees
- an Anti-Fraud & Corruption Policy
- a Risk Management Strategy

- systems of financial and business internal control
- an internal audit section, that is compliant with the Public Sector Internal Audit Standards and Code of Ethics
- whistle blowing arrangements
- a complaints system for residents and service users
- business continuity arrangements
- a senior manager to act as the Caldicott Guardian to protect the confidentiality of patient and service-user information
- arrangements to manage other parts of the Council's Group. The S151 Officer monitors and reports on the financial effectiveness of the subsidiary and joint venture companies, whose accounts are subject to external audit.

During the year the governance arrangements of Kirklees Neighbourhood Housing (KNH) Limited were revised. The Board was strengthened to oversee housing operations and to act as a single purpose vehicle to deliver the housing management and maintenance service. Housing Policy and Strategy, housing/asset investment and HRA business planning matters will be determined by the Council, Cabinet or Council officers with advice from KNH officers. The Council will establish a specific Housing Strategy Steering Group with cross-party representation to work with the KNH Board and help guide Cabinet decisions. This group will be supported by the Tenant Panel to ensure the tenants' voice is central to decision making.

## 2018/19 Review of effectiveness

Kirklees Council has a legal responsibility for conducting, at least annually, a review of the effectiveness of its governance framework. The review is informed by the work of the executive managers, the Head of Audit & Risk's annual report, the external auditor and other review agencies and inspectorates and Member Committees. The Council has four bodies / committees jointly responsible for monitoring and reviewing governance. These are:

- the Executive (Cabinet);
- the Corporate Governance & Audit Committee;
- the Overview & Scrutiny Committee; and
- the Standards Committee.

The main parts of the review process are as follows:

1. Annual Review of effectiveness of the system of internal control  
In accordance with the requirements of the Accounts and Audit Regulations 2015 and Public Sector Internal Audit Standards (PSIAS) the CGAC approved the annual review of the effectiveness of its system of internal control and internal audit. The Head of Audit & Risk's self-assessment of current compliance with the Public Sector Internal Audit Standards & Code of Ethics and revised CIPFA Local Government Application Note 2019, concluded that overall Internal Audit does conform to these Standards and an Action Plan has been agreed to further improve compliance and progress with this which will be monitored by the Corporate Governance & Audit Committee.
2. Head of Audit and Risk's Annual Assurance Opinion

Based on the programme of planned Internal Audit work and other than in respect of a small number of significant control issues that have arisen during the year, the Head of

Audit and Risk has provided assurance that overall the Council's systems of governance, risk management and internal control are generally sound and operate reasonably consistently across Services.

Concern was expressed about the following key areas about which Limited Assurance opinions were produced and which may warrant Significant Governance Issue status:

New Areas

- SAP Security and User Access Controls
- Corporate Health & Safety Assurance / Bereavement Services – cemetery safety (coupled with tree safety from risk management)

Areas with an Action Plan from 2017/18 Statement

- Child Support & Family Protection Safeguarding
- Performance Indicators
- Risk Management

A common theme behind a number of these opinions was a reduction of control due to resource issues as part of austerity downsizing.

3. External Auditor's Review

During the year the External Auditor's Annual Report

- an unqualified opinion on the Council's 2017/18 financial statements; and
- an unqualified value for money conclusion, except for Children's Services, stating that we have made proper arrangements to secure economy, efficiency and effectiveness in our use of resources.

4. Corporate Governance & Audit Committee (CGAC)

The Committee's terms of reference include agreeing and updating regularly the Council's Code of Corporate Governance, monitoring its operation and compliance with it.

During 2018/19 the CGAC reviewed a number of aspects of the Council's governance arrangements and noted or approved revisions or made recommendations to Council as appropriate. CGAC also receives assurance from various annual reports such as health and safety, emergency planning and business continuity, information governance and customer corporate complaints and is informed of peer review activity.

Recognising the need to ensure that members of the Committee have the appropriate support and skills to carry out their role a series of short training sessions were provided through the year looking at Treasury management, the role and expectations of Governance and Audit Committee as well as interpreting financial accounts. The sessions were also offered to other members with an interest in the topics.

5. Overview & Scrutiny Committee

During 2018/19 the Committee reviewed a number of aspects of the Council's governance arrangements.

## 6. Standards Committee

During the year the Committee reviewed various aspects of Member conduct, support and training, the appointment of an Independent Person for the Council and consultation by the Committee on Standards in Public Life to inform review of Local Government Ethical Standards.

## 7. Role of the Chief Financial Officer

The role of the Chief Financial Officer (CFO) continues to reflect the governance arrangements set out in the CIPFA Statement, which are required to ensure the CFO is able to operate effectively and perform their core duties as part of the review of the Constitution. The Council's financial management arrangements continue to fully conform to those set out in the Statement.

## 8. External Inspections & Peer Reviews

The outcomes of each formal inspection and commissioned peer or external review provide assurance about things which are working well and areas requiring further improvement. Activity during 2018/19 is summarised below:

### Inspections

#### Ofsted – Children's Services

A series of monitoring visits has been undertaken this year, the latest being early December 2018, following which HM Inspectors concluded that the Council has made significant progress in improving its initial response to children and young people who need help and protection. Improvement is gathering pace and there is now increasing focus on quality as well as ensuring that statutory compliance is met.

#### Office of Surveillance Commissioners

The Regulation of Investigatory Powers Policy was revised and other key actions agreed.

