

# Public Document Pack



**Service Director – Legal, Governance and  
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Thursday 4 May 2023

## Notice of Meeting

Dear Member

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

The **Corporate Governance and Audit Committee** will meet in the **Meeting Room 3 - Town Hall, Huddersfield** at **10.00 am** on **Friday 12 May 2023**.

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', on a light-colored background.

**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 Yusra Hussain (Chair)  
Councillor Ammar Anwar  
Councillor Kath Pinnock  
Councillor Harry McCarthy  
Councillor Elizabeth Reynolds  
Councillor Joshua Sheard  
Councillor John Taylor

When a Member of the Corporate Governance and Audit Committee cannot attend the meeting, a member of the Substitutes Panel (below) may attend in their place in accordance with the provision of Council Procedure Rule 35(7).

### **Substitutes Panel**

#### **Conservative**

B Armer  
A Gregg  
D Hall  
V Lees-Hamilton  
R Smith  
M Thompson

#### **Green**

K Allison  
S Lee-Richards

#### **Independent**

C Greaves  
A Lukic

#### **Labour**

S Hall  
M Kaushik  
M Sokhal E Firth  
T Hawkins

#### **Liberal Democrat**

A Munro  
PA Davies  
J Lawson  
A Marchington  
A Pinnock

### **Ex Officio Members**

Councillor Paul Davies - Cabinet Member, Corporate  
Councillor Elizabeth Smaje - Chair of Overview and Scrutiny Committee  
Councillor Jo Lawson – Chair of Standards Committee

# Agenda

## Reports or Explanatory Notes Attached

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**Pages**

**1: Membership of the Committee**

To receive any apologies for absence, or details of substitutions to the Committee membership.

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**2: Minutes of Previous Meeting**

1 - 4

To approve the Minutes of the meeting of the Committee held on 21 April 2023.

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**3: Declarations of Interest**

5 - 6

Committee Members will be asked to advise if there are any items on the Agenda in which they have a Disclosable Pecuniary Interest, which would prevent them from participating in any discussion or vote on an item, or any other interests.

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**4: Admission of the Public**

Most debates take place in public. This only changes where 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, by virtue of the reports containing information which falls within a category of exempt information as contained at Schedule 12A of the Local Government Act 1972.

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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: Public Question Time**

The Committee will hear any questions from the general public.

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**7: Changes to the Council's Constitution (Reference to Annual Council)** 7 - 26

To consider proposed changes to the Council's Constitution and receive a summary of changes made by the Monitoring Officer using delegated powers.

Contact: Julie Muscroft, Service Director – Legal, Governance and Commissioning

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**8: Proposed Amendments to Overview and Scrutiny (Reference to Annual Council)** 27 - 42

To consider proposed amendments to the Overview and Scrutiny structure.

Contact: Samantha Lawton, Head of Governance

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**9: Proposed Revisions to Financial Procedure Rules (Reference to Annual Council)** 43 - 60

To consider proposed changes to Financial Procedure Rules for the municipal year 2023/24.

Contact: Martin Dearnley, Head of Risk

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**10: Proposed Revisions to Contract Procedure Rules (Reference to Annual Council)** 61 - 128

To consider proposed changes to Contract Procedure Rules for the municipal year 2023/24.

Contact: Jane Lockwood, Head of Procurement

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**11: Informing the Audit Risk Assessment**

129 -  
170

To receive an update on the final accounts and audit processes for 2022/3.

Contact: James Anderson, Head of Accountancy

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**12: External Audit Progress Report**

171 -  
190

To receive an update report relating to external audit.

Contact: Grant Thornton, External Auditor

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Contact Officer: Leigh Webb

## KIRKLEES COUNCIL

### CORPORATE GOVERNANCE AND AUDIT COMMITTEE

**Friday 21st April 2023**

Present: Councillor Yusra Hussain (Chair)  
Councillor Harry McCarthy  
Councillor Elizabeth Reynolds  
Councillor John Taylor

In attendance: Chris Jones – Independent person  
Councillor Paul Davies (Ex Officio)  
Councillor Elizabeth Smaje (Ex Officio)  
Councillor Jo Lawson (Ex Officio)

Julie Muscroft – Service Director, Legal, Governance and Commissioning  
Martin Dearnley – Head of Risk & Internal Audit  
Aaron Gouldman – Grant Thornton  
Helen O’Sullivan – Acting General Manager, Business Assurance

Apologies: Councillor Kath Pinnock

#### **1 Membership of the Committee**

Councillor John Taylor was appointed as interim chair of the meeting and presided during consideration of items 2 to 7 inclusive, at which point Councillor Hussain took the Chair.

Chris Jones was welcomed by the Committee as the Independent Person appointed.

Apologies for absence were received on behalf of Councillor Kath Pinnock.

#### **2 Minutes of Previous Meetings**

**RESOLVED:** That the minutes of the meeting held on 10<sup>th</sup> February 2023 be approved as a correct record. The Committee noted the minutes/notes of the meeting held on 10<sup>th</sup> March 2023.

#### **3 Declarations of Interest**

No interests were declared.

#### **4 Admission of the Public**

It was noted that Agenda item 10 would be considered in private session.

#### **5 Deputations/Petitions**

There were no deputations or petitions received.

**6 Audit Progress**

The Committee received a verbal update from Grant Thornton, external auditor regarding their Audit of the 2021/22 Financial Statement and the Value for Money Report. It was noted that the Audit of 2021/22 Financial Statement was near completion. There was a national issue where the triennial evaluations of pensions of Local Government Pension funds had been published at the beginning of April 2023, which realigned the actuarial position for all pension funds back to 31<sup>st</sup> March 2022. This provided new information about the position as at last year and once all firms nationally had considered the impact, it was hoped that a resolution would be provided, and completion be confirmed.

The Value for money report would be finalised after conclusion of the financial audit. A draft version of the report was under discussion with the Finance Director and his team, with the aim that this Committee considers the report in May 2023.

**RESOLVED:** That the update be noted.

**7 Quarterly Report of Internal Audit Q4 2022/23 January 2023 to March 2023**

The Committee received a report which set out the activities of the Internal Audit Quarter 4 of 2022/23 from the Head of Internal Audit.

The report provided information regarding eighteen audits completed during the period. There were seventeen planned pieces of work including four into aspects of financial management of social care, reviews of two stores systems and routine audits at five schools. There was limited assurance relating to a review of part of the business rates system and in relation to adoption arrangements. In the corporate area, there was adequate assurance relating to corporate risk management and whistleblowing. There was limited assurance as regards corporate complaints handling and the communications service was rated as having adequate assurance. One follow up audit had the unusual 'no assurance' rating which related to a continued failure of the service to make proper arrangements or procurement of services, this matter should be addressed by summer 2023.

The proportion of activity that was reviewed in the period found to offer no or limited assurance was 33%, and cumulatively in the year 29%, if schools were excluded the cumulative in year results suggest that 33% of financial process and 58% of business processes required improvements. The Executive Team recognised that this was an issue that needed to be addressed.

The Council's Fraud Investigation Team had continued activity on Right to Buy applications, other aspects of tenancy fraud and other areas of fraud. Sixty-two referred cases of Blue Badge Misuse had led to prosecution and warning letters. The Committee acknowledged that there had been no Regulation of Investigatory Powers Act activity during the period quarter 4 2022/23.

**RESOLVED:** That the Internal Audit Quarter 4 2022-23 report be noted.

**8 Annual Report of Internal Audit 2022/23 & Issues for 2023/24**

The Committee received a report from the Head of Internal Audit which provided information on Internal Audit activity in the year to 31<sup>st</sup> March 2023 and provided an opinion on the adequacy and effectiveness of the council's framework of risk management, governance, and internal control arrangements, and advised on compliance with the requirements of the Public Sector Internal Audit Standards and Code of Ethics. The report also set out suggested internal audit activity planned for 2023/24.

It was noted that 2022/23 was more normal than the previous two years with 83 formal tasks completed. From the beginning of the year, the internal audit function took on customer counter fraud activity. The year also involved a more structured approach to risk management. Overall assurance from audit work was at 71%. This was masked by high performance from schools on financial systems and controls, but poor assurance outcomes on business controls and from follow up audits.

It was suggested that the Audit Plan for 2023/24 be split into a Spring/Summer (Q1,Q2) plan and a provisional Autumn/Winter (Q3,Q4) plan which could be adjusted based on council need and the internal and external environment creating changed assurance priorities.

During discussion, the committee raised concerns regarding the number of follow up audits required by the audit team and suggested that proactive checks were carried out to remind services of audit follow ups by the risk manager, in liaison with the strategic directors. Concerns were also expressed in relation to limited assurance on business controls.

**RESOLVED:**

1. That the Committee was content with the (i) effectiveness of its Internal Audit function, noting its conformance with Public Sector Internal Audit Standards and Code of Ethics (ii) effectiveness of the Council's overall system of internal control (iii) effectiveness of the broader control environment, risk management and governance arrangements of the Council (subject to the observations contained within the report). (iv) finding from internal audit activity in 2022/23 (v) the proposed Audit Mission, Strategy & Charter (vi) the proposed Audit Plans for 2023/24,
2. That authority be given for the Head of Internal Audit to vary the proposed audit plan as is considered necessary, subject to reporting back as a part of the quarterly review process,
3. That the Chair of the Committee liaised with the Head of Risk regarding the number of follow up audits and limited assurances in respect of business controls.

**9 Exclusion of the Public**

**RESOLVED:** That acting under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in

## **Corporate Governance and Audit Committee - 21 April 2023**

Part 1 of Schedule 12A of the Act, as specifically state in the undermentioned minute.

### **10 Quarterly Report of Internal Audit Q4 2022/23 January 2023 to March 2023**

**RESOLVED:** That the Committee noted the exempt information, which was an appendix to Agenda item 7.

<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 (Reference to Annual Council)

Date: 12th May 2023

Title of report: 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 some of the proposed amendments.

To also provide a summary of changes to the Constitution made by the Monitoring Officer using delegated powers.

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 <u>Council's Forward Plan (key decisions and private reports)?</u>	NO
The Decision - Is it eligible for call in by Scrutiny?	NO
Date signed off by <u>Strategic Director</u> & name	Yes – Rachel Spencer-Henshall
Is it also signed off by the Service Director for Finance?	Yes – Eamonn Croston
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Yes – Julie Muscroft
Cabinet member <a href="#">portfolio</a>	Cllr Paul Davies

Electoral wards affected: All

Ward councillors consulted: NO

Public or private: Public

Has GDPR been considered? YES

## 1. Summary

- 1.1 This report will cover any changes proposed as well as any amendments made since 2022, both on the authority of Council and by the Monitoring Officer using delegated powers.
- 1.2 The report will set out, in section 2, the proposed changes in relation to the different parts of the Constitution and to seek approval by members of those proposed changes. Each section of the Constitution is set out below with information setting out details of the proposed change for which approval and/or comment is sought.
- 1.3 There have been some changes using delegated authority granted to the Monitoring Officer by Council on 20<sup>th</sup> May 2015 to reflect changes to officer's titles, typing or grammatical errors, old references and new legislation. The list of changes made using the Monitoring Officer's delegation are set out in the attached **Appendix 1** for information and members are asked to note those changes.

## 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. This has been reviewed and there are no current proposed changes.

### **PART 2 – ARTICLES**

- 2.02 There are 16 articles that set out how the council operates.
- 2.03 There are proposed amendments to **Article 4**.
- 2.04 The Policy Framework is the list of plans, policies and strategies that require formal sign-off and adoption by Full Council. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 set out several plans and strategies that if they are produced, can only be approved or amended by Full Council. The Secretary of State at the time also recommended that local authorities should consider other significant plans and strategies for approval or adoption by Full Council.
- 2.05 In Kirklees, the Full Council's Policy Framework is the current list of strategies, policies, and plans that, if produced, require approval or adopted at Full Council and is attached at **Appendix 2**.
- 2.06 Over the last two decades, the number of strategies and plans requiring this approach has changed significantly due to changes in legislation as well as numerous pushes by successive governments to try and reduce the bureaucratic burden on local authorities through removing national targets and objectives. Therefore, the Framework has had minor amends in recent years but has been largely unchanged for eight years.
- 2.07 Taking account of the above information and context, the

proposal is to refocus the Policy Framework, focusing on our highest-level strategies, policies and plans which set the context and direction for delivering Our Shared Outcomes, other strategic plans and programmes as well as continuing to include plans that by law must be adopted at Full Council (e.g., the Licensing Policy and Youth Justice Plan). The proposed new Policy Framework is set out at **Appendix 2**.

- 2.08 The reasons for the proposed amendments are to address a number of areas including accuracy, legislative requirements, pressure on the Council agenda and pressure on resources. Some of the plans are no longer produced or have been superseded by other documents, e.g. Early Learning and Childcare 2011-2014 and the Climate Change and Fuel Poverty Strategy. The current Policy Framework is therefore out of date and does not accurately describe the most important strategies, policies, and plans we produce. Legislative and national policy changes mean the number of strategies and plans requiring approval or adoption by Full Council has reduced significantly. This means the current Policy Framework is larger than currently legally required.
- 2.09 The number of plans on the Policy Framework (currently 20 items) causes or risks unnecessary pressure on Council agendas. The proposal is to reduce the potential pressure on Council agendas and prevent plans appearing at Council by 'default'.
- 2.10 Preparing for a decision at Full Council is a significant expenditure of officer time and is not the most effective way of securing cross-party engagement. This is better done pre-decision through portfolio briefings, scrutiny, group meetings, wider consultation such as place partnerships meetings, and individual member engagement.
- 2.11 Removing an item from the Policy Framework does not mean it cannot or will not be discussed or decided at Full Council. Cabinet can still refer any strategy, policy, or plan to Full Council. The proposal is only to remove the constitutional requirement that they are approved or adopted at Full Council due to the reasons and context outlined above.
- 2.12 There are proposed amendments to **Article 14**. These amendments are to allow a future adoption of 'DocuSign', as a means of electronic sealing.
- 2.13 The proposed amendments are in red below:

#### **14.4 Authentication of documents for Legal Proceedings or procedures**

Where attestation of any document is necessary to any legal proceedings or legal procedure [contemplated by Article 14.3], it will be signed by the Service Director – Legal, Governance, and Commissioning or another person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

14.4.1 A document shall have been properly signed in accordance with Article 14.2 and Article 14.4 where it is physically signed in hardcopy format or it is signed electronically in an electronic format.

#### 14.5 Common Seal of the council

The Common Seal of the Council will be kept in a safe place in the custody of the Service Director – Legal, Governance and Commissioning. A decision of the Council, or of any part of it made with statutory or delegated authority, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Service Director – Legal, Governance and Commissioning should be sealed. The affixing of the Common Seal will be attested by:-

- the Service Director – Legal, Governance and Commissioning or
- any other Legal Officer nominated by the Service Director Legal, Governance and Commissioning

An entry of sealing of a document shall be made and consecutively numbered in a sealing book or an electronic sealing register.

The Common Seal shall be properly affixed in accordance with Article 14.5 whether it is physically affixed to a hard copy document or it is affixed electronically to an electronic document where the law permits in accordance with the Electronic Communications Act 2000.

The common seal may be affixed without further authority from the Council:

- a. to any mortgage, bond or other security for money advanced to the council;
- b. to any transfer of stock or bonds purchased or sold on behalf of the council;
- c. to any release or re-assignment of any mortgage or other security given to the council for any advance made by the council on repayment of the whole of the money thereby secured;
- d. to any proxy forms or transfer of any investment of funds of the council;
- e. to any grants of exclusive rights of burial and grants of exclusive rights of depositing ashes or cremated bodies in graves.

### **PART 3 - RESPONSIBILITY FOR FUNCTIONS**

2.14 This part details the council's cabinet, committees' and other groups' responsibilities. This section also contains each individual Cabinet Member's specific responsibilities.

2.15 It is proposed to amend the 3rd term of reference for the Regulatory Panel of the Licensing and Safety Committee to clarify and introduce a specific reference to Sexual Entertainment Venue licensing:

3. Power to issue ~~entertainment~~ licences to sexual entertainment venues

2.16 It is proposed to make some amendments to the financial limits set out in the Scheme of Delegation to Officers in Section F. As these are changes to executive powers these are for committee and council to note.

The proposals reflect the fact that these figures have not been increased for some time and to do so will reduce the need for reporting to Cabinet.

These relate to the functions of the Strategic Director Growth and Regeneration, It is proposed to amend the functions relating to Asset Management as follows, with changes in red:

**F. Asset Management**

**Executive Functions**

*Discharge of all functions and responsibilities of the Council relating to its Asset Management including, but not limited to:*

- (a) Asset management;*
- (b) Corporate Landlord;*
- (c) Capital development;*
- (d) Capital construction delivery;*
- (e) Building Services.*

*And not by virtue of any legislation present or future prevented from being the responsibility of the Executive or required by legislation to be carried out by full Council together with any local choice functions set out within Section A of this Part that have been allocated to the Executive subject to the exceptions that:*

*Matters are referred to the Executive in the following cases:*

*As specified in paragraph 3 of the General Provisions above;*

- (a) Payment of disturbance payments to tenants exceeding ~~£10,000~~ 50,000;*
- (b) Approval of heads of terms for the disposal of any rights, estates or interests in land and property of the Council where the estimate of value exceeds ~~£500,000~~ 1,000,000;*
- (c) Approval of heads of terms for the acquisition of rights in and estates in land and property in cases where the purchase price or consideration exceeds ~~£500,000~~ 1,000,000;*
- (d) Disposal of any Council interests in public or quasi open space, common land or village greens where objections to the proposed disposal have been received from members of the public; and*
- (e) Decisions to submit planning applications relating to land and property owned or to be acquired by the Council in circumstances where ward members have been consulted and have made adverse comments.*

Changes to the above will also necessitate a change to the Cabinet Local Issues Committee terms of reference to reflect the increased reporting levels. These are in Section C of the Constitution. The change to the terms of reference is in red below:

- ii. To consider reports on disposals of Council assets, with a capital value not exceeding ~~£500,000~~ 1,000,000, that have previously been approved by officers.*

- 2.17 Online auctions are being used more regularly and in order to facilitate online auctions for sale of property it is proposed that the Scheme of delegation to Officers in part 3.7 of the constitution is amended to add the following to the scheme of delegation of the Monitoring Officer (Service Director -Legal,

Governance and Commissioning) to authorise an external property auctioneer to sign as agent for the Council. This is for committee to note.

**“to authorise an external property auctioneer to sign as agent for the Council , a Sale Memorandum to record the property price and terms of conditions of sale .”**

This is also added to the Contract Procedure Rules for consistency and is picked up in the report dealing with such changes on this meeting agenda.

## **PART 4 – RULES OF PROCEDURE**

- 2.18 This section contains eight documents which describe how Councillors and Officers conduct themselves in meetings and make decisions about certain matters.
- 2.19 The changes are as a result of considered review of the rules with learning from previous meetings, officer recommendations and consideration of other authorities regionally to ensure the meeting is properly focused and that time is used effectively to enable robust debate and business to be conducted in a timely fashion.
- 2.20 The Council procedure rules encompass the format and procedures for Council meetings and have been updated and amended each year. Over time it has become even more important that the limited time available for such meetings should be used in the most efficient and effective way to provide access to democracy for citizens and to ensure the business of the authority is properly debated and transacted. The proposed changes to the Council procedure rules are attached at **Appendix 3** but are described below.

### **The Council Procedure Rules**

- 2.21 By comparison to many Councils, the Kirklees constitution is particularly permissive and open. The aim of the proposed changes is to balance access to democracy and improve outcomes for citizens whilst allowing effective and timely focus on council business at Council meetings.

### **Deputations**

- 2.22 The changes proposed in **Appendix 3** are to ensure there is streamlining of processes to allow officers time to process and manage the business at meetings. In addition, they will continue to allow time for citizens to bring a question or deputation but also provides some additional parameters and earlier notice provision to ensure that citizens are provided with the best information available, as more time will be available to deliver a full and detailed response to questions and deputations and to provide advice/ guidance on the appropriate content of deputations. The amendments will provide for citizens to be referred to the most appropriate forum or body to ensure they are provided with the most suitable and

accurate response, whether that be a different committee, scrutiny panel or complaints response.

- 2.23 This will enable citizens to have clear answers to issues raised in the relevant forum and will also allow for wider engagement across the authority and its committees including scrutiny. It will provide greater emphasis on appropriate, timely citizen engagement as part of policy development and decision-making process.
- 2.24 The proposed changes to deputations and notice requirements will require submission of the deputation in advance so this can be considered carefully to ensure they i) meet the criteria set out within the rules ii) to ensure it is the correct forum for an answer to their submission iii) to ensure they are not providing factually incorrect information and iv) to ensure they are not providing personally identifiable information, all of which has recently occurred. The 10 working days provide additional time to manage the process, prepare and advise the public, consider against the criteria and is regionally in line with other local authorities.
- 2.25 Within West Yorkshire (and Rochdale), no authority allows both deputations and public questions at Council meetings. Bradford provides an additional requirement that all deputations must be accompanied by 20 signatures. There is also a larger amount of notice required in order to process deputations by officers which impacts on resource and capacity.

#### Other Local Authorities

	Kirklees	Bradford	Calderdale	Leeds	Wakefield	Rochdale
Both Deputations and Public Questions	Y	N	N	N	N	N
Notice for Deputations	24 hrs	3 working days and **	No deputations	14 days	7 days	No deputations
Notice for Public Questions	None	7 days	7 days	No Public Questions	No Public Questions	10 days
Unlimited deputations	Y	Maximum 5	-	Maximum 5	Maximum 2	-

\*\* Must be signed by a minimum of 20 residents

- 2.26 It is proposed that **CPR10** be amended and replaced by the wording set out in the table attached at **Appendix 3**.
- 2.27 The proposed changes are to provide additional working days notice to 10 working days, add clarity to the process, and a maximum number of deputations to help manage time at meetings and the rationale set out at paragraphs 2.23 – 2.26.

## Public Questions

- 2.28 Whilst some other Councils do not have both public questions and deputations we are not proposing any changes in this regard. However, it is proposed that **CPR 11(1)** be amended by the addition of a new paragraph (d), requiring 7 working days notice, set out within **Appendix 3**:
- 2.29 This will enable the time management of the meeting and will allow a period of time for the question to be assessed in accordance with the criteria at **CPR11**, which will allow the member of the public to be given a sufficient period of notice in the event that their question cannot be accepted.
- 2.30 Allowing additional notice for submission of the question also provides citizens time to give more thought to the questions and enables them to receive a fuller response as the majority of questions received are asked on an impromptu basis.

## Written Questions

- 2.31 It is proposed that **CPR 12(1)** be amended to reflect that 'Any Member of the Council may submit up to three written questions ...' and is set out within **Appendix 3**.
- 2.32 This will enable the opportunity for more Members to be able to put questions during the time available in the meeting.
- 2.33 It is also proposed that all Written Questions be submitted at least **seven** clear working days prior to the meeting.
- 2.34 This will allow more time for the questions to be processed and circulated by governance prior to the meeting.

## Motions

- 2.35 It is proposed that **CPR 14(1)** be further amended to require submission of motions to Council to be made by 9:00 am on the 8<sup>th</sup> working day before the meeting of Council and is set out in **Appendix 3**.
- 2.36 This would be a change from the current requirement of the 6<sup>th</sup> working day. The current deadline is the same day as the legal requirement for agenda publication and so provides very limited opportunity for Councillors who may submit a Motion to make any necessary changes once it has been assessed against criteria.