### Peer & Other External Review Activity has included:

- Adult Safeguarding Board Peer Challenge
- Assistive Technology External Review
- Public Health Sector Led Improvement Peer Review (of health protection, wellness model and whole systems approach to health improvement).
- Children Leaving Care External Review
- Members' Allowances Independent Review Panel

## 9. Officer Governance

Officer Boards as prescribed in the Constitution have continued to drive forward the Transformation Programme within the context of the Medium Term Financial Plan with strategic oversight from the Executive Team and escalation of appropriate issues. These arrangements are subject to both Cabinet and Scrutiny oversight.

## 10 Significant Partnerships

Partnerships range from joint venture partnerships, thematic partnerships and their subsidiaries to key contractual agreements managing substantial amounts of public money. The main contact officer for each Partnership is responsible for assessment of the governance arrangements and providing details of any significant changes to the membership and circumstances of the partnership. This information is used by senior officers of the Council to assess the potential risk that the partnership presents to the reputation or financial standing of the Council. The Council is working on a number of areas where arrangements need to be revised to strengthen and embed the governance framework.

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**Name of meeting:** CORPORATE GOVERNANCE & AUDIT COMMITTEE

**Date:** 26<sup>TH</sup> APRIL 2019

**Title of report:** QUARTERLY REPORT OF INTERNAL AUDIT Q4 2018/19  
 JANUARY 2019- MARCH 2019

**Purpose of report;** To provide information about internal audit work in quarter 4 of 2018/19

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	not applicable
The Decision - Is it eligible for call in by Scrutiny?	not applicable
Date signed off by Strategic Director & name  Is it also signed off by the Service Director for Finance IT and Transactional Services?  Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	not applicable
Cabinet member portfolio	not applicable

**Electoral wards affected:** All

**Ward councillors consulted:** None

**Public or private:** Public with a private appendix

The appendix to this report is recommended for consideration in private because the information contained in it is exempt information within part 1 of Schedule 12A of the Local Government Act 1972 namely that the report contains information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption outweighs the public interest in disclosing the information and providing greater openness in the Council's decision making.

**Have you considered GDPR?** Yes

## 1. Summary

- 1.1 This report sets out the activities of Internal Audit in the final quarter of 2018/19. This report contains information about 2 investigations, 16 formal opinion based pieces of work and 8 other projects or tasks .No new work was completed for the Housing Revenue Account (HRA) and Kirklees Neighbourhood Housing in this period.
- 1.2 There were 2 investigations into the management of (disabled parking) Blue Badges, and regarding gritting route completion. Of the 16 reports that include assurance levels, 8 of the schools offered substantial assurance. There was one school with "no

- 1.3 assurance” where there are substantial concerns about the recording and reporting of transactions. Work is progressing to improve this situation. Other work was about Adult Safeguarding, Council Tax Support, Public ICT, Homelessness and Building Control.
- 1.4 There were 2 follow ups. Significant improvements had been made in relation to client property (adult care), but the actions accepted previously in relation to bereavements services had still not been implemented (limited assurance), with a retimed action plan now agreed.
- 1.5 Overall, 81% of council work in the period attracted a positive outcome- similar to quarter 3, based again on quite a small sample. The cumulative positive outcome for the year is 78%- slightly below the target of 80%.(last year outturn 78%).
- 1.6 Internal Audit time was also spent on assessing Anti Money Laundering and similar arrangements, SAP Debtors and income, along with continuing work in relation to the National Fraud initiative and GDPR compliance.
- 1.7 Internal Audit resourcing continues to be challenged, due to staff turnover, ongoing investigations, which does mean that overall coverage of operational assurance audits on financial and business systems is quite limited. There are 7 pieces of (Council and KNH) work in progress at the year end.
- 1.8 This report includes a summary of progress against the actions contained as a consequence of the 2017/18 Annual Governance Statement(AGS), although there have been limited progress from that reported previously in some areas. The draft proposed 2018/19 AGS is the subject of another report on this agenda.
- 1.9 This Committee has now taken full responsibility for the oversight of activity within Kirklees Neighbourhood Housing Ltd following the restructuring agreed at the beginning of this calendar year.
- 1.10 It was agreed at March 2018 Council that this committee consider any surveillance activities under the Regulation of Investigatory Powers Act 2000. (Annex 1). There are none this quarter. Some training was provided on RIPA related matters to a number of senior managers.

## 2. Information required to take a decision

- 2.1 The detail is contained within the private Appendix.

## 3. Implications for the Council

- 3.1 **Working with People** – None directly
- 3.2 **Working with Partners** – None directly
- 3.3 **Place Based Working** – None directly
- 3.4 **Improving outcomes for children**– None directly
- 3.5 **Other (eg Legal/Financial or Human Resources)**- Although each of the sub categorisations above suggest no direct implications, the work of internal audit covers all aspects of the councils operations, including elements of the above, either specifically, indirectly or on a commissioned basis. The main issues relate to those areas highlighted above- where there are risks associated with basic processing arrangements, and delivering sound governance and control.

## 4. Consultees and their opinions

There are no consultees to this report although heads of service/directors are involved in and respond to on individual pieces of work

## 5. Next steps and timelines

5.1 To consider if any additional activity is sought.(Limited assurance audit outcomes are routinely followed up).

6. **Officer recommendations and reasons**

6.1 Members are asked to note the Internal Audit Quarterly Report and determine if any further action is sought on any matter identified.

6.2 Members are also asked to note that there has been no Regulation of Investigatory Powers Act activity during the period quarter 4 2018/19.

7. **Cabinet portfolio holder's recommendations**

Not applicable

8. **Contact officer**

Martin Dearnley, Head of Risk & Internal Audit (01484 221133 x73672)

9. **Background Papers and History of Decisions**

Previous Quarterly reports, Audit Plan and confidential appendix

10. **Service Director responsible**

Not applicable

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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