- 2.37 It will provide additional time for Officers to liaise with Councillors and will assist with the governance of issuing agenda papers.
- 2.38 It is proposed that **CPR 14(11)** be amended to require amendments to motions to be submitted by 10.00 am the day prior to the meeting of Council, to read:.

*'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 no later than 10.00am on the day prior to the Council Meeting.'*

**CPR 14.11 (a) and (b)** shall be deleted.

- 2.39 The current deadline is the same day as the meeting and so provides very limited opportunity for Officers to assess the content, which impacts upon the period of notice given to Councillors to make any necessary changes that may be considered to be necessary.
- 2.40 The proposed change will provide additional time for Officers to liaise with Councillors regarding the finalised wording of any amendment.
- 2.41 It is proposed to remove **CPR 51(10)**
- 2.42 This was a temporary arrangement during covid requiring the submission of written questions at remote meetings and including the process, which is no longer necessary.. The full proposed deleted paragraph is contained in **Appendix 3**.
- 2.43 There are a number of other small amendments highlighted in Appendix 3 at CPR 11, 14(1), 14(2), 35(7), which are drafting amendments to be picked up by the Monitoring officer using her delegation and to be noted by members.

#### Access to Information Procedure Rules

- 2.44 It is proposed that the final paragraph of **part 6** is removed. It currently reads:

'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.'

- 2.45 This involves printing papers that are not used and all council meeting papers are available online. If copies are requested on the day, these can be printed or access provided on a device.
- 2.46 It is proposed to amend **part 14.2** to increase the monetary KDN value from

£250k to £500k.

- 2.47 The KDN value was adopted in 2002 and was the figure used by most Councils at the time as being a suitable figure. Most Councils have now changed the figure and looking regionally is between £500k and £1m.

	<b>Current Key Decision Notice figure</b>
Calderdale	£200k moving to £500k
Bradford	£250k
Wakefield	£275k
Rotherham	£400k
Leeds	£500K
York, Barnsley, North Yorkshire	£500k
Sheffield and Manchester	£500k
WYCA	£1 million

- 2.48 It is also proposed to move **part 14.6** up to **14.2** to add clarity.

- 2.49 It is proposed to include a further exception to **paragraph 14.2**. This does not provide any changes and is already referred to within the Financial Procedure Rules but clarifies the position in relation to Key Decisions and links the rules which should be read in conjunction. The additional wording proposed '*Grants to and from the Council and loans from the Council (in accordance with Financial Procedure Rules)*'.

2.50 Budget and Policy Framework Rules

There are no proposed amendments to these Rules

2.51 Executive Procedure Rules

There are no proposed amendments to these rules.

2.52 Financial Procedure Rules

A separate report is on this agenda which considers changes to the Rules.

2.53 Contract Procedure Rules

A separate report is on this agenda which considers changes to the Rules

2.54 Overview and Scrutiny Procedure Rules

There are proposed amendment to the Scrutiny panels and these will be subject to a separate report to this Committee and Council.

2.55 Officer Employment Procedure Rules

There are no proposed amendments to these rules.

2.56 This section sets out the Council's Codes and Protocols in relation to a number of areas.

2.57 Members Code of Conduct

There are presently no proposed amendments to the Code of Conduct.

2.58 Monitoring Officer Protocol

There are no proposed amendments to this protocol.

2.59 Protocol for Planning Committees and Sub-Committees

There are no proposed amendments to this protocol.

2.60 Decision Making On Ward Issues – Procedural Advice to Cabinet Members

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

2.62 Officers Code of Conduct

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

2.64 Licensing and Safety Committee Protocol

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

However, the working relationship between members and officers was the subject of some recent work, that involved member participation.

The work is on-going and any proposed amendments will be considered by Standards Committee, before being considered at Corporate Governance and Audit and coming back to Council (as necessary) with any amendments.

2.66 Safeguarding Protocol

There are no proposed amendments to this protocol.

#### 2.67 Protocol for Online Meetings

This Protocol was added to the Constitution as a result of the legislative changes on remote meetings made in response to the Covid 19 lockdown, so that Council business could still be transacted.

Whilst the protocol is no longer applicable to many meetings, some may still be lawfully held remotely, such as Licensing Panel meetings, and it is proposed to retain this, rather than remove it. There is a current campaign aimed at persuading the government to legislate to make virtual meetings lawful and, should this happen, the protocol would be needed.

#### 2.68 Concurrent Functions Protocol

There are no proposed amendments to this protocol.

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

It is essential 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 challenges, unnecessary procedural delays and less transparency in the Council's democratic process.

#### **3.01 Working with people**

N/A

#### **3.02 Working with Partners**

N/A

N/A

#### **3.03 Place Based Working**

N/A

#### **3.04 Climate Change and Air Quality**

N/A

#### **3.04 Improving Outcomes for Children**

N/A

#### **3.06 Financial Implications for the people living or working in Kirklees**

#### **3.07 Other (eg Integrated Impact Assessment/Legal/Financial or Human Resources)**

N/A

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

Various officers have been consulted.

## **5 Next steps and timelines**

5.03 This will be considered by Annual Council on May 24<sup>th</sup> 2023. Any feedback, comments or recommendations from this committee will be included in the report to Annual Council.

5.04 Any amendments agreed by Council will be made to the Constitution.

## **6 Officer recommendations and reasons**

That it be recommended that CGA:-

- a. Notes the changes made to the Constitution in 2022-2023 listed in Appendix 1
- b. Approves the proposed changes to the Councils constitution as set out in paragraphs 2.07, 2.13, 2.15, 2.21 – 2.42, 2.44 and 2.46 and the accompanying relevant Appendices.
- c. Notes the changes set out at paragraphs 2.16, 2.17, 2.43, 2.48 and 2.49.
- d. Notes that work will continue to keep the Council's Constitution under review.
- e. Notes the proposed further work in relation to the Member Officer protocol in paragraph 2.65
- f. Recommends to Council that they note and approve (as applicable) the above recommendations and delegate authority to the Service Director – Legal, Governance and Commissioning to make appropriate amendments to the constitution which may be agreed by 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  
01484 221 000

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

## **10 Service Director responsible**

Julie Muscroft – Service Director – Legal, Governance and  
Commissioning  
01484 221 000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

## **11 Appendices**

**Appendix 1 - Amendments 2022-2023 (Information only)**

**Appendix 2 – Current and Proposed Article 4**

**Appendix 3 – Proposed Changes to Council Procedure Rules**

## APPENDIX 1

### Constitutional amendments

2022-2023 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>		
Part 2 – updates to Article 4	Monitoring Officer Delegation	26 <sup>th</sup> July 2022
<b>PART 3 Responsibility for Functions</b>		
Part 3 Section B	Monitoring Officer Delegation	13 <sup>th</sup> July 2022
Part 3 Section B – CGA ToR	Monitoring Officer Delegation	21 <sup>st</sup> April 2023
Part 3.4 Section C Responsibility for Executive Functions	Approved at Annual Council 25 May	16 <sup>th</sup> June 2022
Part 3.4 Section C Responsibility for Executive Functions	Monitoring Officer Delegation	28 <sup>th</sup> June 2022
Part 3.4 Section C Responsibility for Executive Functions	Monitoring Officer Delegation	8 <sup>th</sup> November 2022
<b>PART 4 Rules of Procedure</b>		
Part 4.1 Council Procedure Rules	Monitoring Officer Delegation	29 <sup>th</sup> June 2022
Part 4.6 Financial Procedure Rules	Approved at Annual Council 25 May	26 <sup>th</sup> May 2022
Part 4.7 Contract Procedure Rules	Approved at Annual Council 25 May	25 <sup>th</sup> May 2022

### **CURRENT ARTICLE 4 - Policy Framework (July 2022)**

- Children and Young People's Plan
- Community Safety Partnership Plan
- Sustainable Community Strategy
- West Yorkshire Local Transport Plan 3
- Plans and strategies which together comprise the Development Plan
- Youth Justice Plan
- The Council Plan
- Inclusion and Diversity Strategy
- Statement of Licensing Policy under the Licensing Act 2003
- Three-year Licensing Policy under the Gambling Act 2005
- Access to Services Strategy (amended 2022, superseding customer services)
- Resources and Waste Strategy
- Joint Health and Wellbeing Strategy
- Commissioning Plans for Adult Social Care
- Inclusive Communities (amended 2022, superseding community cohesion)
- Housing Policy (to include Commissioning Housing/ wider Strategy)
- Early Learning and Childcare 2011-2014
- Economic Strategy
- Climate Change & Fuel Poverty Strategy
- Corporate Safeguarding Policy (added in 2022)

### **PROPOSED NEW POLICY FRAMEWORK ARTICLE 4**

- Our Council Plan
- Our top-tier strategies:
  - Kirklees Health & Wellbeing Strategy
  - Environment Strategy (in development)
  - Inclusive Communities Framework
  - Inclusive Economy Strategy (in development)
- By statute:
  - Kirklees Community Partnership Plan (replacing the Community Safety Partnership Plan and Sustainable Community Strategy, including the Crime and Disorder Reduction duties)
  - Development Plan documents (the Local Plan and associated policies)
  - Licensing Authority Policy Statement (Gambling and Licensing)
  - Youth Justice Plan
  - Local Transport Plan (the duty to produce sits with WYCA but will require individual authority adoption)

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## APPENDIX 3

### PROPOSED CHANGES TO COUNCIL PROCEDURE RULES (12 MAY 2023)

The proposed amendments are set out in blue.

CPR		
10	Deputations	<p>(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 relevant to its terms of reference. The Mayor/Chair in consultation with the Chief Executive shall have discretion to decide whether or not to hear the deputation.</p> <p>(2) All Any request to make a deputation should be submitted at least <del>24 hours</del> five working days prior to the meeting. A copy of the deputation speech must accompany the request.</p> <p>(3) The Council will not receive more than four deputations at any ordinary meeting.</p> <p>(4) The suitability of a Deputation shall be determined by the Chief Executive. Permission to attend a meeting after consideration of the most relevant committee, forum or appropriate body for response and present a Deputation shall be issued by <i>the Chief Executive</i>. Eligible deputations shall be heard in the order in which permission is granted.</p> <p>(5) Where two or more deputations present opposing views on the same matter, the Council will not receive more than one of these related deputations at the same meeting. Multiple deputations on a particular subject matter or from any one person or organisation shall not be received.</p> <p>(6) The Council shall not normally receive a deputation on a matter that has been the subject of a deputation in the previous six months, except as a result of a refusal at (5).</p> <p>(7) The Council shall not debate any matter raised by a deputation when it is presented.</p>

		<p>(8) Any Member of the Council may move a motion without notice, that the deputation be or not be received, or that the subject matter be referred to the appropriate committee. The Mayor will put such a motion on being seconded, to the vote without debate.</p> <p>Deputations which will not be received</p> <p>(9) If the Chief Executive considers that it includes references to the following:</p> <p>(a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.</p> <p>(b) Information relating to complaints made under statutory provisions which have not been finally dealt with.</p> <p>(c) Information concerning <del>the merit of applications or other matters currently before</del> <b>being considered by any type of Committee including but not limited to,</b> the Council, Cabinet or a Committee, Sub-committee, Panel or Officers <del>for determination in respect of which the Council is required to act quasi-judicially or administratively is under a duty to act quasi-judicially.</del></p> <p>(d) Information of a personal nature or which is defamatory, offensive, frivolous, repetitive or vexatious.</p> <p>(10) 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.</p> <p>Size of Deputation and Speech</p> <p>(11) The deputation shall not exceed five persons and the speech shall not exceed five minutes.</p> <p>(12) 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.</p> <p>(13) 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.</p>
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		<p>Referral of Subject Matter</p> <p>(14) 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</p>
11	Public Questions	<p>Amend title to include the word 'Boards'</p> <p>MO Delegation</p>
11	Public Questions	<p>Require submission at least seven working days in advance of meeting. <i>(covered in last years CGA report 22.4.22 para 2.12)</i></p> <p>It is proposed that CPR 11(1) be amended by the addition of a new paragraph (d), as follows: (d) All public questions must be submitted at least seven clear working days prior to the meeting.</p>
12	Written Questions	<p>Limit the number of questions each Councillor can submit</p>
14 (1)	Motions	<p>Change submission deadline to 8 working days <i>(covered in last years CGA report 22.4.22 para 2.16)</i></p>
14 (1)	Motions	<p>Change second para to '...will only be accepted for the next scheduled Ordinary Council meeting from 10.00am onwards following the day of the previous Council Meeting'</p> <p>MO Delegation</p>
14 (2)	Motions	<p>Change to 'Any further (new) Motions, including previous Motions that have not been resubmitted in accordance with Council Procedure Rule 14(3) will be listed after Motions submitted in accordance with Council Procedure Rule 14(3).'</p> <p>CPR 14(2)be amended to read 'Any Motions re-submitted will be listed on the agenda in the same order that they were listed for the previous meeting. Any further motions, ie, new motions or previous motions deemed withdrawn in accordance with CPR 14(3), will be listed after the re-submitted motions. The Chief Executive, in consultation with the Mayor, shall have authority to re-order the Motions as</p>

		<p>appropriate. The Chief Executive will inform Group Leaders when such action is being taken.'</p> <p>MO Delegation – clarifies procedure, no changes</p>
14 (11)	Amendments	<p>Change deadline to day before Council (<i>covered in last years CGA report 22.4.22 para 2.19</i>)</p> <p>It is proposed that CPR 14(11) be amended to require amendments to motions to be submitted by 10.00 am the day prior to the meeting of Council.</p> <p>'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 no later than 10.00am on the day prior to the Council Meeting.'</p> <p>CPR 11 (a) and (b) shall be deleted.</p> <p>The current deadline is the same day as the meeting and so provides very limited opportunity for Officers to assess the content, which impacts upon the period of notice given to Councillors to make any necessary changes that may be considered to be necessary.</p> <p>It will provide additional time for Officers to liaise with Councillors regarding the finalised wording of any amendment.</p>
35 (7)	Substitutes	<ul style="list-style-type: none"> <li>- Delete District Committees</li> <li>- Delete Employee Relations Sub Committee</li> <li>- Add in – Statutory Officer Dismissal Committee</li> <li>- Add in - Corporate Parenting Board</li> </ul> <p>MO Delegation</p>
51	Remote Meetings	<p>Remove CPR 51(10) – this was a temporary arrangement during covid relating to written questions at remote meetings.</p>

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

**Date:** 12 May 2023

**Title of report:** Proposed Amendments to Overview and Scrutiny

**Purpose of the report:** The report sets out proposed amendments to the Overview and Scrutiny structure along with an update on the implementation of recommendations of the Kirklees Democracy Commission in relation to the review of governance models.

<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>No</b>
<b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u>?</b>	<b>Not applicable</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>Not applicable</b>
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	<b>Rachel Spencer Henshall – 12<sup>th</sup> May 2023</b>
<b>Is it also signed off by the Service Director for Finance?</b>	<b>Not applicable</b>
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	<b>Julie Muscroft – 28<sup>th</sup> April 2023</b>
<b>Cabinet member <a href="#">portfolio</a></b>	

**Electoral wards affected:** All

**Ward councillors consulted:** Not applicable.

**Public or private:** Public Report

**Has GDPR been considered?** Yes. The report does not include any personal data that identifies a living individual.

## 1. Summary

- 1.1 The Council's Democracy Commission reported its findings and recommendations in respect of a review into alternative governance models to Council in January 2023. Having resolved to retain the current Leader and Cabinet model, a number of subsequent recommendations were agreed in relation to the further development of the Council's scrutiny function, including a request to review the current scrutiny panels. A copy of the full recommendations of the Democracy Commission are provided at **Appendix 3**.
- 1.2 The report proposes changes to the current structure and highlights progress in relation to the implementation of the wider recommendations of the Democracy Commission. Any changes to the scrutiny structure needs to be agreed at Annual Council.

## 2. Information required to take a decision

### Current Structure

- 2.01 The current Overview and Scrutiny structures, which have been in place since 2017, have allowed Scrutiny the flexibility to respond to the priority issues facing the Council and develop a focussed and constructive approach. The following themed committees are in place to scrutinise decisions and issues falling within their respective remits:
- Corporate Scrutiny Panel
  - Children's Scrutiny Panel
  - Economy and Neighbourhoods Scrutiny Panel
  - Health and Adult Social Care Panel
- 2.02 An overarching Overview and Scrutiny Management Committee (OSMC) manages and co-ordinates the work programmes and the use of Scrutiny resources. In addition, OSMC is also responsible for the statutory Scrutiny requirements in relation to scrutiny of crime and disorder and flood risk management.
- 2.03 Statutory joint committees, relating to health, along with ad-hoc panels, undertaking time limited task-based pieces of work also form part of the current structure which is set out at **Appendix 1**.
- 2.04 Within the current structure a Regeneration Ad-hoc Panel was constituted in April 2022 to scrutinise a number of regeneration projects in Kirklees. This Panel has met throughout the year and its work is ongoing.

## 3. Proposed Structure

- Dis-establish the **Corporate Scrutiny Panel**
- Retain overarching **Overview and Scrutiny Management Committee (OSMC)** to manage the overall work programme and prioritise the work of the Scrutiny Panels. The Panel will pick up high-level performance monitoring in relation to financial management, scrutinising the performance and implementation of financial policy and the delivery of the Council Plan. The OSMC have responsibility for the Corporate portfolio and will to continue

to carry out the statutory requirements in relation to crime and disorder and flood risk management.

- Retain the current **Health and Adult Social Care Scrutiny Panel**. This panel retains the statutory scrutiny of Health responsibilities. The power to refer concerns about proposals for significant changes to local health services to the Secretary of State is vested in the individual Joint Health Scrutiny Panels.
- Retain a **Children's Scrutiny Panel**
- Rename the **Economy and Neighbourhoods Scrutiny Panel** to **Environment and Climate Change Panel** (to pick up work under the Environment and wider climate change agenda in addition to highways/streetscene and culture)
- Dis-establish **Ad- Hoc Regeneration Panel**
- Establish a **Growth and Regeneration Panel** (remit to include skills, growth and regeneration along with housing)
- Dis-establish the **Democracy Commission**

A proposed structure chart is attached at **Appendix 2**

#### 4. Rationale

- 4.1 Reviewing the operation of the current panels has provided the opportunity to examine the workloads and remits of the existing panels. The setting up of the current Ad-hoc Regeneration Panel was partly as a result of the wide remit of the Economy and Neighbourhoods Panel which had resulted in capacity issues when it came to undertaking in depth scrutiny of a number of ongoing major regeneration projects.
- 4.2 The proposal to formally constitute a standing Regeneration and Housing Panel will reduce the remit of the Economy and Neighbourhoods Panel and allow for a dedicated Panel to scrutinise the wider regeneration and skills agenda in Kirklees. Furthermore, the inclusion of housing will align the remit of the new Panel more closely with the current Directorate structure.
- 4.3 With regard to the dis-establishment of the Corporate Panel, it is proposed that the main corporate strategic items relating to Council finance, and performance monitoring be transferred to the OSMC in their scrutiny role of holding the executive to account and ensuring they scrutinise the performance and implementation of the financial policy. This will allow for high level scrutiny oversight from the Management Committee on these critical areas. It is envisaged that performance monitoring will enable OSMC to offer constructive challenge and refer issues of concern to individual panels or other appropriate forums for in depth consideration where appropriate.
- 4.4 In conclusion, the proposed changes outlined in the report seeks to ensure that remits across the themed Panels are more balanced and more closely aligned with current work areas and portfolios. Strategic oversight of critical areas of corporate focus will fall within the remit of the Management Committee (OSMC).
- 4.5 Where there are cross cutting issues/items, the Chair of Scrutiny will continue to determine which Panel will consider the item in consultation with the respective Lead Member.

- 4.6 The proposed structure retains the same number of standing Panels and can be delivered within existing resources which makes the best use of resources within the financial challenge the Authority faces, with no change to the number and level of allowances paid through the Members Allowance Scheme.
- 4.7 It is also proposed the Democracy Commission is dis-established following the review of the proposal and the approval of the recommendations from Council on 11 January 2023.

## 5. Wider Scrutiny Development

- 5.1 A number of wider recommendations from the Democracy Commission relate directly to improving the Council's scrutiny function. Set out below is progress in relation to delivery of the recommendations to date.

### Pre-Decision Scrutiny

- 5.2 The Democracy Commission outlined a strong desire to enhance pre-decision scrutiny by ensuring there was an understanding that pre-decision scrutiny is carried out some time before a decision is made, at the point decision-makers may still be weighing up different evidence and assessing available options. The Commission recognised that such an approach may require some more time and resources and as such it would be limited to significant strategic matters. All Commission Members supported this view and recognised that it would require a commitment of openness from Cabinet.
- 5.3 To assist the delivery of more effective pre-decision scrutiny a draft protocol is being developed in consultation with the Chair of Scrutiny and the Chair of the Democracy Commission/Cabinet Member for Democracy and Housing will operate within the authority. The pre-decision protocol, will provide a framework to ensure good lines of communication between Lead Members, Cabinet Members and Strategic Directors and will be implemented in the new municipal year. The protocol aims to ensure potential items are identified in a timely manner which allows time for scrutiny to influence and add value to the decision-making process.

### Member Training

- 5.4 Arrangements are underway to provide scrutiny training to all Members in advance of the first meeting of the Scrutiny Panels in the 2023/24 Municipal Year. The training will include:
- Scrutiny Structure in Kirklees
  - Relevant Legislation and powers
  - Call-In guidance
  - Meeting Preparations
  - Questioning Techniques
  - Work Programme prioritisation

A finalised programme will be developed in consultation with the Chair of Scrutiny, with a separate additional session being developed for Lead Members.

Progress in relation to the implementation of all the recommendations of the Democracy Commission is set out at **Appendix 3**.

## **6. Implications for the Council**

### **Working with People**

N/A

### **Working with Partners**

N/A

### **Place Based Working**

N/A

### **Climate Change and Air Quality**

N/A

### **Improving outcomes for children and young people**

The proposals within the report do not seek to change the current arrangements in respect of scrutiny of Children's Services

### **Financial Implications for the people living or working in Kirklees**

There are no direct cost impacts on the Kirklees community.

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

The proposed structure meets with the requirements of the Local Government Act 2000 and subsequent legislation in relation to the provision of a scrutiny function.

The financial implications as set out in paragraph 4.6 of the report indicate that the proposed structure can be supported without an increase in special responsibility allowances.

### **Consultation**

The Chair of Overview and Scrutiny Management Committee, Chair of the Democracy Commission have been consulted on the proposals.

## **7. Next steps and timelines**

Any recommendations from the Committee in respect of changes to the Council's Scrutiny structures would need approval from full Council.

## **8. Officer recommendations and reasons**

1. That Corporate Governance and Audit committee recommends to Annual Council the changes as set out in paragraph 3 of the report
2. That subject to the agreement of (1) above, the Committee recommend to Council that the Service Director Legal, Governance and Commissioning be delegated with authority to make appropriate changes to the Constitution to reflect the agreed changes to the scrutiny arrangements.

## **9. Cabinet Portfolio Holder's recommendations**

Not applicable.

**10. Contact officer**

Samantha Lawton, Head of Governance  
Tel 01484 221000  
Email:Samantha.lawton@kirklees.gov.uk

**11. Service Director responsible**

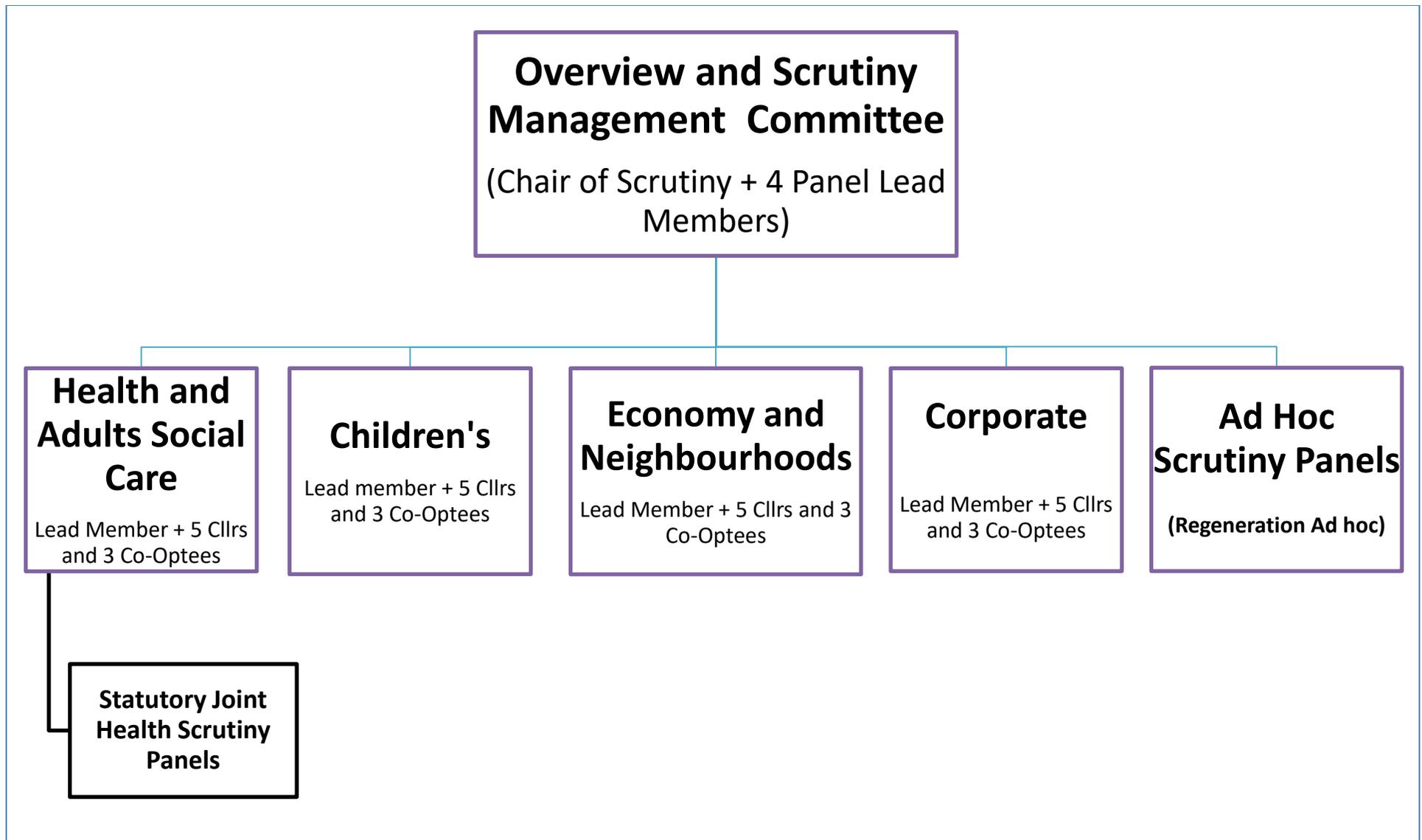
Julie Muscroft, Service Director, Legal, Governance and Commissioning

**Appendices**

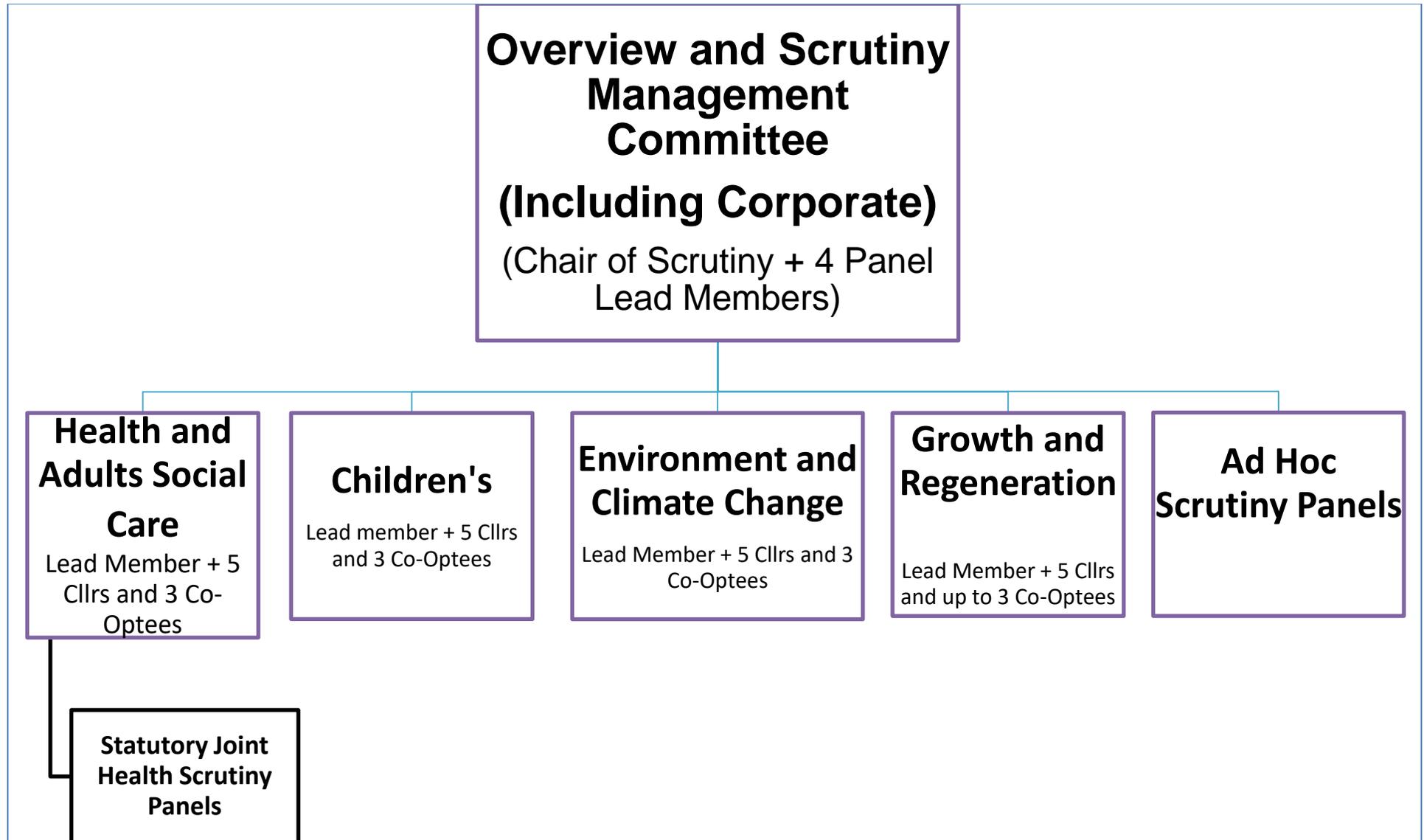
Insert: Appendix 1 – Current Scrutiny structure  
Appendix 2 – Proposed Scrutiny structure  
Appendix 3 – Democracy Commission recommendations and update



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### APPENDIX 3

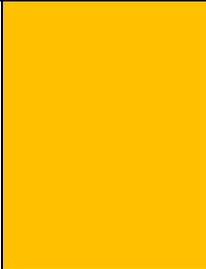
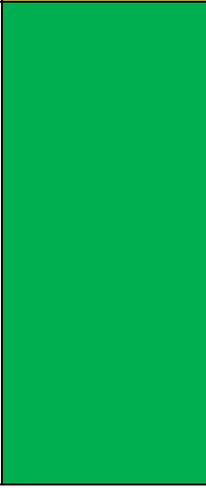
#### Democracy Commission Recommendation Proposals – Update

Key

	Actioned/In progress
	In development
	Longer term

Recommendation	Current Position	Rating
(i) Improvements to enhance and improve pre-decision scrutiny to include reviewing the current scrutiny panels	<ul style="list-style-type: none"> <li>Review of panels <b>Actioned</b></li> </ul> <p>Report to CGA and Annual Council for approval 12<sup>th</sup> May 2023 and 24<sup>th</sup> May 2023</p> <ul style="list-style-type: none"> <li>Enhanced Scrutiny training <b>Actioned</b></li> </ul> <p>Programme in place for municipal year 23/24</p> <ul style="list-style-type: none"> <li>Consequential updates to O &amp; S Procedure rules (constitution)</li> </ul>	
(ii) Clear guidance as far as reasonably practicable in defining pre-decision scrutiny and associated timelines	<ul style="list-style-type: none"> <li>Pre-decision protocol and agreed approach</li> </ul> <p><b>Actioned</b> - Work ongoing</p> <ul style="list-style-type: none"> <li>Wider communication</li> </ul>	

		and website updates/briefings (TBC once approved)	
(iii)	Annual training and work programme briefings provided to all Members of the Council's Scrutiny Panels.	Programme developed and enhanced to include for lead members  Actioned – in place from May/Jun 23  Digital training offer	In progress   Ongoing - longer term
(iv)	Providing clear information to Members and officers on the benefits of pre decision scrutiny and to ensure there is an understanding of the requirements to engage in early pre-decision scrutiny to enhance good decision making	Actioned – see above	
3.	The Commission recognises that good scrutiny and decision making relies on the provision of transparent, accessible information in a timely manner and supports the development of sharing information to raise awareness, increase understanding of and ensure clarity for Members and Officers around scrutiny, Access to Information Rules and the sharing of information.	Ongoing	
4.	That Cabinet be requested to explore increasing dialogue on key strategic issues with Members to increase transparency and explore developing both formal and informal engagement with Members.	Ongoing	
5.	That consultation be undertaken with Group Business Managers and Members, to identify any potential barriers preventing some Members being appointed to Committees/Panels such as timing, frequency, location, format of meetings and any actions appropriately co-ordinated.	In development  TBC Summer 23	

<p>6. That information be communicated to all Members (across different roles) in relation to engagement with the decision-making process, including access to information rules, scrutiny, raising a notice of concern, speaking and questioning rights at committees.</p>	<p>In development</p>	
<p>7. That work is considered to explore enhancing training and development for Councillors to help understand and carry out their roles.</p>	<p>Training being developed within governance and scrutiny to address areas outlined above</p> <p>Actioned – in place May/June 2023</p>	

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**Name of meeting: Corporate Governance & Audit Committee**  
**Date: 12<sup>th</sup> May 2023**

**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 2023/24**

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 E. Croston Service Director- Finance
Is it also signed off by the Service Director for Finance, IT & Transactional Services?	
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 for the year 2023/24
- 1.2 There are some proposed changes to the revenue and capital budgeting and budgetary control arrangements and minor proposed changes regarding income, and grants. The sections affected are most of FPR2, a part of FPR3 and the first clause of FPR 11, and later clauses of section 22

## 2. Information required to take a decision

- 2.1 All the text changes are shown in Appendix 1 by a table showing the as now and as proposed against each paragraph. .
- 2.2 The changes proposed in this report are intended to;
- 2.3 (a) Enable the implementation of revenue budget changes in line with the longer-term medium term financial plan, rather than addressing these annually only, starting from the approval of the next years budget (FPR section 2)

- (b) Enable greater flexibility in capital planning (FPR section3), and to clarify arrangements for appointment of contractors on a provisional basis (usually pending completion of a final project plan and cost)
- (c) Enable greater flexibility in changing fees and charges, or setting new charges (FPR section 11)
- (d) Additional reference recognising the requirements of the new Subsidy Control Act 2022.

### **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 **Climate change and air quality**- None directly
- 3.6 **Financial Implications for the people living or working in Kirklees** – None directly
- 3.7 **Other (e.g., Legal/Financial or Human Resources)**- **Although** each of the sub categorisations above suggest no direct implications, these Procedure Rules cover all aspects of the councils operations.

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

- 4.1 The Chief Finance Officer, and relevant 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 after consideration by this Committee.

### **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. The 2022 version of FPRs is available as a part of the council constitution.

**10. Service Director responsible**

Service Director- Legal Governance and Commissioning  
Service Director- Finance.

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<b>FINANCIAL PROCEDURE RULES</b>	
CURRENT (MAY 2022)	POSSIBLE AMENDED TEXT
<b>2. REVENUE BUDGET PREPARATION AND MANAGEMENT</b>	
<p><b>Responsibilities</b></p> <p>The Council is responsible for determining the Corporate/Council Plan which sets out the Council’s strategic outcomes and actions, and Strategic Directorate outcomes to provides the overarching framework for the determination of the Council’s MTFP within available resources.</p> <p>The Council's Medium Term Financial Plan (MTFP) comprising a multi-year General Fund Revenue Budget Plan which will normally cover a period of up to 5 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.</p>	<p><b>Responsibilities</b></p> <p>The Council is responsible for determining the Corporate/Council Plan which sets out the Council’s strategic outcomes and actions, and Strategic Directorate outcomes to provides the overarching framework for the determination of the Council’s Medium Term Financial Plan (MTFP) within available resources.</p> <p>The Council's MTFP includes the following:</p> <ul style="list-style-type: none"> <li>i) an overall revenue balanced budget position for the following financial year; both for the general fund and the ring-fenced Housing Revenue Account (HRA), including making provision for the revenue consequences from the Capital Investment Plan as appropriate.</li> <li>ii) the level of Council Tax for the following financial year</li> <li>iii) general fund and HRA revenue spend and funding forecasts beyond the next financial year; for a period of up to 4 years; including the revenue consequences from the multi-year capital investment plan over the same period; and</li> <li>iv) an overall longer term balanced budget forecast for the HRA MTFP in the context of the ring-fenced 30-year HRA business plan</li> </ul>

<p>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.</p> <p>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.</p>	<p>2.1 The Cabinet is responsible for recommending a Medium-Term Financial Plan (MTFP) as set out above to Budget Council, to enable the Council to set a balanced budget for both the general fund and HRA for the forthcoming financial year. The 1992 Local Government Finance Act, Section 30 (6) states that that the billing Authority must set an amount of Council Tax before 11th March in the financial year preceding that for which it is set. To comply with this legal requirement, this effectively means that the annual date of Budget Council should be no later than 10th March each year.</p> <p>2.1A The Cabinet is responsible for implementing the Budget Council approved MTFP for the forthcoming financial year.</p> <p>2.1B On the advice of the Chief Finance Officer, Cabinet can recommend amendments to the MTFP to any meeting of Council, also recommending any related changes to the Council Plan, strategic objectives or actions.</p> <p>2.2 not amended</p>
<p style="text-align: center;"><b>Budget Preparation</b></p> <p>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 up to 5 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.</p>	<p style="text-align: center;"><b>Budget Preparation</b></p> <p>2.3 not amended</p>

<p>2.4 The Chief Finance Officer is responsible for establishing budget procedures, including determination of the following:</p> <ul style="list-style-type: none"> <li>i) target spending controls for the Council budget over the MTFP, and their allocation to Strategic Directors, as appropriate,</li> <li>ii) the format for budget documentation,</li> <li>iii) a corporate budget timetable, and</li> <li>iv) to report on any amendments put forward as part of the Council’s budget process</li> </ul>	<p>2.4 not amended</p>
<p>2.5 The provisional budget strategy will include arrangements for wider public and key stakeholder engagement on budget options being considered.</p>	<p>2.5 not amended.</p>
<p>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 integrated impact assessments, in formulating budget options for Cabinet consideration.</p>	<p>2.6 not amended</p>
<p>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.</p>	<p>2.7 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, the Cabinet will make its recommendations to the Council with regards to the Annual Revenue Budget, the Capital Plan, and the consequent rates for Council Tax, and the updated MTFP.</p>

<p>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.</p>	<p>2.8 not amended</p>
<p><b>Budget Management</b></p> <p>2.9 The Cabinet is responsible for implementing the Council 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.</p> <p>2.10 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.</p> <p>2.11 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.</p> <p>2.12 These budgets will normally align with the Strategic 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 2.21 to 2.25 below).</p>	<p><b>Budget Management</b></p> <p>2.9 The Cabinet is responsible for implementing the Council Plan within the resources allocated in the Revenue Budget, and MTFP The Cabinet will provide summary revenue monitoring information to the Council at least twice per year.</p> <p>2.10 not amended</p> <p>2.11 not amended.</p> <p>2.12 not amended</p>

2.13 Service Directors are responsible for managing controllable budgets within their delegated authority and should exercise proper budgetary control in order to achieve Council Plan and service objectives.

2.14 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.

2.15 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.

2.16 Where a Service Director is reporting a projected overspend 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

2.13 not amended

2.14 not amended.

2.15 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.

2.15A A Strategic Director (in consultation with the relevant Portfolio Holder) is authorised to make such changes to service provision as are necessary; providing the proposed change is consistent with the approved Council Plan, service objectives and Council policy, to achieve spending within the approved annual budget or MTFP (as adjusted by any agreed virements)

2.16 Where a Service Director is reporting a projected overspend on an activity that cannot be addressed either through budget virement or other in-year changes to service provision, this will be highlighted in a manner prescribed by the Chief Finance Officer as part of the report to the Cabinet on the overall management of the Revenue Budget on at least a quarterly basis through the year. The

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.

2.17 The Chief Finance Officer is accountable for all central budgets, which will be managed in the same way as activity budgets.

2.18 The Chief Finance Officer has delegated authority to review the requirement for existing Council Provisions and Earmarked Reserves, in-year, and to approve the proposed drawdown of earmarked reserves in-year in consultation with the relevant Strategic Director, ensuring that the proposed drawdowns are appropriate for the stated purpose of the earmarked reserve. Earmarked Reserves drawdowns in-year will also form part of the overall report to Cabinet on a quarterly basis as set out at FPR 2.10. The Chief Finance Officer will also report any new Reserves or Provisions requirements to Cabinet for approval.

2.19 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.

reasons for the overspending and potential management options for eliminating or reducing the overspending will be included in this report. The Cabinet is responsible for determining such further steps as are necessary to align activity consistent with the resources allocated by the MTFP

2.17 not amended

2.18 not amended.

2.19 Service Directors should delegate authority to commit budgets to the appropriate level of management, set out clearly the extent of authority and review the performance of managers in managing these budgets.

<b>Virements</b>	<b>Virements</b>
<p>2.20 Service Directors are authorised to transfer resources within an activity budget without limit providing the corporate objectives for the activity is not changed in a material way.</p>	<p>2.20 not amended</p>
<p>2.21 Virement which is associated with a change in the level of service must be approved by the Cabinet.</p>	<p>2.21 Virement which results in a change in the level of service must be addressed as per FPR 2.15A.</p>
<p>2.22 Virement is not permitted between HRA funded and General Fund funding streams</p>	<p>2.22 not amended</p>
<p>2.23 Strategic Directors, in consultation with the appropriate executive member(s), are authorised to transfer resources between controllable activity budgets within the Strategic Directorate budget up to £1,000,000, cumulatively in any one year.</p>	<p>2. 23 Strategic Directors, in consultation with the appropriate Portfolio Holder (s), are authorised to transfer resources between controllable activity budgets within the Strategic Directorate budget up to £1,000,000, cumulatively in any one year.</p>
<p>2.24The 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 Strategic Directorate not exceeding £2m in any year. Cumulative Virements above these thresholds requires Council approval.</p>	<p>2.24The Cabinet is authorised to transfer resources (undertake a Virement) without limit for the purposes of achieving budget targets and obligations</p>
<p>2.25 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:</p> <p>(a) there is explicit prior year approval as part of the approved budget plans of the Council, for the following financial year; or</p> <p>(b) Service Directors can identify, from the revenue budget (up to £500,000 cumulative virement in any one financial year) to add</p>	<p>2.25 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 there is explicit prior year approval as part of the approved budget plans of the Council, for the following financial year</p>

<p>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</p> <p>2.26 Virement is specifically not allowed where the transfer of resources is from budgets for capital charges, Council support functions or statutory taxes and levies.</p> <p>2.27 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.</p>	<p>2.26 not amended</p> <p>2.27 not amended</p>
<p>No changes are recommended to sections 2.28 to 2.37</p>	
<p></p>	
<p><b>3 CAPITAL INVESTMENT PLAN PREPARATION</b></p>	
<p>No changes are recommended to sections 3.1 to 3.9</p>	
<p><b>Plan Management</b></p> <p>3.10 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.</p> <p>3.11 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 £2,000,000 in any financial year. (3) Transfer resources within programme areas between any year within the approved capital plan, subject to compliance with 3.14 and 3.16</p>	<p>3.10 not amended</p> <p>3.11 The Cabinet is authorised to transfer resources without restrictions. including between any year, within the approved capital plan, subject to compliance with 3.14 and 3.16</p>

3.12 Service Directors are authorised to transfer resources within a programme area up to a maximum of £1,000,000 in any financial year, subject to notification to the relevant Cabinet Member and appropriate Ward Members.

3.13 The Cabinet may delegate its authority under Financial Procedure Rule 3.11 to Service Directors. This is to be agreed on an annual basis.

3.14 Transfers under 3.10 to 3.13 require the approval of the Chief Finance Officer who must be satisfied that there is no impact on capital funding stream because of the changes.

3.15 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, but subject to approval by the Executive Team and the Chief Finance Officer; and compliance with FPR 3.19 and 3.20.

3.16 Transfer of resources must recognise funding arrangements. Transfer is not permitted between HRA funded and General Fund

3.12 Service Directors are 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 £2,000,000 in any financial year. (3) Transfer resources within programme areas between any year within the approved capital plan, subject to compliance with 3.14 and 3.16 subject to notification to the relevant Cabinet Member and appropriate Ward Members.

3.13 no longer required

3.14 Transfers under 3.10 to 3.12 require the approval of the Chief Finance Officer who must be satisfied that there is no impact on capital funding stream because of the changes.

3.15 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 there is explicit prior year approval as part of the approved budget plans of the Council for the following financial year.

3.16 Transfer is not permitted between HRA funded and General Fund funding streams, nor in respect of any project (or programme)

<p>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.</p> <p>3.17 Any decision on resource allocation by Cabinet, Strategic and Service Directors (3.11 to 3.16) must recognise any policy decisions of Council. Any decision on resource allocation by Strategic and Service Directors (3.12-3.16) must recognise any policy decisions of Cabinet.</p> <p>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</p>	<p>to the extent that it is funded by a project (or programme) specific third-party grant.</p> <p>3.17 not amended</p> <p>3.18 not amended</p>
<p style="text-align: center;"><b>Initiating &amp; Progressing Investment Decisions</b></p> <p>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</p>	<p>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</p>

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).

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.

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 3.16),

c) Any necessary external approval has been obtained.

d) The project will not lead to any unexpected or unplanned costs, not envisaged by the business case or optional appraisal.

source. This can include payment to a contractor for initial project scoping and design, provided that such costs are covered by an identified 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).

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.

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 3.16),

c) Any necessary external approval has been obtained.

d) The project will not lead to any unexpected or unplanned costs, not envisaged by the business case or optional appraisal.

The Chief Finance Officer may issue a partial approval (for example to cover a design stage) provided that there are sufficient resources to cover that stage. The Solicitor to the Council may only issue a contract that aligns with this authorisation.

<p>3.21 Service Directors have authority to progress projects once the approvals at 3.20 have been given. They must ensure compliance also with Contract Procedure Rules.</p> <p>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 overall financial reporting and monitoring process.</p> <p>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.</p>	<p>3.21 not amended</p> <p>3.22 not amended</p> <p>3.23 not amended</p>
<p><b>Complex Projects</b></p> <p>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 &amp; Commissioning. The Chief Finance Officer and Service Director Legal, Governance &amp; Commissioning must be consulted on any decision made by such a delegated party.</p>	<p>3.24 Any capital project which involves partnership arrangements, or investment in limited companies or other separate entities must be approved by Cabinet.</p> <p>3.24A The reporting of the capital position in such cases must follow a similar arrangement to any direct asset investment</p>
<p>No changes are recommended to sections 3.25 and 3.26</p>	

<b>11. INCOME</b>	
<p>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</p> <p>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.</p> <p>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.</p>	<p>11.1 Fees and charges must be reviewed at least once per annum. Service Directors have authority to implement new charges and amend existing fees and charges to achieve budget targets, to account for changes in legislation and market conditions, in consultation with the appropriate Strategic Director, relevant Portfolio Holder and Chief Finance Officer.</p>
No changes are proposed to sections 11.2 to 11.17	
<b>21. GRANTS TO AND FROM THE COUNCIL AND LOANS FROM THE COUNCIL</b>	
Grants and Loans to Other Organisations	Grants and Loans to Other Organisations
<p>22.17 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 -applicable national or international Procurement or State Aid requirements. In the event of any doubt</p>	<p>22.17 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 -applicable national or international Procurement or State Aid or Subsidy Control Act 2022 requirements.</p>

<p>about the matter advice must be sought from the Service Director Legal Governance &amp; Commissioning.</p> <p>22.18 Service Directors must ensure that appropriate records are retained to publish details of grants in accordance with the Local Government Transparency Code.</p>	<p>In the event of any doubt about the matter advice must be sought from the Service Director Legal Governance &amp; Commissioning.</p> <p>22.18 Service Directors must ensure that appropriate records are retained to publish details of grants in accordance with the Local Government Transparency Code. Details of any subsidy under State aid rules or the Subsidy Control Act 2022 must be published as required by law.</p>
<p>No changes are proposed to sections 22.1 to 22.16, or 22.19</p>	

No changes are proposed this year to any other FPR section not listed above



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

**Date:** 12 May 2023

**Title of report:** Proposed Revisions to Contract Procedure Rules 2023

**Purpose of report:** To provide information on proposed changes to Contract Procedure Rules for the municipal year 2023/24

<p><b>Key Decision – A key decision is an executive decision to be made by Cabinet which is likely to result in Council spending or saving £250k or more per annum, or to have a significant positive or negative effect on communities living or working in an area compromising two or more electoral wards. Decisions having a particularly significant effect on a single ward may also be treated as if they were key decisions.</b></p>	<p>Not Applicable</p>
<p><b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u>?</b></p>	<p>Not Applicable</p>
<p><b>The Decision - Is it eligible for call in by Scrutiny?</b></p>	<p>Not Applicable</p>
<p><b>Date signed off by <u>Strategic Director</u> &amp; name</b></p> <p><b>Is it also signed off by the Service Director for Finance?</b></p> <p><b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b></p>	<p>R Spencer-Henshall – Strategic Director – Corporate Strategy, Commissioning &amp; Public Health</p> <p>E Croston Service Director – Finance</p> <p>J Muscroft Service Director - Legal Governance and Commissioning</p>
<p><b>Cabinet member <a href="#">portfolio</a></b></p>	<p>Not applicable</p>

**Electoral wards affected:** All

**Ward councillors consulted:** Not applicable

**Public or private:** Public

**Has GDPR been considered?** Yes

## 1. Summary

- 1.1 This report sets out information on proposed changes to Contract Procedure Rules for the year 2023/24
- 1.2 The Contract Procedure Rules ensure that the Council is acting in line with current legislation and other developments in public law when conducting procurements.
- 1.3 A more fundamental review of the Contract Procedure Rules will be undertaken at the appropriate time in line with any legislative changes relating to the Procurement Bill.
- 1.4 The proposed changes relate to bonds and guarantees and some additions in relation to Rule 10 executing contracts.
- 1.5 Committee should note that some of the amendments suggested are also picked up in the report dealing with changes to other parts of the constitution which is also on this meetings agenda so that the amendments are consistent e.g. at Rule 10 where they are asterisked \*.

## 2. Information required to take a decision

- 2.1 The detail relating to all proposed changes is contained in the table below;

Section of the Contract Procedure Rules	Proposed changes
Rule 2 Preparation and Process	<p>The section on Bonds to be updated to include Bonds and Guarantees. Recommended changes to bond levels are noted in this section. The rules would now make clearer the need to have a parent company guarantee with the new addition below;</p> <p>2.3.10 The council should always seek a parent company guarantee when such an option is available.</p> <p>Suggested changes to bond levels are noted at 2.3.11; The levels would be increased from £300,000 to £500,000 for supply contracts relating to;</p> <ol style="list-style-type: none"> <li>a. capital construction works in excess of £500,000</li> <li>b. any IT contracts that involve pre operational payments in excess of £500,000;</li> </ol> <p>and a suggested increased from £3million to £5million for</p> <ol style="list-style-type: none"> <li>c. any contracts with a total consideration in excess of £5m</li> </ol>
Rule 10 Executing contracts	It is proposed that “Contract” be capitalised throughout where it relates to the defined definition.
Rule 10* Executing contracts	<p>New additions proposed at 10.5 in relation to signing and signatures;</p> <ul style="list-style-type: none"> <li>• a document shall be properly signed where it is physically signed in hardcopy format, or it is electronically signed in an electronic format approved by the Solicitor the Council;</li> </ul> <p>The Solicitor to the Council may authorise an external firm of lawyers to sign documents (and or initial and make amendments to documents) as agent on behalf of the Council.</p>
Rule 10 Executing contracts	10.7 Reference be changed from ‘EU supplies and services threshold’ to ‘UK Threshold for supplies and services.’

Rule 10* Executing contracts	CPR 10.8-10.10 deals with land transactions, see below proposed new addition in relation to authorising third party auctioneers to sign on the councils behalf; 10.11 The Solicitor to the Council may authorise an external property auctioneer to sign as agent for the Council, a Sale Memorandum to record the property price and terms of conditions of sale.
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- 2.2 All text changes are marked in Appendix A by track changes.
- 2.3 A clean copy of the revised contract procedure rules with suggested amendments can be seen at Appendix B.

### 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 **Climate Change and Air Quality**- None directly

3.5 **Improving outcomes for children**- None directly

3.6 **Financial Implications for the people living or working in Kirklees**

3.7 **Other (eg Integrated Impact Assessment/Legal/Financial or Human Resources)**

Although each of the sub categorisations above suggest no direct implications, these Contract Procedure Rules covers all aspects of the councils operations. These updated CPRs reflect good procurement practice which in turn supports the Council Plan by using procurement activity to help achieve the Council's wider objectives and outcomes. The legal obligation to have CPR's is to comply with Section 135 Local Government Act 1972 and the Public Contracts Regulations 2015

### 4. Consultation

Consultation has been carried out with the Head of Audit and Risk, Head of Corporate-Legal and officers in Procurement and Legal Services. All Heads of Service across the Council have had the opportunity to comment and feedback.

### 5. Next steps and timelines

This matter will go forward to Annual Council for consideration on 24 May 2023.

### 6. Officer recommendations and reasons

Members are asked to consider the proposed changes to Contract Procedure Rules and recommend them to Annual Council for approval.

### 7. Cabinet Portfolio Holder's recommendations

Not applicable.

### 8. Contact officer

Jane Lockwood, Head of Procurement (01484 221000, e-mail; [JaneA.Lockwood@kirklees.gov.uk](mailto:JaneA.Lockwood@kirklees.gov.uk) )

### 9. Background Papers and History of Decisions

The attached document includes track changes. The 2022 version of CPRs is available as a part of the council constitution.

### 10. Service Director responsible

Julie Muscroft, Service Director- Legal, Governance and Commissioning  
Eamonn Croston, Service Director-Finance

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**KIRKLEES COUNCIL  
CONTRACT PROCEDURE RULES**

**MAY 202~~3~~<sup>2</sup>**

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- 1.7 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.
- 1.8 A Service Director has authority to commence any Procurement subject to:
- 1.8.1 compliance with these CPRs and FPRs; and
  - 1.8.2 having appropriate delegated authority; and
  - 1.8.3 compliance with management processes designed to ensure that proposed projects meet the Council's business needs; and
  - 1.8.4 seeking Value for Money.
- 1.9 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK law and agreements with Grant funding organisations.
- 1.10 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:
- 1.10.1 the Head of Procurement – Good Procurement Practice;
  - 1.10.2 Solicitor to the Council – UK Procurement Rules and other laws and Corporate Governance;
  - 1.10.3 Head of Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.11 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.
- 1.12 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:-
- 1.12.1 the post holders to whom these duties are assigned must hold general competencies as follows:-
    - 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.
    - the same degree of separation of officer responsibility for the duties is maintained.

#### **Conflicts of Interest and Integrity<sup>1</sup>**

- 1.13 Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures to avoid any distortion of competition and to ensure equal treatment of all economic operators.

<sup>1</sup> Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.6 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

[an order to do so and to take any necessary steps to ensure that the Council complies with the relevant provisions of the 2022 Local Government Act and the 2022 Local Government Finance Act.](#)

- 1.14 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 they become aware of a potential Conflict of Interest and update the declaration in the event of any changes.
- 1.15 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.
- 1.16 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. 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.
- 2.2. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with UK Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service, Find A Tender Service (FTS) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.3. Each Service Director must ensure:
  - 2.3.1. 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 CPRs or the UK Procurement Rules, unless justified by objective reasons.
  - 2.3.2. Where the cost of the Supply is less than the UK 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 UK Procurement Rules.
  - 2.3.3. The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK supplies and services threshold.
  - 2.3.4. The process can be adequately resourced.
  - 2.3.5. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

**Compliance**

- 2.3.6. Each Procurement complies with the following:-
  - a. it is justified by a business case (that includes a risk assessment) approved 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 6.14), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions and options available under CPRs 6.12 & 6.13).

**Estimated Value**

- 2.3.7. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.
- 2.3.8. 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.
- 2.3.9. The Supply is likely to be within budgetary provision (see CPR 10.1).

**Bonds and Guarantees**

2.3.10. The council should always seek a parent company guarantee when such an option is available.

~~2.3.10.~~ 2.3.11. Bonds: All supply contracts relating to;

- a. capital construction works in excess of £5300,000
- b. any IT contracts that involve pre operational payments in excess of £5300,000
- c. any contracts with a total consideration in excess of £53m

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:-

- i. No bond is necessary; or
- ii. A different value (or percentage) is appropriate; and or
- ~~iii.~~ iii) a cash bond; and or
- ~~iv.~~ iv. A parent company guarantee or other form of surety can be accepted instead.

**The Specification**

- 2.4. In preparing a Specification, the Service Director should consider how the procurement activity might meet the Councils wider policy and strategy but subject always to ensuring full compliance

~~an order to do this and to be a minimum of 10% of the total value of the contract for 2022/23 and 2023/24. Changes~~



Director must follow the Council's Information Security Policy, in particular regarding contracting with data processors, sharing data and consulting with the Information Governance Team. The Service Director must ensure that:

- 2.12.1. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
- 2.12.2. appropriate guarantees of the security of the personal data are included within a written contract;
- 2.12.3. the performance of the contract is appropriately monitored;
- 2.12.4. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
- 2.12.5. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
- 2.12.6. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

#### **Collaboration**

- 2.13. The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.14. 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); any 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
£0 - £24,999.99	<p>Any Reasonable Means to select are permitted. Reasons to justify the decision taken must be recorded,</p> <ul style="list-style-type: none"> <li>Where practicable, suppliers from Kirklees (and/or West Yorkshire) area are encouraged and should be invited to submit quotes. Officers need to ensure that purchases achieve best value for the Council and an audit trail is maintained to demonstrate this.</li> </ul>	<ol style="list-style-type: none"> <li>Any reasonable means</li> <li>A Contract Award notification form needs to be completed for values in excess of £5,000 and up to £24,999. This must be reported to Corporate Procurement</li> </ol>	3
£25,000 – Threshold	<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>Exceptions (CPR 6)</li> <li>Internal, Consortia &amp; Compulsory(CPR 6)</li> </ul> <p>In addition;</p> <p>Legal, Governance, Risk, Insurance, Information Governance and Health &amp; Safety teams must be consulted where necessary</p>	<p><b>As the Head of Procurement determines</b></p> <ol style="list-style-type: none"> <li>From a standing list</li> <li>An approved Framework Agreement</li> <li>An approved Dynamic Purchasing System</li> <li>Advertise on eProcurement Portal, ContractsFinder PLUS other reasonable advertising means</li> </ol>	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>
Above Threshold	<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>Exceptions (CPR 6)</li> <li>Internal, Consortia &amp; Compulsory(CPR 6)</li> </ul> <p>In addition</p> <p>Legal, Governance, Risk, Insurance, Information Governance and Health &amp; Safety teams must be consulted where necessary</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>Advertise on eProcurement Portal, Contracts Finder, FTS and in other media if appropriate; or</p> <p>Use approved Framework Agreement; or</p> <p>Use approved Dynamic Purchasing System</p>	5

- 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>2</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.
- 3.4. The Suppliers must be reasonably capable of, or have indicated that they are willing to, submit a Tender. If it is not possible to identify the number of suitable and/or 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**

- 3.5. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.
- 3.6. Where the procurement process has an overall value of less than the supplies and services UK 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.
- 3.7. When operating a procurement process with a value above the supplies and services UK threshold, 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.
- 3.8. 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 UK Procurement Rules, minimum standard and/or pass marks must be published in the relevant FTS 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.

<sup>2</sup> See CPR 5.17

[https://www.dorsetcouncil.gov.uk/media/1914696/procurement-2022-2024-2022-changes](#)

#### **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 eProcurement Portal 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 Procurement reference and title;
  - 4.4.2 name of each supplier submitting a Tender and the time of submission;
  - 4.4.3 name of suppliers failing to submit prices/proposal for any restricted opportunities;
  - 4.4.4 prices from each supplier;
  - 4.4.5 name of opening officer;
  - 4.4.6 names of the persons present at the opening for any tenders submitted outside of the eProcurement Portal ;
  - 4.4.7 date and time of opening of Tenders;
- 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 they feel 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 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.
- 4.7 Any variants which are submitted must conform to the requirements of the tender documents.
- 4.8 Tenders which do not comply with the CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Internal Audit.
- 4.9 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.7) and keep a written record of the analysis and outcome.
- 4.10 The use of or participation in e-auctions to set prices is permitted where:
- 4.10.1 bids can be ranked automatically; and
  - 4.10.2 the mathematical formula to determine the rankings of the bids (or each variant where

variants are permitted) is disclosed; and

4.10.3 the written agreement of the Head of Internal Audit has been given; and

4.10.4 the process is subject to supervision by the Head of Procurement.

- 4.11 The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.
- 4.12 The Service Director must ensure that, where required by UK 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.
- 4.13 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 4.15) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.
- 4.14 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

- 4.15 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:
- 4.15.1 set an appropriate time limit for a reply; and
- 4.15.2 do not request changes or otherwise seek to influence the bidder; and
- 4.15.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
- 4.15.4 treat all tenderers equally and fairly and so, for example, the request:-
- a. must not occur before all of the bids have been subject to an initial evaluation;
  - b. must not unduly favour or disadvantage the bidder to whom the request is addressed; and
  - c. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 4.16 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. All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.
- 4.17 Interviews and/or presentations which form part of the bid must be authorised by the Head of Procurement in writing. They must also be:



- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract and in accordance with the UK 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 UK 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 be subject to consistent due diligence assessments of DPS participants
- 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 which Service Directors are permitted to use.

**Use of Third Party Procurement Facilities**

- 5.18 Supplies may be obtained through third party Frameworks Agreements (provided that the Head of Procurement is satisfied that using such a method is demonstrated to represent value for money) 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 where the UK procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.



- 6.6.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.
- 6.6.4 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 UK 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 their own Service Director, there must be consultation with the Head of Internal Audit.

**Negotiated Contracts**

- 6.7 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.
- 6.8 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 6.9 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**

- 6.10 The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed the UK threshold (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).
- 6.11 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, they must consult with the Solicitor to the Council about the possibility of subsidy control before approving the exemption from competition.

**Mandatory suppliers, frameworks agreements or dynamic purchasing systems**

- 6.12 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 UK Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.
- 6.13 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.
- 6.14 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-
  - 6.14.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;
  - 6.14.2 in respect of the outsourcing of an activity having a value below £100,000;
  - 6.14.3 in respect of services provided within schools;

[an/needs/ya/ldocgen/ers/and/str/loc/alm/ncs/m/1/9/m/lowe/limitat/49/cor/proc/2002/69/m/4/aid/cor-2002/trcked/changes](#)

6.14.4 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 the dividing large procurements into contract Lots;
- 7.1.4 consideration of social value in the commissioning and procurement process
- 7.1.5 any interviews, other dialogue or negotiation;
- 7.1.6 A risk log;
- 7.1.7 supplier vetting; and
- 7.1.8 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 on the eProcurement Portal 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 2](#)).
- 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 UK Procurement Rules.
- 7.5 Each Service Director must promptly provide to the Head of Procurement the information specified in [Appendix 2](#).
- 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

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## **RULE 8 - INCOME CONTRACTS & CONCESSIONS**

- 8.1 CPR 8 Includes nil value and disposal contracts but excludes Land.
- 8.2 CPRs 8.2 to 8.8 apply when the Council intends to derive income from:-
  - 8.2.1 the disposal of property (other than Land);
  - 8.2.2 the sale of a right to exploit a business opportunity;
  - 8.2.3 the operation of business activity.
- 8.3 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

[an overview of the council's income contracts and disposal contracts 2022/23 and 2023/24 changes](#)





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 UK supplies and services threshold must be in writing and can be made by the Service Director either:

- where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
- By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

10.3 If the Service Director and Solicitor to the Council decide that it is appropriate for the Cecontract to be sealed (or if it is required by law), the Cecontract will be executed by the Solicitor to the Council.

10.4 The Head of Procurement must ensure that the Council's electronic procurement systems are setup so that the most appropriate Official Council Order are available to be attached to the supply being purchased.

10.5 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 UK supplies and services threshold must be in writing and must (subject to CPR 10.6) be either:

- made under the corporate common seal of the Council, attested by one legal officer; or
- signed by two legal officers;
- a document shall be properly signed where it is physically signed in hardcopy format, or it is electronically signed in an electronic format approved by the Solicitor the Council;

who have been nominated as Cecontract signatories by the Solicitor to the Council under their Scheme of Officer Delegations. The solicitor to the Council may authorise an external firm of lawyers to sign documents (and or initial and make amendments to documents) as agent on behalf of the Council.

10.6 Notwithstanding CPR 10.5, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist Cecontracts for Supplies above the UK supplies and services threshold. Two authorised officers must sign each such Cecontract.

10.7 The Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant Cecontracts and suitable record keeping, provide third parties with a power of attorney to sign Council Cecontracts of values below the £UK Threshold for supplies and services threshold.

#### Land

10.8 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- 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.

10.9 Any Cecontract 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



**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 25<sup>th</sup> May 2023~~2~~

## 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
<b>Commissioning</b>	The relationship between commissioning and procurement is described in the diagram in Appendix 3.
<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>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 the relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement or sale procedure.
<b>Contract</b>	Means any form of contract, agreement for the supply of any works, goods, or services that the Council enters into (whether by purchase, lease, hire or any other arrangement).
<b>Contract Procedure Rules (CPRs)</b>	Means these Contract Procedure Rules.
<b>Data Protection Legislation</b>	Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority.

<b>Dynamic Purchasing System (DPS)</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 all contracts and it should be set up using the restricted procedure.
<b>eProcurement Portal (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. Currently available at <a href="https://yortender.eu-supply.com">https://yortender.eu-supply.com</a>
<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>Find A Tender Service (FTS)</b>	“Find a Tender” means the UK e-notification service where notices for new procurements are required to be published;
<b>Financial Procedure Rules (FPRs)</b>	The Financial Procedure Rules.
<b>Framework Agreement</b>	Means an agreement between a Contracting Authority 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 UK Threshold are subject to the Public 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>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>Income Contract</b>	An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset <sup>4</sup> and includes situations where the Council does so at nil value (subject to this not being a Grant – see <a href="#">Appendix 4</a> Appendix 4).
<b>Land</b>	“Land” includes any interest in land ( including buildings) and any easement or right in or over land
<b>Local Government Transparency Requirements</b>	Means the statutory codes and legislation requiring the Council to publish information, such as <sup>5</sup> the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.

<sup>4</sup> For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

<sup>5</sup> The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be exhaustive. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/420211/procurement-2015-2021-full-draft-2021-cpr-2023-cracked-changes-appendix-4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420211/procurement-2015-2021-full-draft-2021-cpr-2023-cracked-changes-appendix-4.pdf)

<b>Official Council Order</b>	A standard form of contract for a Supply for a value of less than the current UK 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>6</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>Public Procurement Rules</b>	The rules on procurement for Supplies above the UK Threshold are subject to the statutory requirements outlined in the Public Contracts Regulations 2015 and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations).
<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>Senior Manager</b>	Means an officer who reports directly to a Head of Service.
<b>Service</b>	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.
<b>Service Director</b>	Means the most senior officer responsible for the day to day functions of each Service.
<b>Social Value</b>	Means The Public Services (Social Value) Act 2012 ('Social Value Act') that requires the Council to consider how a procurement over the relevant thresholds could improve the economic, social and environmental wellbeing of the district
<b>Solicitor to the Council</b>	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
<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

limiting  
<sup>6</sup> Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or their delegate [See the FPR].

	others to provide specific Supplies 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>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. 'Suitability' shall be interpreted accordingly.
<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>Supply / Supplies</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>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>UK Threshold</b>	The financial threshold from time to time at which the UK Procurement Rules are applicable to a Supply. Current UK Thresholds are set out in <a href="#">Appendix 1</a> .
<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 which can be used to produce a spend profile of the Supply over its anticipated lifespan.</li> </ul>



**Appendix 2**

**Information to be Reported to the Head of Procurement (RULE 7 – RECORD KEEPING AND REPORTING)**

	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 2. title of agreement 3. Contract Manager; name of person responsible for managing the contract 4. description of the goods and/or services being provided 5. Supplier name and details 6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract) 7. start, end and review dates, including permitted extensions 8. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and 9. 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 10. whether or not the contract involves processing personal data	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 Public Procurement Rules apply on Contract Award

Appendix 3

Relationship between Commissioning and Procurement



## Appendix 4

### How to decide if a procurement or grant is applicable

- The Council obtains supplies of goods, works, and services from external suppliers and normally uses competitive processes to do so in accordance with the Contract Procedure Rules (CPRs)
- It is always appropriate to use procurement to obtain **goods** and **works**, and this is the usual preference to obtain **services**.
- There may though be some occasions when a grant may be an appropriate way to achieve the priorities of the Council. The table below aims to provide a guide to support commissioners to think about whether a grant or procurement is the most appropriate method in obtaining and/or supporting a particular **service**.

1	If you are seeking to obtain <b>goods</b> or <b>works</b> you should <b>procure as per CPRs</b>
2	If you are seeking to obtain a <b>service</b> and can answer <b>YES</b> to <b>ANY</b> of the following, you should <b>procure as per CPRs</b> <ul style="list-style-type: none"><li>• Is there an intention to specify service standards and outputs required?</li><li>• Will payment be reduced/alterd if service standards are not met, or additional payment be made if there are claims for additional costs incurred?</li><li>• Are there opportunities for change control?</li><li>• Is there a contractual obligation on both parties?</li><li>• Is there an intention to have active management of the provider?</li></ul>
3	If you are seeking to use a supplier that is a commercial i.e., profitmaking organisation this would generally require procurement as per CPRs. If the organisation is a genuine “not for profit” organization or charity you should discuss further with the Procurement team.
4	If you are seeking a <b>service</b> and can answer <b>YES</b> to <b>ANY</b> of the following, you can consider use of a <b>Grant as per FPRs</b> <ul style="list-style-type: none"><li>• Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider?</li><li>• Is the intention to support parts of an existing activity?</li><li>• Is the intention to provide a subsidy to existing service users</li><li>• Is the council’s only ultimate remedy to withhold payment of a next phase of grant, seek clawback or to refuse to fund future activity by the provider?</li><li>• Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?</li></ul>

#### Important notes/advice

- Always remember to check with the Procurement team if unsure.
- A competition will generally be appropriate to select which parties are entitled to receive grants.
- Grants still require a grant agreement.
- Grants which involve procurement by a third party require use of competition in selection of their suppliers (broadly aligning with council CPRs)

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**KIRKLEES COUNCIL**  
**CONTRACT PROCEDURE RULES**

**MAY 2023**

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## **INTRODUCTION**

These Contract Procedure Rules (CPRs) 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.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts.

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 proportionate and relative to the need which the Supply fulfils and should appropriately balance the value of, and risks associated with, any proposed action.

Where the council wishes to obtain the delivery of goods, works, or services, the use of procurement is the usual method. Grants should only be used to assist or support objectives of another organisation. In some instances, CPRs will apply to grants (see Appendix 4).

### **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 take every opportunity to consider how improvements to the economic, social and environmental wellbeing of the district (social value) can be generated and 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 processor 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.
  - 1.4.3 a suitably experienced and trained officer is identified to adequately manage the Contract for every contractual relationship the Council enters into.
- 1.5 When authorising staff to procure Supplies on their behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure the Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations. An officer wishing to commence a procurement exercise and/or commit the council to contractual obligations must ensure that:
  - 1.5.1 they have the Cabinet authority or a written approval of the delegated decision by an authorised officer under the Scheme of Officer Delegation to incur the expenditure and provide details to the Head of Corporate Procurement.
  - 1.5.2 officer executive decisions are recorded accurately and promptly including the relevant information required, such as the context in which the decision was taken, the reasons for the decision and alternative options considered.
  - 1.5.3 all significant officer decisions taken relating to the procurement exercise (i.e. decisions which may be of interest to councillors and/or the public) are recorded
  - 1.5.4 where a Supply is a Key Decision, a Key Decision Notice (KDN) has been published in a Notice of Forthcoming Key Decisions.
- 1.6 The Head of Procurement may:-
  - 1.6.1 authorise officers who are not procurement officers under their managerial responsibility to act on their 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 them 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.

- 1.7 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.
- 1.8 A Service Director has authority to commence any Procurement subject to:
- 1.8.1 compliance with these CPRs and FPRs; and
  - 1.8.2 having appropriate delegated authority; and
  - 1.8.3 compliance with management processes designed to ensure that proposed projects meet the Council's business needs; and
  - 1.8.4 seeking Value for Money.
- 1.9 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK law and agreements with Grant funding organisations.
- 1.10 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:
- 1.10.1 the Head of Procurement – Good Procurement Practice;
  - 1.10.2 Solicitor to the Council – UK Procurement Rules and other laws and Corporate Governance;
  - 1.10.3 Head of Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.11 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.
- 1.12 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:-
- 1.12.1 the post holders to whom these duties are assigned must hold general competencies as follows:-
    - 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.
    - the same degree of separation of officer responsibility for the duties is maintained.

### **Conflicts of Interest and Integrity<sup>1</sup>**

- 1.13 Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures to avoid any distortion of competition and to ensure equal treatment of all economic operators.

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<sup>1</sup> Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.6 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

- 1.14 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 they become aware of a potential Conflict of Interest and update the declaration in the event of any changes.
- 1.15 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.
- 1.16 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. 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.
- 2.2. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with UK Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service, Find A Tender Service (FTS) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.3. Each Service Director must ensure:
  - 2.3.1. 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 CPRs or the UK Procurement Rules, unless justified by objective reasons.
  - 2.3.2. Where the cost of the Supply is less than the UK 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 UK Procurement Rules.
  - 2.3.3. The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK supplies and services threshold.
  - 2.3.4. The process can be adequately resourced.
  - 2.3.5. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

### **Compliance**

2.3.6. Each Procurement complies with the following:-

- a. it is justified by a business case (that includes a risk assessment) approved 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 6.14), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions and options available under CPRs 6.12 & 6.13).

### **Estimated Value**

2.3.7. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.

2.3.8. 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.

2.3.9. The Supply is likely to be within budgetary provision (see CPR 10.1).

### **Bonds and Guarantees**

2.3.10. The council should always seek a parent company guarantee when such an option is available.

2.3.11. Bonds; All supply contracts relating to;

- a. capital construction works in excess of £500,000
- b. any IT contracts that involve pre operational payments in excess of £500,000
- c. any contracts with a total consideration in excess of £5m

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:-

- i. No bond is necessary; or
- ii. A different value (or percentage) is appropriate; and or
- iii. a cash bond; and or
- iv. A parent company guarantee or other form of surety can be accepted instead.

### **The Specification**

2.4. In preparing a Specification, the Service Director should consider how the procurement activity might meet the Councils wider policy and strategy but subject always to ensuring full compliance with UK procurement legislation. Service Directors must also consider how what is proposed to be

procured might improve the economic, social and environmental wellbeing of Kirklees.

- 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. The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.10) and other procurement documentation must be created to be understandable by all reasonably well informed people in the relevant industry.

### **Award Criteria**

- 2.7. 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 3.5– 3.9) and must be proportional to the contract's main objectives.
- 2.8. The Head of Procurement is consulted at the preparatory stage if conducting interviews or receiving presentations is considered to be beneficial to the process (also see CPRs 4.16-4.17).

### **Contracting**

- 2.9. For contracts up to the UK supplies and services threshold, other than Land Contracts, 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).
- 2.10. For contracts above the UK supplies and services threshold, other than Land Contracts the Service Director must consult with the Solicitor to the Council who will prepare contract documentation appropriate for the contract.

### **Data Processing**

- 2.11. 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.
- 2.12. 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. The Service Director must follow the Council's Information Security Policy, in particular regarding contracting

with data processors, sharing data and consulting with the Information Governance Team. The Service Director must ensure that:

- 2.12.1. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
- 2.12.2. appropriate guarantees of the security of the personal data are included within a written contract;
- 2.12.3. the performance of the contract is appropriately monitored;
- 2.12.4. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
- 2.12.5. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
- 2.12.6. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

### **Collaboration**

- 2.13. The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.14. 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); any 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> <ul style="list-style-type: none"> <li>Where practicable, suppliers from Kirklees (and/or West Yorkshire) area are encouraged and should be invited to submit quotes. Officers need to ensure that purchases achieve best value for the Council and an audit trail is maintained to demonstrate this.</li> </ul>	<ol style="list-style-type: none"> <li>Any reasonable means</li> <li>A Contract Award notification form needs to be completed for values in excess of £5,000 and up to £24,999. This must be reported to Corporate Procurement</li> </ol>	3
<b>£25,000 – 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>Exceptions (CPR 6)</li> <li>Internal, Consortia &amp; Compulsory(CPR 6)</li> </ul> <p>In addition;</p> <p>Legal, Governance, Risk, Insurance, Information Governance and Health &amp; Safety teams must be consulted where necessary</p>	<p><b>As the Head of Procurement determines</b></p> <ol style="list-style-type: none"> <li>From a standing list</li> <li>An approved Framework Agreement</li> <li>An approved Dynamic Purchasing System</li> <li>Advertise on eProcurement Portal, ContractsFinder PLUS other reasonable advertising means</li> </ol>	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>
<b>Above 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>Exceptions (CPR 6)</li> <li>Internal, Consortia &amp; Compulsory(CPR 6)</li> </ul> <p>In addition</p> <p>Legal, Governance, Risk, Insurance, Information Governance and Health &amp; Safety teams must be consulted where necessary</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>Advertise on eProcurement Portal, Contracts Finder, FTS and in other media if appropriate; or</p> <p>Use approved Framework Agreement; or</p> <p>Use approved Dynamic Purchasing System</p>	5

- 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:-
  - 3.1.1 an **approved**<sup>2</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
  - 3.1.2 it is otherwise agreed with the Head of Internal Audit in consultation with the Solicitor to the Council.
- 3.4. The Suppliers must be reasonably capable of, or have indicated that they are willing to, submit a Tender. If it is not possible to identify the number of suitable and/or 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**

- 3.5. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.
- 3.6. Where the procurement process has an overall value of less than the supplies and services UK 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.
- 3.7. When operating a procurement process with a value above the supplies and services UK threshold, 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.
- 3.8. 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 UK Procurement Rules, minimum standard and/or pass marks must be published in the relevant FTS 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.

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<sup>2</sup> See CPR 5.17

## **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 eProcurement Portal 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 Procurement reference and title;
  - 4.4.2 name of each supplier submitting a Tender and the time of submission;
  - 4.4.3 name of suppliers failing to submit prices/proposal for any restricted opportunities;
  - 4.4.4 prices from each supplier;
  - 4.4.5 name of opening officer;
  - 4.4.6 names of the persons present at the opening for any tenders submitted outside of the eProcurement Portal ;
  - 4.4.7 date and time of opening of Tenders;
- 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 they feel 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 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.
- 4.7 Any variants which are submitted must conform to the requirements of the tender documents.
- 4.8 Tenders which do not comply with the CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Internal Audit.
- 4.9 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.7) and keep a written record of the analysis and outcome.
- 4.10 The use of or participation in e-auctions to set prices is permitted where:
  - 4.10.1 bids can be ranked automatically; and
  - 4.10.2 the mathematical formula to determine the rankings of the bids (or each variant where

variants are permitted) is disclosed; and

4.10.3 the written agreement of the Head of Internal Audit has been given; and

4.10.4 the process is subject to supervision by the Head of Procurement.

- 4.11 The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.
- 4.12 The Service Director must ensure that, where required by UK 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.
- 4.13 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 4.15) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.
- 4.14 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**

- 4.15 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:
- 4.15.1 set an appropriate time limit for a reply; and
  - 4.15.2 do not request changes or otherwise seek to influence the bidder; and
  - 4.15.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
  - 4.15.4 treat all tenderers equally and fairly and so, for example, the request:-
    - a. must not occur before all of the bids have been subject to an initial evaluation;
    - b. must not unduly favour or disadvantage the bidder to whom the request is addressed; and
    - c. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 4.16 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. All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.
- 4.17 Interviews and/or presentations which form part of the bid must be authorised by the Head of Procurement in writing. They must also be:

- 4.17.1 Comprehensively recorded; and
- 4.17.2 assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
- 4.17.3 supervised by the Head of Procurement.

## **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 6.12). 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 UK Procurement Rules) of the Supply in question does not exceed the relevant UK Threshold. A Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant UK 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 eProcurement Portal, 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 CPRs 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 UK Procurement Rules, as applicable).

- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract and in accordance with the UK 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 UK 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 be subject to consistent due diligence assessments of DPS participants
- 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 which Service Directors are permitted to use.

### **Use of Third Party Procurement Facilities**

- 5.18 Supplies may be obtained through third party Frameworks Agreements (provided that the Head of Procurement is satisfied that using such a method is demonstrated to represent value for money) 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 where the UK 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 UK Procurement Rules the following are exempted from the competitive requirements of these CPRs<sup>3</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 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 6.12 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 UK Procurement Rules;
- 6.2 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. Value for money must be evidenced and recorded.
- 6.3 Trial Purchases**
- 6.4 Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000 without competition in order to ascertain if the Supply is of interest to the Council. 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.
- 6.5 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.
- 6.6 The procuring Service Director and the Head of Procurement may decide that;
- 6.6.1 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.
  - 6.6.2 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.

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<sup>3</sup> When the UK Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

- 6.6.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.
- 6.6.4 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 UK 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 their own Service Director, there must be consultation with the Head of Internal Audit.

### **Negotiated Contracts**

- 6.7 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.
- 6.8 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 6.9 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**

- 6.10 The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed the UK threshold (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).
- 6.11 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, they must consult with the Solicitor to the Council about the possibility of subsidy control before approving the exemption from competition.

### **Mandatory suppliers, frameworks agreements or dynamic purchasing systems**

- 6.12 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 UK Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.
- 6.13 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.
- 6.14 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-
- 6.14.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;
  - 6.14.2 in respect of the outsourcing of an activity having a value below £100,000;
  - 6.14.3 in respect of services provided within schools;

6.14.4 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 the dividing large procurements into contract Lots;
  - 7.1.4 consideration of social value in the commissioning and procurement process
  - 7.1.5 any interviews, other dialogue or negotiation;
  - 7.1.6 A risk log;
  - 7.1.7 supplier vetting; and
  - 7.1.8 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 on the eProcurement Portal 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 2).
- 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 UK Procurement Rules.
- 7.5 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 2.
- 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**

- 8.1 CPR 8 Includes nil value and disposal contracts but excludes Land.
- 8.2 CPRs 8.2 to 8.8 apply when the Council intends to derive income from:-
- 8.2.1 the disposal of property (other than Land);
  - 8.2.2 the sale of a right to exploit a business opportunity;
  - 8.2.3 the operation of business activity.
- 8.3 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 they will decide whether this amounts to a Grant (and so FPR 4 applies instead of CPR 8).

### **The disposal of an asset**

8.4 The procedure for the disposal of assets is:-

8.4.1 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;

8.4.2 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.

8.5 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**

8.6 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 asset 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.

8.6.1 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 and should be arranged and undertaken by the Service Director responsible for the activity.

8.6.2 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.**

8.7 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.

8.8 If an Income Contract has any potential to distort the relevant market advice must be obtained from the Solicitor to the Council.

### **Concession Contracts**

8.9 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.

8.10 Concession contracts for works or services above UK thresholds 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**

8.11 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.

8.12 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.

8.13 When calculating the estimated value of a Concession contract or Income Contract, Service Directors shall, where applicable, take into account:-

8.13.1 the value of any form of option and any extension of the duration of the contract;

8.13.2 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;

8.13.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;

8.13.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;

8.13.5 revenue from sales of any assets which are part of the contract;

8.13.6 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;

8.13.7 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 UK supplies and services threshold must be in writing and can be made by the Service Director either:
- where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
  - By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.
- 10.3 If the Service Director and Solicitor to the Council decide 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.
- 10.4 The Head of Procurement must ensure that the Council's electronic procurement systems are setup so that the most appropriate Official Council Order are available to be attached to the supply being purchased.
- 10.5 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 UK supplies and services threshold must be in writing and must (subject to CPR 10.6) be either:
- made under the corporate common seal of the Council, attested by one legal officer; or
  - signed by two legal officers;
  - a document shall be properly signed where it is physically signed in hardcopy format, or it is electronically signed in an electronic format approved by the Solicitor the Council;
- who have been nominated as Contract signatories by the Solicitor to the Council under their Scheme of Officer Delegations. The solicitor to the Council may authorise an external firm of lawyers to sign documents (and or initial and make amendments to documents) as agent on behalf of the Council.
- 10.6 Notwithstanding CPR 10.5, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist Contracts for Supplies above the UK supplies and services threshold. Two authorised officers must sign each such Contract.
- 10.7 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 UK Threshold for supplies and services.

## **Land**

- 10.8 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 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.
- 10.9 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 CPR 9.1.

## General

- 10.10 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 10.5 and provided that this is not subject to any contrary direction from the Council or Cabinet.
- 10.11 The Solicitor to the Council may authorise an external property auctioneer to sign as agent for the Council, a Sale Memorandum to record the property price and terms of conditions of sale.

## **RULE 11 – VARIATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS**

- 11.1 It is recognised that during the term of a Contract, modifications may be proposed, which if adopted would result in additional Works, Goods and/or Services, which were not considered when the original procurement took place, being procured or otherwise would alter the overall nature of the Contract. There are significant limitations upon the Council being able to make such modifications, especially where the Regulations apply. When considering a variation, modification or the termination of an existing Contract, advice must be sought in advance from the Corporate Procurement Service and with the Solicitor to the Council.
- 11.2 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.
- 11.3 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.
- 11.4 The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.
- 11.5 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.
- 11.6 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.
- 11.7 Any variation with a value above £25,000 to a contract which cannot be fulfilled by following CPR 11.6 must be subject to the approval of the Head of Procurement.
- 11.8 Any variation to a contract which cannot be fulfilled by following CPR 11.6 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.
- 11.9 Subject to approval of the Solicitor to the Council and the Head of Procurement contracts may be novated to another Supplier where permitted by an express provision to novate in the terms and conditions of contract; or in the event of a successor due to the original Supplier carrying out a corporate restructuring, merger, acquisition, takeover or insolvency. The new Supplier must comply with the requirements under the original contract.

## **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 25<sup>th</sup> May 2023

## 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
<b>Commissioning</b>	The relationship between commissioning and procurement is described in the diagram in Appendix 3.
<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>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 the relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement or sale procedure.
<b>Contract</b>	Means any form of contract, agreement for the supply of any works, goods, or services that the Council enters into (whether by purchase, lease, hire or any other arrangement).
<b>Contract Procedure Rules (CPRs)</b>	Means these Contract Procedure Rules.
<b>Data Protection Legislation</b>	Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority.

<b>Dynamic Purchasing System (DPS)</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 all contracts and it should be set up using the restricted procedure.
<b>eProcurement Portal (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. Currently available at <a href="https://yortender.eu-supply.com">https://yortender.eu-supply.com</a>
<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>Find A Tender Service (FTS)</b>	“Find a Tender” means the UK e-notification service where notices for new procurements are required to be published;
<b>Financial Procedure Rules (FPRs)</b>	The Financial Procedure Rules.
<b>Framework Agreement</b>	Means an agreement between a Contracting Authority 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 UK Threshold are subject to the Public 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>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>Income Contract</b>	An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset <sup>4</sup> and includes situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4).
<b>Land</b>	“Land” includes any interest in land ( including buildings) and any easement or right in or over land
<b>Local Government Transparency Requirements</b>	Means the statutory codes and legislation requiring the Council to publish information, such as <sup>5</sup> the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.

<sup>4</sup> For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

<sup>5</sup> The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be exhaustive.

<b>Official Council Order</b>	A standard form of contract for a Supply for a value of less than the current UK 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>6</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>Public Procurement Rules</b>	The rules on procurement for Supplies above the UK Threshold are subject to the statutory requirements outlined in the Public Contracts Regulations 2015 and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations).
<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>Senior Manager</b>	Means an officer who reports directly to a Head of Service.
<b>Service</b>	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.
<b>Service Director</b>	Means the most senior officer responsible for the day to day functions of each Service.
<b>Social Value</b>	Means The Public Services (Social Value) Act 2012 (‘Social Value Act’) that requires the Council to consider how a procurement over the relevant thresholds could improve the economic, social and environmental wellbeing of the district
<b>Solicitor to the Council</b>	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
<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

limiting

<sup>6</sup> Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources and their delegate [See the FPR].

	others to provide specific Supplies 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>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. 'Suitability' shall be interpreted accordingly.
<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>Supply / Supplies</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>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>UK Threshold</b>	The financial threshold from time to time at which the UK Procurement Rules are applicable to a Supply. Current UK Thresholds are set out in Appendix 1.
<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 which can be used to produce a spend profile of the Supply over its anticipated lifespan.</li> </ul>

## Appendix 1

### Relevant Thresholds in Public Contract Regulations inclusive of VAT

[Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx \(publishing.service.gov.uk\)](#)

Supply and service contracts	<b>£213,477</b>
Light Touch Regime Contracts (Annex XIV)	£663,540
Works contracts	£5,336,937
Concession contracts	£5,336,937

- ◆ 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. The thresholds are updated every two years with the next update due on the 1 January 2024

## Appendix 2

### Information to be Reported to the Head of Procurement (RULE 7 – RECORD KEEPING AND REPORTING)

	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: <ol style="list-style-type: none"> <li>1. reference number</li> <li>2. title of agreement</li> <li>3. Contract Manager; name of person responsible for managing the contract</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. start, end and review dates, including permitted extensions</li> <li>8. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and</li> <li>9. 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> <li>10. whether or not the contract involves processing personal data</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 Public Procurement Rules apply on Contract Award

## Appendix 3

### Relationship between Commissioning and Procurement



## Appendix 4

### How to decide if a procurement or grant is applicable

- The Council obtains supplies of goods, works, and services from external suppliers and normally uses competitive processes to do so in accordance with the Contract Procedure Rules (CPRs)
- It is always appropriate to use procurement to obtain **goods** and **works**, and this is the usual preference to obtain **services**.
- There may though be some occasions when a grant may be an appropriate way to achieve the priorities of the Council. The table below aims to provide a guide to support commissioners to think about whether a grant or procurement is the most appropriate method in obtaining and/or supporting a particular **service**.

1	If you are seeking to obtain <b>goods</b> or <b>works</b> you should <b><u>procure as per CPRs</u></b>
2	<p>If you are seeking to obtain a <b>service</b> and can answer <b>YES</b> to <b>ANY</b> of the following, you should <b><u>procure as per CPRs</u></b></p> <ul style="list-style-type: none"> <li>• Is there an intention to specify service standards and outputs required?</li> <li>• Will payment be reduced/altered if service standards are not met, or additional payment be made if there are claims for additional costs incurred?</li> <li>• Are there opportunities for change control?</li> <li>• Is there a contractual obligation on both parties?</li> <li>• Is there an intention to have active management of the provider?</li> </ul>
3	If you are seeking to use a supplier that is a commercial i.e., profitmaking organisation this would generally require procurement as per CPRs. If the organisation is a genuine “not for profit” organization or charity you should discuss further with the Procurement team.
4	<p>If you are seeking a <b>service</b> and can answer <b>YES</b> to <b>ANY</b> of the following, you can consider use of a <b><u>Grant as per FPRs</u></b></p> <ul style="list-style-type: none"> <li>• Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider?</li> <li>• Is the intention to support parts of an existing activity?</li> <li>• Is the intention to provide a subsidy to existing service users</li> <li>• Is the council’s only ultimate remedy to withhold payment of a next phase of grant, seek clawback or to refuse to fund future activity by the provider?</li> <li>• Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?</li> </ul>

#### Important notes/advice

- Always remember to check with the Procurement team if unsure.
- A competition will generally be appropriate to select which parties are entitled to receive grants.
- Grants still require a grant agreement.
- Grants which involve procurement by a third party require use of competition in selection of their suppliers (broadly aligning with council CPRs)

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**Name of meeting:** Corporate Governance and Audit Committee  
12 May 2023

**Title of report:** Informing the Audit Risk Assessment for Kirklees Metropolitan Council

**Purpose of report**

The report updates Members on the final accounts and audit processes for 2022/23.

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
Date signed off by Strategic Director & name	Not applicable
Is it also signed off by the Service Director for Finance, IT and Transactional Services?	Eamonn Croston - 3/5/2023
Is it also signed off by the Service Director for Governance and Commissioning Support?	Julie Muscroft - 3/5/2023
Cabinet member portfolio	Not applicable

**Electoral wards affected:** Not applicable

**Ward councillors consulted:** Not applicable

**Public or private:** Public

**GDPR:** This report contains no information that falls within the scope of General Data Protection Regulations.

## 1. Summary

1.1 The Council's external auditor Grant Thornton (GT) has asked that council officers complete the attached 'Informing the audit risk assessment for Kirklees Council 2022/23' (Appendix A), which consists mainly of a schedule of issues entitled:

"Question" (by GT)

"Management Response" (by KMC officers)

1.2 These relate to the following topics:

General Enquiries of Management  
Internal Control  
Fraud  
Fraud Risk Assessment  
Laws and Regulations  
Impact of Laws and Regulations  
Litigation and Claims  
Related Parties with whom the council has or records transactions  
Going Concern  
Accounting Estimates  
Accounting Estimates - General Enquiries of Management

1.3 They have also requested that the council officers complete the attached 'Accounting estimate management questionnaire' (Appendix B). This covers the use of accounting estimates across key accounting areas including: Operational Land and Buildings valuation, Council Dwellings valuation, Investment Properties valuation, LGPS net liability valuation, Depreciation, PFI and Fair Value.

1.4 External Audit will use these assurance letters to support their overall opinion on the Audited Statement of Accounts and Annual Governance Statement which will be presented to this Committee for approval on 30 September 2023.

1.5 The auditors want this committee to affirm that they believe these assertions to be true (or have no reason to believe that they are untrue). The documents are attached.

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

2.1 The Committee need to read the statements and assertions

2.2 If there are questions arising they can ask officers for an explanation.

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

3.1 **Working with People**

N/A

3.2 **Working with Partners**

N/A

3.3 **Placed based working**

N/A

3.4 **Climate Change & Air Quality**

N/A

3.5 **Improving Outcomes for Children**

N/A

3.6 **Financial Implications for the people living or working in Kirklees**

N/A

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

These assertions related to the annual statement of accounts enable the appointed auditors to ensure that they are satisfied that the Council funds are also properly accounted for, and the financial position presented by the accounts is reasonable, true and fair.

**4. Consultees and their opinions**

The responses were completed by the Service Director Finance, Service Director Legal, Governance & Commissioning, Head of Accountancy and Head of Risk & Internal Audit.

**5. Next steps**

The auditors will consider the responses and use this in providing their opinion on the Audited Statement of Accounts and Annual Governance Statement which will be presented to this Committee for approval on 30 September 2023.

**6. Officer recommendations and reasons**

For Corporate Governance and Audit Committee to agree the risk assessment document, and for it to be formally submitted to Grant Thornton.

**7. Cabinet portfolio holder's recommendations**

Not applicable

**8. Contact officer**

James Anderson Head of Accountancy

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

None

**10. Service Directors responsible**

Eamonn Croston

01484 221000

Julie Muscroft

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# Informing the audit risk assessment for Kirklees Council 2022/23



The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect your business or any weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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## Purpose

The purpose of this report is to contribute towards the effective two-way communication between Kirklees Council's external auditors and Kirklees Council's Corporate Governance and Audit Committee as 'those charged with governance'. The report covers some important areas of the auditor risk assessment where we are required to make inquiries of the Corporate Governance and Audit Committee under auditing standards.

### Background

Under International Standards on Auditing (UK), (ISA(UK)) auditors have specific responsibilities to communicate with the Corporate Governance and Audit Committee. ISA(UK) emphasise the importance of two-way communication between the auditor and the Corporate Governance and Audit Committee and also specify matters that should be communicated.

This two-way communication assists both the auditor and the Corporate Governance and Audit Committee in understanding matters relating to the audit and developing a constructive working relationship. It also enables the auditor to obtain information relevant to the audit from the Corporate Governance and Audit Committee and supports the Corporate Governance and Audit Committee in fulfilling its responsibilities in relation to the financial reporting process.

### Communication

As part of our risk assessment procedures we are required to obtain an understanding of management processes and the Authority's oversight of the following areas:

- General Enquiries of Management
- Fraud,
- Laws and Regulations,
- Related Parties,
- Going Concern, and
- Accounting Estimates.

## Purpose

This report includes a series of questions on each of these areas and the response we have received from Kirklees Council's management. The Corporate Governance and Audit Committee should consider whether these responses are consistent with its understanding and whether there are any further comments it wishes to make.

# General Enquiries of Management

Question	Management response
1. What do you regard as the key events or issues that will have a significant impact on the financial statements for 2022/23?	Cost of living crisis and resulting budgetary pressures (especially energy costs, food & fuel inflation and pay award along with increased costs of borrowing). High Needs budgetary pressures, Minimum Revenue Provision in-year 'unwind', long-term net pension liability and asset valuations.
2. Have you considered the appropriateness of the accounting policies adopted by Kirklees Council? Have there been any events or transactions that may cause you to change or adopt new accounting policies? If so, what are they?	Accounting Policies are reviewed annually for continuing appropriateness. Updates are made as necessary to bring in to line with Code requirements.
3. Is there any use of financial instruments, including derivatives? If so, please explain	No complex financial instruments are used. See Stat Accounts disclosures
4. Are you aware of any significant transaction outside the normal course of business? If so, what are they?	No

# General Enquiries of Management

Question	Management response
5. Are you aware of any changes in circumstances that would lead to impairment of non-current assets? If so, what are they?	No.
6. Are you aware of any guarantee contracts? If so, please provide further details	See Contingent Liabilities working papers
7. Are you aware of the existence of loss contingencies and/or un-asserted claims that may affect the financial statements? If so, please provide further details	See Contingent Liabilities working papers
8. Other than in house solicitors, can you provide details of those solicitors utilised by Kirklees Council during the year. Please indicate where they are working on open litigation or contingencies from prior years?	Solicitors instructed are primarily selected from the WYLA and EMLawshare framework panels of solicitors and a panel of insurance specialist lawyers chosen by or in agreement with our insurers. A small number of Council services instruct external solicitors directly in relation to debt recovery matters.

# General Enquiries of Management

Question	Management response
9. Have any of the Kirklees Council's service providers reported any items of fraud, non-compliance with laws and regulations or uncorrected misstatements which would affect the financial statements? If so, please provide further details	No
10. Can you provide details of other advisors consulted during the year and the issue on which they were consulted?	Treasury Management (Arling Close) and Tax advice (PWC for VAT).
11. Have you considered and identified assets for which expected credit loss provisions may be required under IFRS 9, such as debtors (including loans) and investments? If so, please provide further details	Yes, see detailed year-end working papers.

# Fraud

## Matters in relation to fraud

ISA (UK) 240 covers auditors responsibilities relating to fraud in an audit of financial statements.

The primary responsibility to prevent and detect fraud rests with both the Corporate Governance and Audit Committee and management. Management, with the oversight of the Corporate Governance and Audit Committee, needs to ensure a strong emphasis on fraud prevention and deterrence and encourage a culture of honest and ethical behaviour. As part of its oversight, the Corporate Governance and Audit Committee should consider the potential for override of controls and inappropriate influence over the financial reporting process.

As Kirklees Council's external auditor, we are responsible for obtaining reasonable assurance that the financial statements are free from material misstatement due to fraud or error. We are required to maintain professional scepticism throughout the audit, considering the potential for management override of controls.

As part of our audit risk assessment procedures we are required to consider risks of fraud. This includes considering the arrangements management has put in place with regard to fraud risks including:

- assessment that the financial statements could be materially misstated due to fraud,
- process for identifying and responding to risks of fraud, including any identified specific risks,
- communication with the Corporate Governance and Audit Committee regarding its processes for identifying and responding to risks of fraud, and
- communication to employees regarding business practices and ethical behaviour.

We need to understand how the Corporate Governance and Audit Committee oversees the above processes. We are also required to make inquiries of both management and the Corporate Governance and Audit Committee as to their knowledge of any actual, suspected or alleged fraud. These areas have been set out in the fraud risk assessment questions below together with responses from Kirklees Council's management.

# Fraud risk assessment

Question	Management response
<p>1. Has Kirklees Council assessed the risk of material misstatement in the financial statements due to fraud?</p> <p>How has the process of identifying and responding to the risk of fraud been undertaken and what are the results of this process?</p> <p>How do the Authority's risk management processes link to financial reporting?</p>	<p>There are limited areas where accounting judgements and estimates are used. These areas are identified and reviewed in conjunction with the external auditor, to mitigate the risk.</p> <p>The council has a routine internal audit plan designed to provide assurance a part of which is assessment of fraud risk.. IA and its fraud team investigate customer fraud, internal and supplier fraud.</p> <p>Risk management processes identify and look to mitigate risk. Corporate risk matrices are created by senior managers, approved by Cabinet and council and linked into the budget making process at Annual Council. In year activity risk monitoring is undertaken by executive team and Cabinet(LMT), alongside discussion of performance and budget monitoring.</p>
<p>2. What have you determined to be the classes of accounts, transactions and disclosures most at risk to fraud?</p>	<p>Treasury management –borrowing; (high risk high control)</p> <p>Customer fraud- means tested activity</p> <p>Cash fraud</p> <p>Mandate fraud (payment fraud subset)</p> <p>Tenancy fraud- RtB, unauthorised occupancy</p> <p>Supplier fraud/(Collusion with officers)</p>
<p>3. Are you aware of any instances of actual, suspected or alleged fraud, errors or other irregularities either within Kirklees Council as a whole, or within specific departments since 1 April 2022? If so, please provide details</p>	<p>Issues would be investigated by IA and reported to CGAC if seen as “routine”. A very significant fraud would be reported through senior management, Cabinet and Council on an urgent as appropriate basis.</p> <p>There were two employee frauds that has been subject to internal disciplinary action.</p>

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# Fraud risk assessment

Question	Management response
<p>4. As a management team, how do you communicate risk issues (including fraud) to those charged with governance?</p>	<p>Issues would be investigated by IA and reported to CGAC if seen as “routine”. A very significant fraud would be reported through senior management, Cabinet and Council on an urgent as appropriate basis</p> <p>Fraud risk panel recently established to ascertain and address fraud risk</p>
<p>5. Have you identified any specific fraud risks? If so, please provide details</p> <p>Do you have any concerns there are areas that are at risk of fraud?</p> <p>Are there particular locations within Kirklees Council where fraud is more likely to occur?</p>	<p>See above</p>
<p>6. What processes do Kirklees Council have in place to identify and respond to risks of fraud?</p>	<p>The council has a routine internal audit plan designed to provide assurance a part of which is assessment of fraud risk. IA investigate internal and supplier fraud. There is a fraud team that investigates customer fraud.</p>

# Fraud risk assessment

Question	Management response
<p>7. How do you assess the overall control environment for Kirklees Council, including:</p> <ul style="list-style-type: none"> <li>the existence of internal controls, including segregation of duties; and</li> <li>the process for reviewing the effectiveness the system of internal control?</li> </ul> <p>If internal controls are not in place or not effective where are the risk areas and what mitigating actions have been taken?</p> <p>What other controls are in place to help prevent, deter or detect fraud?</p> <p>Are there any areas where there is a potential for override of controls or inappropriate influence over the financial reporting process (for example because of undue pressure to achieve financial targets)? If so, please provide details</p>	<p>The Council has an internal audit function that reports to the Corporate Governance &amp; Audit Committee (CGAC), &amp; to management, which operates in compliance with Public Sector Internal Audit Standards(PSIAS). There is an agreed, risk based audit plan, which is reported on quarterly and is subject on an annual opinion. Although there are anticipated to be some qualifications, the 2022/23 IA opinion is that (financial) internal control arrangements are sound. The annual governance statement &amp; quarterly review of the action plan are reported through CGAC.</p> <p>The council has a routine internal audit plan designed to provide assurance a part of which is assessment of fraud risk. IA and its fraud specialist investigate suspected fraud and suspicions.</p> <p>This risk of override of controls is deemed minimal. Senior Management are not incentivised based on financial performance. Also senior management (the Executive Team) do not have direct access to input (journal) on to the financial ledger. There is also a strong culture of honesty and integrity.</p>
<p>8. Are there any areas where there is potential for misreporting? If so, please provide details</p>	<p>See answer above (Q2), but the risk of material misstatements is deemed small.</p>

# Fraud risk assessment

Question	Management response
<p>9. How do Kirklees Council communicate and encourage ethical behaviours and business processes of it's staff and contractors?</p> <p>How do you encourage staff to report their concerns about fraud?</p> <p>What concerns are staff expected to report about fraud? Have any significant issues been reported? If so, please provide details</p>	<p>The Council's employee handbook sets out expectation on staff conduct and ethical behaviour (issued to all new staff on the council intranet).</p> <p>There is a whistleblowing arrangements that are (reasonably well) publicised and used.</p> <p>There are procedures intended to detect inappropriate actions, such as money laundering and terrorism (as required by legislation).</p> <p>Contractual documents, tenders etc, recognise the importance of fraud mitigation and control, and procurement staff have specific training regarding this matter.</p> <p>Whistleblowing Procedures. (Records are available for inspection).</p> <p>Customer complaints processes.</p> <p>Whistleblowing, subject to triage, assessment, investigation and reporting back.</p> <p>Annual reporting of whistleblowing is reported to CGAC.</p> <p>Nothing of material significance reported in year- other than as noted elsewhere</p>
<p>10. From a fraud and corruption perspective, what are considered to be high-risk posts?</p> <p>How are the risks relating to these posts identified, assessed and managed?</p>	<p>Treasury management employees –borrowing; (high risk high control)</p> <p>Any roles handling cash</p> <p>Procurement roles/ contractor supervision</p> <p>Roles involving allocation or management of property (tenancies),</p> <p>Roles involving the awarding of means tested benefits, grants or assistances(individuals or corporate)</p>
<p>11. Are you aware of any related party relationships or transactions that could give rise to instances of fraud? If so, please provide details</p> <p>How do you mitigate the risks associated with fraud related to related party relationships and transactions?</p>	<p>Related parties are recognised and assessments made. The nature of the related parties should not create any unusual risk of fraud as related party transactions are generally performed in accordance with normal council procedures.</p>

# Fraud risk assessment

Question	Management response
<p>12. What arrangements are in place to report fraud issues and risks to the Corporate Governance and Audit Committee?</p> <p>How does the Corporate Governance and Audit Committee exercise oversight over management's processes for identifying and responding to risks of fraud and breaches of internal control?</p> <p>What has been the outcome of these arrangements so far this year?</p>	<p>Reported as a matter of routine to CGAC (and in other government return). See earlier responses..</p>
<p>13. Are you aware of any whistle blowing potential or complaints by potential whistle blowers? If so, what has been your response?</p>	<p>All Whistleblowing or those of the nature of WB are investigated, including those that are anonymous.</p>
<p>14. Have any reports been made under the Bribery Act? If so, please provide details</p>	<p>No</p>

# Law and regulations

## Matters in relation to laws and regulations

ISA (UK) 250 requires us to consider the impact of laws and regulations in an audit of the financial statements.

Management, with the oversight of the Corporate Governance and Audit Committee, is responsible for ensuring that Kirklees Council's operations are conducted in accordance with laws and regulations, including those that determine amounts in the financial statements.

As auditor, we are responsible for obtaining reasonable assurance that the financial statements are free from material misstatement due to fraud or error, taking into account the appropriate legal and regulatory framework. As part of our risk assessment procedures we are required to make inquiries of management and the Corporate Governance and Audit Committee as to whether the body is in compliance with laws and regulations. Where we become aware of non-compliance or suspected non-compliance we need to gain an understanding of the non-compliance and the possible effect on the financial statements.

Risk assessment questions have been set out below together with responses from management.

# Impact of laws and regulations

Question	Management response
<p>1. How does management gain assurance that all relevant laws and regulations have been complied with?</p> <p>What arrangements does Kirklees Council have in place to prevent and detect non-compliance with laws and regulations?</p> <p>Are you aware of any changes to the Authority's regulatory environment that may have a significant impact on the Authority's financial statements?</p>	<p>The Monitoring Officer (Director of Legal, Governance and Commissioning) and the Head of Legal services have procedures in place to monitor statutory compliance on all obligations, proposals and initiatives.</p> <p>The Monitoring Officer and colleagues in Legal Services and Insurance provide updates on ongoing and potential litigation and claims.</p> <p>No.</p>
<p>2. How is the Corporate Governance and Audit Committee provided with assurance that all relevant laws and regulations have been complied with?</p>	<p>By reporting from the above to the Council, Cabinet and Executive Team.</p>
<p>3. Have there been any instances of non-compliance or suspected non-compliance with laws and regulation since 1 April 2022 with an on-going impact on the 2022/23 financial statements? If so, please provide details</p>	<p>Yes, relating to minor matters relating to failure to comply with FPRs; laws and regulations; These have been reported to Council/Cabinet/Executive Team/CGAC as appropriate. We are not aware that any of these will have any material ongoing impact on the financial statements for 2022/23</p>
<p>4. Are there any actual or potential litigation or claims that would affect the financial statements? If so, please provide details</p>	<p>No items that would materially affect the 22/23 accounts.</p>

## Impact of laws and regulations

Question	Management response
5. What arrangements does Kirklees Council have in place to identify, evaluate and account for litigation or claims?	The Monitoring Officer and colleagues in Legal Services and Insurance provide updates on ongoing and potential litigation and claims.
6. Have there been any reports from other regulatory bodies, such as HM Revenues and Customs, which indicate non-compliance? If so, please provide details	No

# Related Parties

## Matters in relation to Related Parties

Kirklees Council are required to disclose transactions with bodies/individuals that would be classed as related parties. These may include:

- bodies that directly, or indirectly through one or more intermediaries, control, or are controlled by Kirklees Council;
- associates;
- joint ventures;
- a body that has an interest in the authority that gives it significant influence over the Authority;
- key management personnel, and close members of the family of key management personnel, and
- post-employment benefit plans (pension fund) for the benefit of employees of the Authority, or of any body that is a related party of the Authority.

A disclosure is required if a transaction (or series of transactions) is material on either side, i.e. if a transaction is immaterial from the [type of body]'s perspective but material from a related party viewpoint then the Authority must disclose it.

ISA (UK) 550 requires us to review your procedures for identifying related party transactions and obtain an understanding of the controls that you have established to identify such transactions. We will also carry out testing to ensure the related party transaction disclosures you make in the financial statements are complete and accurate.

# Related Parties

Question	Management response
<p>1. Have there been any changes in the related parties including those disclosed in Kirklees Council's 2021/22 financial statements? If so please summarise:</p> <ul style="list-style-type: none"> <li>• the nature of the relationship between these related parties and Kirklees Council</li> <li>• Whether Kirklees Council has entered into or plans to enter into any transactions with these related parties</li> <li>• the type and purpose of these transactions</li> </ul>	<p>See 2021/22 financial Statements. Work to re-confirm related parties and transactions to support disclosures in the 2022/23 Financial Statements is in progress.</p>
<p>2. What controls does Kirklees Council have in place to identify, account for and disclose related party transactions and relationships?</p>	<p>Forms to disclose Directorships. Letters to all councillors (or emails as appropriate) to remind them annually to update interests.</p>
<p>3. What controls are in place to authorise and approve significant transactions and arrangements with related parties?</p>	<p>As there are limited real associated parties- these controls arise through the normal course of business and by normal decision making- eg through Cabinet – in all other cases (eg KSDL)</p>
<p>4. What controls are in place to authorise and approve significant transactions outside of the normal course of business?</p>	<p>The Council does not undertake transactions outside of the normal course of business.</p>

# Going Concern

## Matters in relation to Going Concern

The audit approach for going concern is based on the requirements of ISA (UK) 570, as interpreted by Practice Note 10: Audit of financial statements and regularity of public sector bodies in the United Kingdom (Revised 2020). It also takes into account the National Audit Office's Supplementary Guidance Note (SGN) 01: Going Concern – Auditors' responsibilities for local public bodies.

Practice Note 10 confirms that in many (but not all) public sector bodies, the use of the going concern basis of accounting is not a matter of significant focus of the auditor's time and resources because the applicable financial reporting frameworks envisage that the going concern basis for accounting will apply where the body's services will continue to be delivered by the public sector. In such cases, a material uncertainty related to going concern is unlikely to exist.

For this reason, a straightforward and standardised approach to compliance with ISA (UK) 570 will often be appropriate for public sector bodies. This will be a proportionate approach to going concern based on the body's circumstances and the applicable financial reporting framework. In line with Practice Note 10, the auditor's assessment of going concern should take account of the statutory nature of the body and the fact that the financial reporting framework for local government bodies presume going concern in the event of anticipated continuation of provision of the services provided by the body. Therefore, the public sector auditor applies a 'continued provision of service approach', unless there is clear evidence to the contrary. This would also apply even where those services are planned to transfer to another body, as in such circumstances, the underlying services will continue.

For many public sector bodies, the financial sustainability of the body and the services it provides are more likely to be of significant public interest than the application of the going concern basis of accounting. Financial sustainability is a key component of value for money work and it is through such work that it will be considered.

# Going Concern

Question	Management response
<p>1. What processes and controls does management have in place to identify events and / or conditions which may indicate that the statutory services being provided by Kirklees Council will no longer continue?</p>	<p>The Council has set a balanced budget for 2023/24. Although there are significant reductions in usable reserves (as a result of the 22/23 expected overspend and to balance the 23/24 budget) overall reserves levels are considered adequate at this stage. Savings target will need to be achieved and progress against this will be monitored.</p> <p>Monthly financial monitoring will be produced, alongside KPI monitoring and specific monitoring on a rag rating basis for the delivery of savings.</p>
<p>2. Are management aware of any factors which may mean for Kirklees Council that either statutory services will no longer be provided or that funding for statutory services will be discontinued? If so, what are they?</p>	<p>No. Although officers are currently in discussion with DfE about the continued participation in the safety valve (SV) programme in light of the council currently being off target, and we wont know until the summer the outcome of any ministerial decision pending submission of our revised plans. If Govt decide not to continue to support through the SV programme at that point, they will discontinue £16.5m funding in relation to statutory SEND services we provide that had been otherwise earmarked to the council over the remainder of the SV Programme, to 26/27.</p>
<p>3. With regard to the statutory services currently provided by Kirklees Council, does Kirklees Council expect to continue to deliver them for the foreseeable future, or will they be delivered by related public authorities if there are any plans for Kirklees Council to cease to exist?</p>	<p>Yes, (subject to point made above in Q2) the Council expects to continue delivery of all statutory services.</p>
<p>4. Are management satisfied that the financial reporting framework permits Kirklees Council to prepare its financial statements on a going concern basis? Are management satisfied that preparing financial statements on a going concern basis will provide a faithful representation of the items in the financial</p>	<p>Yes, management are satisfied that the Council continues to be a going concern. Please see detailed disclosures in the S151 Positive Assurance statement in the recent Council Budget report for 2023/24.</p>

# Accounting estimates

## Matters in relation to accounting estimates

ISA (UK) 540 (Revised December 2018) requires auditors to understand and assess a body's internal controls over accounting estimates, including:

- The nature and extent of oversight and governance over management's financial reporting process relevant to accounting estimates;
- How management identifies the need for and applies specialised skills or knowledge related to accounting estimates;
- How the body's risk management process identifies and addresses risks relating to accounting estimates;
- The body's information system as it relates to accounting estimates;
- The body's control activities in relation to accounting estimates; and
- How management reviews the outcomes of previous accounting estimates.

As part of this process auditors also need to obtain an understanding of the role of those charged with governance, which is particularly important where the estimates have high estimation uncertainty, or require significant judgement.

Specifically do Audit Committee members:

- Understand the characteristics of the methods and models used to make the accounting estimates and the risks related to them;
- Oversee management's process for making accounting estimates, including the use of models, and the monitoring activities undertaken by management; and

Evaluate how management made the accounting estimates?

How would we ask the Audit Committee to satisfy itself that the arrangements for accounting estimates are adequate.

# Accounting Estimates - General Enquiries of Management

Question	Management response
1. What are the classes of transactions, events and conditions, that are significant to the financial statements that give rise to the need for, or changes in, accounting estimate and related disclosures?	Valuation, depreciation and impairment of non-current assets (including PFI). Valuation of defined benefit net pension liability.
2. How does the Authority's risk management process identify and address risks relating to accounting estimates?	Annual risk assessment, identifying and addressing risks as part of closedown processes.
3. How does management identify the methods, assumptions or source data, and the need for changes in them, in relation to key accounting estimates?	Use of guidance materials: CIPFA Code of Practice, RICS.
4. How do management review the outcomes of previous accounting estimates?	Assessed as part of annual closedown procedures. Historic valuations assessed against subsequent sales proceeds as part of year-end assurance/valuation process.
5. Were any changes made to the estimation processes 2022/23 and, if so, what was the reason for these?	None as yet.

# Accounting Estimates - General Enquiries of Management

Question	Management response
6. How does management identify the need for and apply specialised skills or knowledge related to accounting estimates?	Technical experts utilised where appropriate eg use of in-house (or external if required) experts for land/property valuations.
7. How does the Authority determine what control activities are needed for significant accounting estimates, including the controls at any service providers or management experts?	In discussion internally within the finance function and externally with regional technical accountants groups and audit.
8. How does management monitor the operation of control activities related to accounting estimates, including the key controls at any service providers or management experts?	Management review the output and the underlying assumptions underpinning them, challenging any discrepancies.
9. What is the nature and extent of oversight and governance over management's financial reporting process relevant to accounting estimates, including: - Management's process for making significant accounting estimates - The methods and models used - The resultant accounting estimates included in the financial statements.	Accounting estimates are discussed at Corporate Governance & Audit Committee, as part of the approval of financial statements. External audit reports also provide a focus on the key areas (asset valuations and pensions liability). Financial Statements training sessions provided to members have also incorporated these areas.

# Accounting Estimates - General Enquiries of Management

Question	Management response
10. Are management aware of any transactions, events, conditions (or changes in these) that may give rise to recognition or disclosure of significant accounting estimates that require significant judgement (other than those considered in the separate estimates paper)? If so, what are they?	No new items for 2022-23 Financial Statements. Ongoing issues re non-current asset valuations.
11. Why are management satisfied that their arrangements for the accounting estimates, as detailed in the separate estimates paper, are reasonable?	Accounting estimates are kept under review throughout the year by the central accountancy team and, formally reviewed each year by the Head of Accountancy and Service Director- Finance in preparation of the financial statements.
12. How is the Corporate Governance and Audit Committee provided with assurance that the arrangements for accounting estimates are adequate ?	Covered as part of the external audit work and reporting.



## KIRKLEES COUNCIL

## Operational Land and Buildings valuation estimate

Question	Management response
<p>1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?</p>	<p>There is a risk that valuations do not accurately reflect the market and the Statement of Accounts therefore do not give a true and fair view.</p> <p>To mitigate this, valuations are carried out by external registered Royal Institution of Chartered Surveyors (RICS) valuers, in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Following this, the asset revaluations are critically reviewed by the Central Finance team with any significant variances from previous valuations or expectations, queried and discussed with the valuers.</p>
<p>2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?</p> <p>Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?</p>	<ul style="list-style-type: none"> <li>• Other land and buildings including surplus assets are valued as part of a 3-year rolling programme at fair value or depreciated replacement cost.</li> <li>• Community assets, vehicles, plant and equipment, infrastructure and assets under construction are valued at depreciated historical cost.</li> <li>• Intangibles are valued at amortised cost</li> <li>• The Council monitors the value of assets that have been revalued over the last 3 years, to ensure all assets have been revalued within this 3-year timeframe.</li> <li>• Valuers undertake an impairment review to ensure assets not valued haven't materially changed in value and that assets which have been valued, haven't changed in value between the date they were valued (usually December) and year end (31 March).</li> <li>• No changes are anticipated to these methods or models in 2022-2023</li> </ul>
<p>3. How do management select the assumptions used in respect of this accounting estimate?</p> <p>Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?</p>	<p>Assumptions are selected by the valuer in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Management review these assumptions and challenge where necessary.</p> <p>No changes are anticipated in 2022-2023.</p>
<p>4. How do management select the source data used in respect of this accounting estimate?</p> <p>Were any changes made to this source data in 2022/23, and if so what was the reason for the change?</p>	<p>The list of assets to value come from the rolling programme from the Asset Register system. These are then reviewed by the interval valuer from the disposals and acquisitions team.</p> <p>Relevant plans are extracted from the Kompass system along with site areas and information from the asset management system K2.</p> <p>No changes were made to the source data in 2022-2023</p>
<p>5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?</p>	<p>The valuer advises on the accounting estimates used in the valuations. The valuer is sourced through a tender process.</p>
<p>6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?</p>	<p>As detailed in Q1, the asset revaluations are critically reviewed by the Central Finance team with any significant variances from previous valuations or expectations, queried and discussed with the valuers.</p>

<p>7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?</p>	<p>Yes, valuations are carried out in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p> <p>Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review.</p> <p>As the internal valuers are RICS registered valuers this extra scrutiny will help to ensure the robustness of figures included in the Statement of Accounts. Formal sign off by all parties.</p>
<p>8. Were any changes made to the key control activities this year? If so please provide details.</p>	<p>No</p>
<p>9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?</p>	<p>Management use the valuers professional opinion on the valuation of each asset and do not select a point estimate to calculate fluctuations in other land and buildings values.</p>
<p>10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?</p>	<p>Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review. A range of possible outcomes is not considered as management use the valuers professional opinion on the factors used in the valuation.</p>

## Council Dwellings valuation estimate

Question	Management response
<p>1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?</p>	<p>There is a risk that valuations do not accurately reflect the market and the Statement of Accounts therefore do not give a true and fair view.</p> <p>To mitigate this, valuations are carried out by external registered RICS valuers, in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Following this, the asset revaluations are critically reviewed by the Strategic Finance team with any significant variances from previous valuations or expectations, queried and discussed with the valuers.</p>
<p>2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?</p> <p>Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?</p>	<p>In terms of method, a beacon valuation approach is used. The dwellings are divided into asset groups (a collection of property with common characteristics such as sheltered housing). Asset groups are further subdivided into archetype groups based on uniting characteristics material to their valuation, such as numbers of bedrooms. The archetype groups are valued on the beacon principle. A sample property, "the beacon" is selected, which is representative of the archetype group, and a detailed inspection carried out. The beacon property is valued on an existing use-social housing basis. This valuation is defined as the 'Beacon Valuation'.</p> <p>Dwellings undergo a valuation every year, whereby 25% of beacons are inspected and valued per year. Over a 4 year period all the beacons for the full residential properties will have been inspected.</p> <p>No changes were made to the method in 2022-2023.</p>
<p>3. How do management select the assumptions used in respect of this accounting estimate?</p> <p>Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?</p>	<p>Assumptions used by the valuer are in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p> <p>No changes are anticipated in 2022-2023</p>
<p>4. How do management select the source data used in respect of this accounting estimate?</p> <p>Were any changes made to this source data in 2022/23, and if so what was the reason for the change?</p>	<p>The housing data file is a living file that is adjusted for sales and additions each valuation &amp; changes are flagged to the valuers. The base stock figures are reconciled back to the stock figures in the annual accounts, and these in turn are reconciled back to the universal housing system.</p> <p>Non housing assets on the HRA valuation are reconciled back to the central asset register for the HRA provided by central finance each year.</p>
<p>5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?</p>	<p>The valuer advises on the accounting estimates used in the valuations.</p> <p>The valuer is sourced through a tender process</p>
<p>6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?</p>	<p>As detailed in Q1, the asset revaluations are critically reviewed by the Central Finance team with any significant variances from previous valuations or expectations queried and discussed with the valuers.</p>

<p>7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?</p>	<p>Yes, valuations are carried out in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p> <p>Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review.</p> <p>As the internal valuers are RICS registered valuers this extra scrutiny will help to ensure the robustness of figures included in the Statement of Accounts. Formal sign off by all parties.</p>
<p>8. Were any changes made to the key control activities this year? If so please provide details.</p>	<p>No</p>
<p>9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?</p>	<p>Management use the valuers professional opinion on the valuation of the Beacons and do not select a point estimate to calculate fluctuations in other land and buildings values.</p>
<p>10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?</p>	<p>Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review. A range of possible outcomes is not considered as management use the valuers professional opinion on the factors used in the valuation.</p>

## Investment Properties valuation estimate

Question	Management response
<p>1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?</p>	<p>There is a risk that valuations do not accurately reflect the market and the Statement of Accounts therefore do not give a true and fair view.</p> <p>To mitigate this, valuations are carried out by external registered RICS valuers, in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Following this, the asset revaluations are critically reviewed by the Strategic Finance team with any significant variances from previous valuations or expectations queried and discussed with the valuers.</p>
<p>2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?</p> <p>Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?</p>	<p>Investment properties (including shops) are valued annually at fair value by qualified valuers if the value is greater than £250k. Those below this are valued as part of the 3 yearly rolling programme.</p> <p>Valuers undertake an impairment review to ensure that assets which have been valued haven't changed in value between the date they were valued (usually January) and year end (31 March).</p> <p>No changes are anticipated to these methods or models in 2022-2023.</p>
<p>3. How do management select the assumptions used in respect of this accounting estimate?</p> <p>Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?</p>	<p>Assumptions used by the valuer are in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p> <p>No changes are anticipated in 2022-2023.</p>
<p>4. How do management select the source data used in respect of this accounting estimate?</p> <p>Were any changes made to this source data in 2022/23, and if so what was the reason for the change?</p>	<p>The list of assets to value comes from the Asset Register system. These are then reviewed by the interval valuer from the disposals and acquisitions team.</p> <p>Relevant plans are extracted from the Kompass system along with site areas and information from the asset management system K2.</p> <p>No changes were made to the source data in 2022-2023.</p>
<p>5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?</p>	<p>The valuer advises on the accounting estimates used in the valuations.</p> <p>The valuer is sourced through a tender process.</p>
<p>6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?</p>	<p>As detailed in Q1, the asset revaluations are critically reviewed by the Central Finance team with any significant variances from previous valuations or expectations, queried and discussed with the valuers</p>
<p>7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?</p>	<p>Yes, valuations are carried out in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p> <p>Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review.</p> <p>As the internal valuers are RICS registered valuers this extra scrutiny will help to ensure the robustness of figures included in the Statement of Accounts. Formal sign off by all parties.</p>

8. Were any changes made to the key control activities this year? If so please provide details.	No
9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?	Management use the valuers professional opinion on the valuation of each asset and do not select a point estimate to calculate fluctuations in other land and buildings values.
10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?	Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review. A range of possible outcomes is not considered as management use the valuers professional opinion on the factors used in the valuation

## LGPS net liability valuation estimate

Question	Management response
<p>1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?</p>	<p>There is a risk that the pension liability estimate is inaccurate and therefore the Financial Statements do not give a true and fair view.</p> <p>There is ongoing uncertainty on the global financial markets and market activity as a result of ongoing energy shortages, inflation and the war in Ukraine.</p>
<p>2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?</p> <p>Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?</p>	<p>The liability estimate is calculated by an actuarial expert, taking into account changes in retirement ages, mortality rates and discount rates.</p> <p>No changes are anticipated to this method or model in 2022-2023.</p>
<p>3. How do management select the assumptions used in respect of this accounting estimate?</p> <p>Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?</p>	<p>The actuary selects the assumptions and management reviews the reasonableness of these assumptions.</p> <p>No changes are anticipated to this method or model in 2022-2023.</p>
<p>4. How do management select the source data used in respect of this accounting estimate?</p> <p>Were any changes made to this source data in 2022/23, and if so what was the reason for the change?</p>	<p>The Pension Fund provides data on pension benefits and membership numbers, to enable the actuary to undertake their estimate.</p> <p>No changes are anticipated to this method or model in 2022-2023.</p>
<p>5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?</p>	<p>An actuary advises on the accounting estimates.</p> <p>The actuary is procured through a tender exercise</p>
<p>6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?</p>	<p>Management review the assumptions and officers discuss these assumptions with the West Yorkshire Technical Accountants Group, comprising of five other authorities, to ensure a consistent view.</p>
<p>7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?</p>	<p>Yes. As detailed in Q6, in addition to management reviewing the assumptions, officers discuss these assumptions with the West Yorkshire Technical Accountants Group comprising of five other authorities, to ensure a consistent view</p>
<p>8. Were any changes made to the key control activities this year? If so please provide details.</p>	<p>No</p>
<p>9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?</p>	<p>The regional technical accountants group collectively discuss the underlying estimation techniques used as part of the calculation of assets and liabilities and question its reasonableness where appropriate with the actuary (via WYPF).</p>
<p>10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?</p>	<p>The actuary provides sensitivity analysis for several assumptions including discount rate and life expectancy of scheme members</p>

## Depreciation accounting estimate

Question	Management response
<p>1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?</p>	<p>There is a risk that the calculation of the annual depreciation is inaccurate, and the Statement of Accounts do not give a true and fair view.</p> <p>To mitigate this, valuations are carried out by external registered Royal Institution of Chartered Surveyors (RICS) valuers, in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. The external valuer provide an updated valuation and a useful life of each asset. The depreciation is calculated on a straight- line basis over the life of the asset provided.</p>
<p>2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?</p> <p>Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?</p>	<p>The Council calculated depreciation on a simple straight-line bases which is identified as one of the methods used per the CIPFA Code of Practice.</p> <p>Once calculated the depreciation is reviewed by Central Finance to ensure all assets that need a depreciation charge have been calculated, and explanations are made if not. Central Finance also review sub totals by asset type to ensure comparative figures year on year are reasonable.</p> <p>No changes are anticipated in 2022-2023</p>
<p>3. How do management select the assumptions used in respect of this accounting estimate?</p> <p>Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?</p>	<p>Assumptions on remaining lives are selected by the valuer in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Management review these assumptions and challenge where necessary.</p> <p>No changes are anticipated in 2022-2023.</p>
<p>4. How do management select the source data used in respect of this accounting estimate?</p> <p>Were any changes made to this source data in 2022/23, and if so what was the reason for the change?</p>	<p>The list of assets to charge depreciation come from the Asset Register system which is reconciled to the Balance Sheet.</p> <p>No changes are anticipated in 2022-2023.</p>
<p>5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?</p>	<p>The valuer advises on the accounting estimates used in the valuations. The valuer is sourced through a tender process.</p>
<p>6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?</p>	<p>As mentioned in Q2, asset lives and depreciation figures are reviewed for reasonableness. Any significant changes in life are queried and discussed with valuers.</p>
<p>7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?</p>	<p>Yes, valuations are carried out in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p>
<p>8. Were any changes made to the key control activities this year? If so please provide details.</p>	<p>No</p>
<p>9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?</p>	<p>Management use the valuers professional opinion on the valuation of each asset and life and do not select a point estimate to calculate fluctuations in other land and buildings values</p>

10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?	Assets are depreciated over their useful lives that are dependent on assumptions about the level of repairs and maintenance that will be incurred in relation to individual assets. Management calculate an amount that the annual depreciation charge would increase every year that the useful lives had reduced.
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### PFI liability accounting estimate

Question	Management response
1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?	The Waste PFI contract has been extended by two years beyond its original expiry date of 31/03/2023. The changes to the contract have been reviewed against the accounting model. In addition to the contract extension a number of other changes to the contract have been made which will increase the cost of fair value of services (e.g. the provision of new services). There is provision for capital expenditure to enhance the waste incinerator, but this is a direct charge to council by the contractor rather than an increase to the unitary payment (i.e. no increase to the PFI liability).
2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?  Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?	The accounting model is based on the requirements of the Code of Practice and accompanying Guidance Notes. The source information is the original contractor's model plus current information based on the annual unitary payment.  No changes are anticipated to these methods or models in 2022-2023.
3. How do management select the assumptions used in respect of this accounting estimate?  Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?	Assumptions are based on the original contractors' model and management's accounting model updated for current and known future changes.  No changes are anticipated to these methods or models in 2022-2023.
4. How do management select the source data used in respect of this accounting estimate?  Were any changes made to this source data in 2022/23, and if so what was the reason for the change?	Source data is based on the original contractors' model and current information e.g. annual unitary payments.  No changes are anticipated to these methods or models in 2022-2023.
5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?	No.
6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?	The accounting model and the basis on which all assumptions are made are reviewed on an annual basis. Changes to the Code of Practice are also reviewed for all relevant developments in relation to PFI accounting. In addition to this, specific changes to each of the individual contracts are monitored to ensure that their impact is reflected in the accounting model.

7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?	Yes, compliance with the Code of Practice and ongoing monitoring of unitary payments.
8. Were any changes made to the key control activities this year? If so please provide details.	No.
9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?	All factors affecting the accounting model are monitored – Code of Practice, the original contractors' model and annual unitary payments. A point estimate is not used.
10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?	The methods and assumptions rarely change between years, but all variable factors are monitored. Once these are agreed for the year, a range of possible outcomes is not considered.

#### Fair value disclosures accounting estimate

Question	Management response
1. Were any risks identified relating to the material accuracy of this accounting estimate for the financial year and, if so, how were these risks addressed?	<p>There is a risk that valuations at fair value do not accurately reflect the market and the Statement of Accounts therefore do not give a true and fair view.</p> <p>To mitigate this, valuations are carried out by external registered Royal Institution of Chartered Surveyors (RICS) valuers, in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Following this, the asset revaluations are critically reviewed by the Central Finance team with any significant variances from previous valuations or expectations, queried and discussed with the valuers.</p>
<p>2. How do management select, or design, the methods, used in respect of this accounting estimate, including the models used?</p> <p>Were any changes made to these methods or models in 2022/23, and if so what was the reason for the change?</p>	<p>The Authority accounts for investment properties in accordance with IFRS13 which is achieved through a fair value hierarchy. The Fair Value of investment property has been established using a market approach, which takes into account quoted prices for similar assets in active markets, existing lease terms and rental, research into market evidence including market rentals and yields, data and market knowledge.</p> <p>Surplus assets and investment properties are valued as part of a 3-year rolling programme at fair value. Investment properties with a net book value greater than £250k are valued each year at highest and best use as per IFRS13.</p> <p>No changes are anticipated for 2022-2023.</p>
<p>3. How do management select the assumptions used in respect of this accounting estimate?</p> <p>Were any changes made to these assumptions in 2022/23, and if so what was the reason for the change?</p>	<p>Assumptions are selected by the valuer in accordance with RICS guidance and the Code of Practice on Local Authority Accounting. Market conditions are such that similar properties are actively purchased and sold and the level of observable are significant, leading to investment properties categorised as level 2 on the fair value hierarchy. Management review these assumptions and challenge where necessary.</p>

	No changes are anticipated in 2022-2023.
<p>4. How do management select the source data used in respect of this accounting estimate?</p> <p>Were any changes made to this source data in 2022/23, and if so what was the reason for the change?</p>	<p>The list of assets to value come from the rolling programme from the Asset Register system, along with selected Investment Properties greater the £250k. These are then reviewed by the interval valuer from the disposals and acquisitions team.</p> <p>Relevant plans are extracted from the Kompass system along with site areas and information from the asset management system K2.</p> <p>No changes were made to the source data in 2022-2023.</p>
5. Were any specialised skills or knowledge used in respect of this accounting estimates, and if so how were these specialist skills procured?	The valuer advises on the accounting estimates used in the valuations. The valuer is sourced through a tender process.
6. How do management monitor the operation of control activities in relation to this accounting estimates, including the control activities at any service providers or management experts?	As detailed in Q1, the asset revaluations are critically reviewed by the Central Finance team with any significant variances from previous valuations or expectations, queried and discussed with the valuers.
7. In management's opinion, are their adequate controls in place over the calculation of this accounting estimate, including those at any service provider or management expert used, and if so how is the robustness of the key controls assessed?	<p>Yes, valuations are carried out in accordance with RICS guidance and the Code of Practice on Local Authority Accounting.</p> <p>Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review.</p> <p>As the internal valuers are RICS registered valuers this extra scrutiny will help to ensure the robustness of figures included in the Statement of Accounts. Formal sign off by all parties.</p>
8. Were any changes made to the key control activities this year? If so please provide details.	No
9. How do management consider the estimation uncertainty related to this accounting estimate and address this uncertainty when selecting the point estimate to use?	Management use the valuers professional opinion on the valuation of each asset and do not select a point estimate to calculate fluctuations in surplus or investment properties values.
10. How do management consider the sensitivity of the estimate to the methods and assumptions used and identify the range of reasonably possible outcomes for disclosure in the financial statements?	Central Finance review the revaluations and assumptions along with internal valuers who also undertake a more in-depth review. A range of possible outcomes is not considered as management use the valuers professional opinion on the factors used in the valuation.

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# Kirklees Council Audit Progress Report and Sector Update

May 2023



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The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit planning process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Authority or all weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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# Introduction

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This paper provides the Corporate Governance and Audit Committee with a report on progress in delivering our responsibilities as your external auditors.

The paper also includes:

- a summary of emerging national issues and developments that may be relevant to you as a local authority; and
- includes a number of challenge questions in respect of these emerging issues which the Committee may wish to consider (these are a tool to use, if helpful, rather than formal questions requiring responses for audit purposes)

Members of the Corporate Governance and Audit Committee can find further useful material on our website, where we have a section dedicated to our work in the public sector. Here you can download copies of our publications

<https://www.grantthornton.co.uk/en/services/public-sector-services/>

If you would like further information on any items in this briefing, or would like to register with Grant Thornton to receive regular email updates on issues that are of interest to you, please contact either your Engagement Lead or Engagement Manager.

# Progress at May 2023

## Financial Statements Audit

We have completed our work on your financial statements for 21-22, **subject to additional procedures required to assess the impact of the 31 March 2022 triennial Local Government Pension Scheme valuation, which was published in April 2023.** We undertook our initial planning work for the 2022/23 audit in March 2023.

Our planning work includes:

- Updated review of the Authority's control environment
- Updated understanding of financial systems
- Review of Internal Audit reports on core financial systems
- Understanding how the Authority makes material estimates for the financial statements
- Early work on emerging accounting issues

The results of our work to date are included in this report.

In July we plan to issue a detailed audit plan, setting out our proposed approach to the audit of the Authority's 2022/23 financial statements.

We will report our work in the Audit Findings Report and aim to give our opinion on the Statement of Accounts by the end of September 2023.

The deadline for publishing audited local authority accounts is 30 September for 2022/23 onwards.

## Value for Money

Under the 2020 Code of Audit Practice, for local government bodies auditors are required to issue our Auditor's Annual Report no later than 30 September or, where this is not possible, issue an audit letter setting out the reasons for delay.

NOA have issued Auditor Guidance Note 3 (AGN 03) in relation to Auditors' Work on Value for Money (VFM) Arrangements for 22-23 audits.

The ongoing delays in local audit continue to significantly impact audited bodies and the financial reporting and auditing process, and may therefore affect the timing of when the work on VFM arrangements set out in AGN03 is performed and reported.

The guidance states that the auditor should perform the procedures required as part of their work on VFM arrangements under AGN3 and issue their Auditor's Annual Report when their work is complete.

The Auditor's Annual Report should be issued no more than three months after the date of the opinion on the financial statements for all local government bodies.

We anticipate issuing our 2021-22 Auditor's Annual Report by 31 May 2023, and our 2022-23 report by 30 December 2023. These reports will present our independent views on the Council's current challenges around financial sustainability.

# Progress at March 2023 (cont.)

## Other areas

### Meetings

We continue to be in discussions with finance staff regarding emerging developments and to ensure the audit process is smooth and effective.

### Events

We provide a range of workshops, along with network events for members and publications to support the Authority. Your officers attended our Accounts Workshop in January and February 2023, where we highlighted financial reporting requirements for local authority accounts and gave insight into elements of the audit approach.

Further details of the publications that may be of interest to the Authority are set out in our Sector Update section of this report.

## Audit Fees

During 2017, PSAA awarded contracts for audit for a five year period beginning on 1 April 2018. 2022/23 is the fifth year of that contract. Since that time, there have been a number of developments within the accounting and audit profession. Across all sectors and firms, the Financial Reporting Council (FRC) has set out its expectation of improved financial reporting from organisations and the need for auditors to demonstrate increased scepticism and challenge and to undertake additional and more robust testing.

Our work in the Local Government sector in the period 2018/19 to 2021/22 has highlighted areas where financial reporting, in particular, property, plant and equipment and pensions, needs to improve. There is also an increase in the complexity of Local Government financial transactions and financial reporting. This combined with the FRC requirement that all Local Government audits are at or above the “few improvements needed” (2A) rating means that additional audit work is required.

We have reviewed the impact of these changes on both the cost and timing of audits. We have discussed this with your s151 Officer including any proposed variations to the Scale Fee set by PSAA Limited, and have communicated fully with the Corporate Governance and Audit Committee.

As a firm, we are absolutely committed to meeting the expectations of the FRC with regard to audit quality and local government financial reporting.

# Audit Deliverables

## 2022/23 Deliverables

### Audit Plan

We are required to issue a detailed audit plan to the Corporate Governance and Audit Committee setting out our proposed approach in order to give an opinion on the Authority's 2022/23 financial statements and to issue a commentary on the Authority's value for money arrangements in the Auditor's Annual Report.

Planned Date

July 2023

Status

Not yet due

### Audit Findings Report

The Audit Findings Report will be reported to the September Corporate Governance and Audit Committee.

September 2023

Not yet due

### Auditors Report

This includes the opinion on your financial statements.

November 2023

Not yet due

### Auditor's Annual Report

This report communicates the key outputs of the audit, including our commentary on the Authority's value for money arrangements.

November 2023

Not yet due

## 2021/22 Audit-related Deliverables

### Audit Findings Report (final) and Auditors Report

These will be issued upon final sign-off of the financial statements, upon resolution of the national pensions issue concerning the latest triennial valuation.

Planned date

May/June 2023

Status

Due imminently

### Auditor's Annual Report

This report communicates the key outputs of the audit, including our commentary on the Authority's value for money arrangements. This will be issued following the conclusion of the audit and discussions with management regarding the content of the report.

May/June 2023

Due imminently

# Infrastructure Assets Update

## Background

Most local government (LG) entities, excluding police bodies, will own infrastructure assets. The balances for highways authorities will be particularly significant and are likely to be material. For LG entities with material infrastructure assets there is therefore a potential risk of material misstatement related to this balance.

The inherent risks which we identified this year in relation to infrastructure assets were:

- An elevated risk of the overstatement of gross book value and accumulated depreciation figures, due to lack of derecognition of replaced components
- A normal risk of understatement of accumulated depreciation and impairment as a result of failure to identify and account for impairments of infrastructure assets, and an over or understatement of cumulative depreciation as a result of the use of inappropriate useful economic lives (UEls) in calculating depreciation charges.



## How these issues have been addressed?

Since these issues were first identified we have been working with CIPFA and the English and Scottish Governments to find both long-term and short-term solutions which recognise the information deficits and permit full compliance with the CIPFA Code. It has been recognised that longer-term solutions, by way of a Code update, will take several years to put into place and so short-term solutions have been put in place in the interim. These short-term solutions include the issue of Statutory Instruments (SIs) by government and an update to the CIPFA Code.

The CIPFA Code update was issued on 29 November 2022. The English SI was laid before Parliament on 30 November 2022 and came into force on 25 December 2022 – see [The Local Authorities \(Capital Finance and Accounting\) \(England\) \(Amendment\) Regulations 2022 \(legislation.gov.uk\)](#). CIPFA issued [CIPFA Bulletin 12 Accounting for Infrastructure Assets Temporary Solution](#) on 11 January 2023, which includes further guidance and illustrative examples on the depreciation of infrastructure assets and the associated useful economic lives (UEls).

For the 2021/22 financial statements, we have considered how the SI and Code update have been considered by the Authority, e.g. how derecognised components have been accounted for and how the financial statement disclosures have been updated. We are satisfied with how this has been accounted for in the 2021/22 financial statements.

For the 2022/23 financial statements, management have revisited the Authority's accounting policies in respect of infrastructure assets, to ensure that these continue to be in line with CIPFA guidance. We will review and comment on these changes as part of our 2022/23 audit.

# Sector Update

Authorities continue to try to achieve greater efficiency in the delivery of public services, whilst facing the challenges to address rising demand, ongoing budget pressures and social inequality.

Our sector update provides you with an up to date summary of emerging national issues and developments to support you. We cover areas which may have an impact on your organisation, the wider local government sector and the public sector as a whole. Links are provided to the detailed report/briefing to allow you to delve further and find out more.

Our public sector team at Grant Thornton also undertake research on service and technical issues. We will bring you the latest research publications in this update. We also include areas of potential interest to start conversations within the organisation and with Corporate Governance and Audit Committee members, as well as any accounting and regulatory updates.

- [Grant Thornton Publications](#)
- [Insights from local government sector specialists](#)
- [Reports of interest](#)
- [Accounting and regulatory updates](#)

More information can be found on our dedicated public sector and local government sections on the Grant Thornton website by clicking on the logos below:

A teal rectangular button with the text "Public Sector" in white, sans-serif font, centered within the button.

Public Sector

A dark purple rectangular button with the text "Local government" in white, sans-serif font, centered within the button.

Local  
government

# Delayed publication of audited local authority accounts

In December 2022 there were over 600 local audit opinions outstanding. This means that many stakeholders can't rely on audited accounts to inform decision making – a significant risk for governance and control.

Local authority accounts are becoming increasingly complex as accounting standards evolve and local authorities enter more and more innovative financing arrangements and income generation projects. A significant challenge in managing local audits is the differing needs of various stakeholders. The local government sector, central government and regulators need to agree on the purpose of local audit and find a consensus on improving efficiency in publishing accounts. Grant Thornton has produced a report that explore the reasons for delayed publication of audited local authority accounts.

Table 1 below illustrates the declining performance against the target date for publication of audited accounts in recent years.

**Table 1 Audited accounts published by target date over the last six years**

Financial year	Deadline for publication of unaudited accounts	Target date for publication of audited accounts	% audited accounts published by target date (all firms average)	% audited accounts published by target date (Grant Thornton audits)
2016/17	30 June 2017	30 September 2017	95	97
2017/18	31 May 2018	31 July 2018	87	91
2018/19	31 May 2019	31 July 2019	58	65
2019/20	1 September 2020	30 November 2020	45	54
2020/21	1 August 2021	30 September 2021	9	12
2021/22	1 August 2022	30 November 2022	12	20

## About time?

Exploring the reasons for delayed publication of audited local authority accounts

March 2023



# Delayed publication of audited local authority accounts

## What more can be done?

All key stakeholders in the local audit system will need to continue their efforts to secure improvement and a return to high levels of compliance with timely publication of audited accounts. The report explores several of the causes of delay and steps which might be taken to reduce the incidence of delays.

These steps relate to systems leadership, holding both authorities and auditors to account for their performance, a continued focus on the quality of accounts preparation and audit, and the effective engagement between auditors and audited bodies.

The report makes 20 recommendations for improving timeliness in publishing audited accounts.

The report also sets out a checklist which management and the Corporate Governance and Audit Committee should consider. The report recommends DLUHC, CIPFA or the FRC set out expectations for the system as a whole.

[Click here for full report](#)

## About time?

Exploring the reasons for delayed publication of audited local authority accounts

March 2023



# Local government procurement and contract management

## Background

Local authorities in England spend around £82.4 billion a year on goods and services. More than a third of all UK government spending on goods and services is spent in the local government sector<sup>1</sup>. Allowing for capital spending as well, the UK public sector procures around £300 billion a year overall.

We reviewed a large number of reports, inspections and interventions issued by a number of firms, including 53 Annual Auditor Reports issued by Grant Thornton UK LLP. To help build on existing good practice, in this report we highlight some common themes for members and officers to consider:

This report considers a selection of issues we identified under each theme and makes recommendations both to local authorities and, in one case, to central government. The report presents a good practice checklist for local authority members and officers to reflect on.

The analysis sets out five key themes for ensuring good practice:

- Strategic planning
- Internal control
- Time, technical expertise, and people
- Commercial awareness
- Contract management

[full report here](#)

More than a third of all UK government spending on goods and services is spent by local government, so it's important councils have effective arrangements for procurement and contract management

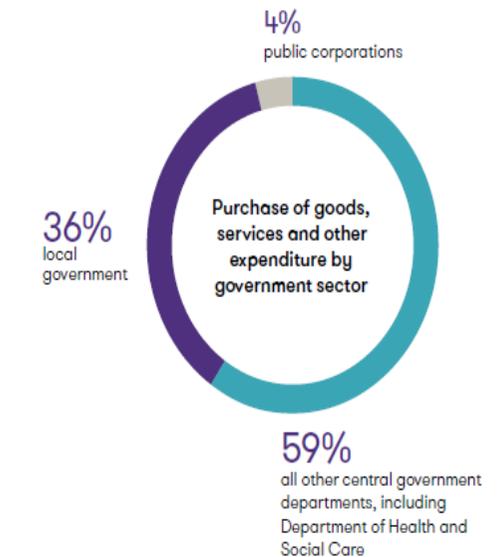
## UK public spending

Public spending on goods and services, £ billions - analysis by segment and department<sup>2</sup>



- PCs Other Public Corporations
- DfT Department for Transport
- WG Welsh Government
- HO Home Office
- DfE Department of Education
- SG Scottish Government
- AC Academies
- MoJ Ministry of Justice
- BBC British Broadcasting Corporation
- BEIS Department of Business, Industry Strategy

Goods, services and other expenditure by segment<sup>4</sup>



<sup>1</sup> HM Treasury, Whole of Government Accounts: year ended 31 March 2020, June 2022  
<sup>2</sup> Cabinet Office, Transforming Public Procurement: Government response to consultation, December 2021  
<sup>3</sup> HM Treasury, Whole of Government Accounts: year ended 31 March 2020, June 2022  
<sup>4</sup> HM Treasury, Whole of Government Accounts: year ended 31 March 2020, June 2022

# SEND deficits kept off budgets for another three years

The government has allowed councils to keep deficits on spending for children with special educational needs and disabilities off their balance sheets for a further three years.

The government's local government finance policy statement published on 12th December 2022 says that the statutory override for the Dedicated Schools Grant (DSG) will be extended for the next three years, from 2023-24 to 2025-26.

Councils use the high needs funding block of the DSG to fund Send provision. But for many authorities, the cost of this has been outstripping the amounts provided by tens of millions of pounds, leading to a total deficit estimated at more than £2bn.

The statutory override means that any DSG deficits are not included in council's main revenue budgets. Before today's announcement, it had been due to expire in 2023. Last year, Matt Dunkley, chair of the Association of Directors of Children's Services' resources and sustainability policy committee, said: "We think the cumulative high needs block deficits of local authorities are approximately £2.3bn."

In June, the government launched the £85m Delivering Better Value in Send programme, that involves specialist advisors probing 55 councils' financial data to try and cut their DSG deficits. The Chartered Institute of Public Finance and Accountancy, a partner in the programme, said the scheme would provide "project management, change management and financial modelling capacity".

The programme is running alongside the Department for Education's 'safety valve' support scheme that offers bailouts for the councils with the largest Send spending deficits, in return for them implementing stringent reforms.

About 40 councils are expected to receive safety valve funding, meaning that the two programmes together will include about two thirds of councils with responsibility for Send. Also in June, the then children's minister Will Quince wrote a letter to council chief executives warning that a "significant number of councils are "running services that are not sustainable, and instead jeopardise the longevity of that crucial support".

# Sustainability: Finance at the heart of decision making

In November 2022 CIPFA published an article on public sector specific response to climate change. Below is an extract from CIPFA's website:

## “Role of the finance profession

Finance and accounting professionals need to move beyond simply measuring and reporting the impact of climate change, environmental regulation, supply chain pressure and rising energy costs. They must focus on understanding those implications and integrating them into financial management and business planning. The ability to integrate climate risks into overall operational risks is a major challenge. The finance profession will need to be able to collect data from different professions (scientists, valuation experts, biologists, meteorologists etc) and be able to understand but also challenge assumptions and projections. The importance of effective communication to both internal and external stakeholders must not be underestimated. Climate reporting should result in decision makers having all the information necessary to be effective, to measure progress and to hold those responsible to account.

Opportunities and risks must be identified and stress tested using various scenarios, including temperature rises of 2C and more. The impact of collapsed ecosystems must not be ignored – from rising sea levels to food scarcity and the mass migration of people whose land is no longer inhabitable. We need honesty, transparency and above all leadership to tackle the climate issues that exist and lie ahead.

## Conclusion

The current focus on net zero emissions by 2050 misses the point that climate change is already happening. There is an urgent need for adaptation measures to be introduced that allow the UK to live with higher temperatures, wetter winters and warmer, drier summers. At the moment we are severely under prepared. This is a call for urgent action from government, both at central and local level. The IPCC recommended threshold of limiting temperature rises to 1.5C is **set to be broken**. Temperature rises above 2.5C will mean ecosystems will collapse which will have severe repercussions on our society as a whole. CIPFA and ICAEW share the view that the finance function has an important role to play in combating climate change. We would like to see the finance profession taking the lead for the public sector in its efforts to tackle climate change”.

[Click here for link to the article](#)

# Audit Market Developments

## Financial Reporting Council Report On The Quality Of Local Audit

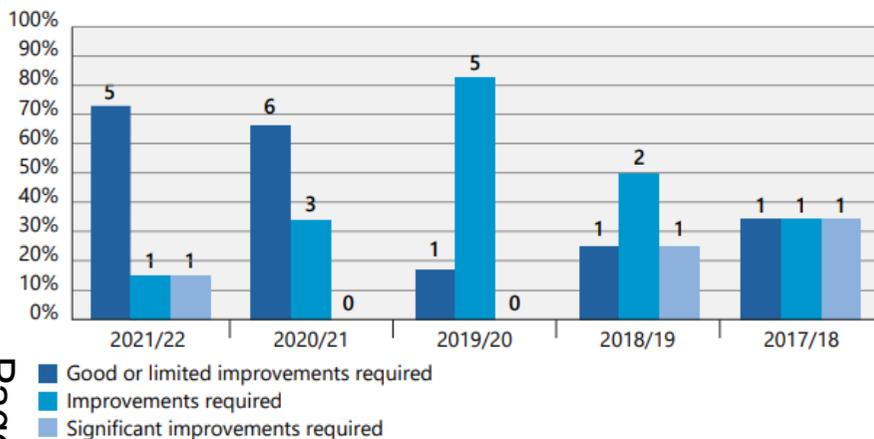
In late October 2022 the Financial Reporting Council (FRC) published its inspection findings into the quality of major local body audits in England, which includes large health and local government bodies.

The Quality Assurance Department (QAD) of the Institute of Chartered Accountants in England and Wales (ICAEW) inspects a sample of local audits that do not meet the definition of a 'major' local audit and the FRC's report also includes a summary of their findings.

The FRC reported that 71% of Grant Thornton audits inspected (7 in total) were assessed as either good or limited improvements required.

This is a pleasing result and reflects on our significant investment in audit quality over recent years. The positive direction of travel over the past five years is illustrated below:

Our assessment of the quality of financial statement audits reviewed



The FRC also inspected our work on VfM arrangements at four bodies.

It is pleasing to note that all of these inspections were assessed as requiring no more than limited improvements (which is the same as the previous year).

As far as the ICAEW are concerned, overall, the audit work reviewed was found to be of a good standard.

Seven of the eight files reviewed (88%) were either 'good' or 'generally acceptable', but one file 'required improvement'.

The ICAEW identified one of our files as requiring 'Improvement' – but it should be noted that this was a 2019-20 file and therefore the learnings from prior years' review could not have been taken into account, an issue recognised by the ICAEW in their report to us.

The ICAEW found that our VfM work was good on each of the files reviewed, and they did not identify any issues with this aspect of the audit teams' work.

Whilst are pleased with our continuing improvement journey, we continue to invest in audit quality to ensure that the required standards are met.

The full report can be found [here](#).



Financial Reporting Council



# Audit Market Developments (continued)

## Local Government External Audit Procurement

Public Sector Audit Appointments Ltd (PSAA) has recently announced the outcome of its national procurement of audit services across the Local Government sector.

This exercise covers the audits from 2023/24 to 2027/28 and covers the 470 local government, police and fire bodies (99% of eligible local bodies) that opted into the national scheme.

We are delighted to have been reappointed as the largest supplier of local government audit. The public sector has played a significant role within the firm for over 30 years and we remain committed to the success of the sector.

Our UK Public Sector Assurance (PSA) team employs 440 people, including 29 Key Audit Partners and specialists in financial reporting, audit quality, and value for money.

The team is dedicated to public audit work in local government and the NHS, with contracts with PSAA, Audit Scotland and over 100 health bodies. The Public Sector Assurance team is a regular commentator on issues facing the sector and oversees the firm's thought leadership, such as its series of publications on grants and public interest reports.

Mark Stocks, lead Partner for PSA at Grant Thornton, said 'This is a very welcome outcome and reflects our previous delivery as well as our ongoing commitment to invest in the public sector.'

Further information can be found [here](#)



# Grant Thornton – Nearly 60 councils at risk of ‘running out of money’ next year

Grant Thornton has warned that the soaring cost of living combined with a decade of austerity could see up to a sixth of English councils fully deplete their reserves in 2023-24 without substantial spending cuts.

Research found that, as a result of higher inflation, councils are expected to have a cumulative budget deficit of £7.3bn by 2025-26 – an increase of £4.6bn since forecasts made at the beginning of this year.

Grant Thornton said that although reserves were bolstered by more than £5bn in 2020-21 due to higher government funding, these balances will “continue to unwind through the long tail of Covid-19” with close to 60 councils forecast to use all earmarked and unallocated reserves next year.

Without additional income, authorities would need to make savings of over £125 per person by 2025-26, equal to the average yearly spend on homelessness, sports and leisure, parks and open spaces, libraries and waste services.

Phillip Woolley, Head of Public Services Consulting at Grant Thornton, said: “Local government has faced unprecedented demands and pressures over the last decade and without action from both central government and councils, in the face of these inflationary pressures, the list of authorities in need of exceptional support looks set to grow quickly.

“Our research shows the additional Covid-19 funding, while critical to support immediate challenges, has not addressed underlying systemic issues or the precariousness of councils’ financial sustainability in the face of economic instability.

“Local authorities are also now facing the risk of interest rate rises, increasing debt financing costs and the real risk of reduced funding from central government, in response to the current economic turmoil facing the country. Without committed intervention from all sides, there is a risk that the sector levels down instead of up.”

Grant Thornton estimated unitary authorities would have the largest budget gap (£1.8bn) by 2025-26, but district councils would have the largest gap compared to net spending at 10.2%.

The firm added that austerity and changing policy demands have left councils struggling to innovate in their services and prevented investment in finance and procurement, diminishing the sector’s ability to tackle medium-term challenges.

Grant Thornton said additional government funding alone will not lead to improvements, and that councils should focus on improving governance and developing financial stability plans.

Joanne Pitt, local government policy manager at CIPFA, said: “With no spending review and no fair funding review, CIPFA shares Grant Thornton’s concerns about the financial sustainability of some in the sector.

“While there are actions local authorities can take to strengthen their own financial resilience, they are facing significant inflationary pressures and rising demand which makes this hugely challenging for the sector.”



# Corporate Governance and Audit Committees: Practical Guidance For Local Authorities And Police – CIPFA

In October CIPFA published this guide, stating “This fully revised and updated edition takes into account recent legislative changes and professional developments and supports the 2022 CIPFA Position Statement. It includes additional guidance and resources to support Corporate Governance and Audit Committee members, and those working with and supporting the committee’s development.”

CIPFA go on to state “Corporate Governance and Audit Committees are a key component of governance. Their purpose is to provide an independent and high-level focus on the adequacy of governance, risk and control arrangements. They play an important role in supporting leadership teams, elected representatives, police and crime commissioners and chief constables.

This edition updates CIPFA’s 2018 publication to complement the 2022 edition of the CIPFA Position Statement on Corporate Governance and Audit Committees.

The suite of publications has separate guidance resources for Corporate Governance and Audit Committee members in authorities, members of police Corporate Governance and Audit Committees, and a supplement for those responsible for guiding the committee.

New aspects include legislation changes in Wales and new expectations in England following the Redmond Review. All authorities and police bodies are encouraged to use the publication to review and develop their arrangements in accordance with the Position Statement.

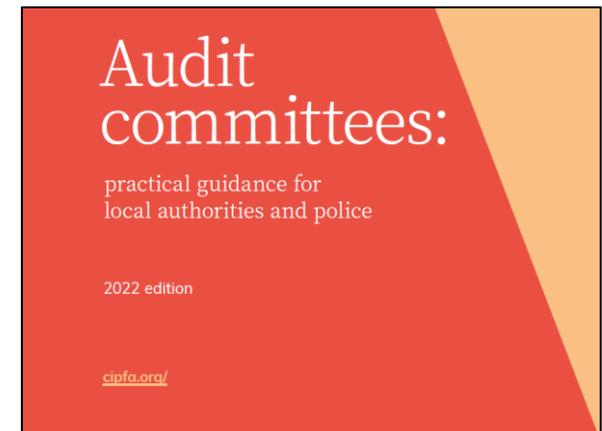
The appendices include suggested terms of reference, a knowledge and skills framework and effectiveness improvement tools.”

The guide covers a number of key areas for Corporate Governance and Audit Committees, including:

- Purpose
- Core functions:
  - Governance, Risk and Control
  - Accountability and Public Reporting
  - Assurance and Audit arrangements
  - Ensuring focus
- Independence and accountability
- Membership and effectiveness

The guide can be purchased via the CIPFA website:

[Corporate Governance and Audit Committee Guidance: 2022 update | CIPFA](#)



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# Stonewall Gold Employer: GT's LGBTQIA+ inclusion journey

## Background

15 Feb 2023, Stonewall, Europe's largest charity for Lesbian, Gay, Bi, Trans, and Queer (LGBTQIA+) rights, launched its widely anticipated Top 100 Employers List – recognising us for our work in supporting LGBTQIA+ colleagues to be the best versions of themselves at work and awarding us Gold Employer, the highest award.

We're proud to announce that we've ranked among the UK's leading employers from the public, private, and third sectors in the Stonewall Workplace Equality Index (WEI). We've also been recognised as a Gold Employer. Overall, we've ranked 38th in the latest WEI results, and 26th in the private sector, and 9th in the financial services sector.



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