

Name of meeting: Council (Annual)

Date: 23 May 2018

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

Purpose of report

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

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?	N/A
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports) ?	N/A
The Decision - Is it eligible for "call in" by Scrutiny?	N/A
Date signed off by Director & name	
Is it also signed off by the Head of Finance and Accountancy?	Eamonn Croston – 15 May 2018
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Julie Muscroft – 15 May 2018
Cabinet member portfolio	Graham Turner

Electoral wards affected: N/A

Ward councillors consulted: N/A

Public or private: Public

1. Summary

- 1.1 To set out proposed changes in relation to different sections of the constitution and seek approval by members of those proposed changes at paragraph 2 marked with a double asterisk. Each section of the Constitution is set out below with information setting out details of the proposed change for which approval and/or comments is sought.
- 1.2 There have been some minor changes using delegated authority granted to the Monitoring Officer by Council on 20 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 A for information.
- 1.3 The constitution has been reviewed during the year in relation to some areas. This is an on-going process to ensure it is correct and up-to-date and reflects any changes to re-structure, procedures and legislation. The outcome of that review is set out in this report.

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 requests for approval for any changes.

PART 2 – ARTICLES

- 2.02 There are 17 articles that set out how the council operates. This has been reviewed and there are changes to the following:-

2.03 Article 7 – The Executive

Following the consideration given throughout the year to the change in approach to DBS checks, it is suggested the following wording is added

‘The Leader shall require the Cabinet member post holders of Children’s and Adults to undertake an Enhanced DBS check in accordance with the DBS Policy’.

The Leader following consultation has confirmed the approach which is to be taken and the amendment is attached for information at Appendix B.

A policy will be drafted that sets out the circumstances and procedure for carrying out those checks. In essence, this will affect the roles which are included within this report at section 2.03 and paragraph 2.12.

2.04 Article 13 – Decision Making Principles **

Members are asked to consider and provide approval for the decision making principles. These have been reviewed and updated to simplify them and keep them in line with current good practice and improve the wording relating to the decision making principles. The changes were approved by Corporate, Governance and Audit committee on 9 March 2018 for agreement by Council and are attached at Appendix C.

Members are referred to paragraph 2.19 of the report which sets out the recommendations of the committee on 9th March about this matter.

PART 3 - RESPONSIBILITY FOR FUNCTIONS

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

Section F sets out the scheme of delegation to officers. This includes executive and non-executive delegations to officers. There have been changes to titles and responsibilities following a review of the Senior Management structure and as a result of the s.151 officer leaving. The relevant amendments were made over the last year using the Monitoring Officers delegation and are set out in the attached Appendix A.

PART 4 – RULES OF PROCEDURE

2.06 This section contains eight documents which describe how Councillors and Officers conduct themselves in meetings and make decisions about certain matters. The documents where amendments are sought are listed below.

2.07 Council Procedure Rules**

CPR 12 (2) currently states '*The Mayor/Chair in consultation with the Chief Executive may determine that a question shall not be put where ~~the question is substantially the same as a question put at a meeting of the Council within the preceding six months or the question appears~~ defamatory, vexatious or requires the disclosure of confidential or exempt information.'*

This will allow members who have follow on questions or questions that are similar to have an opportunity to put their question and aid discussion.

It is suggested the words are deleted as outlined above.

2.08 Rule 18 of the CPR's is in relation to the Rules of Debate. This amendment is to reflect current practice and allows for flexibility in terms of who presents the budget speech. CPR 18 (6) currently states:-
No speech of a Member of the Council in moving a motion to adopt the report of Cabinet or a Committee, or a motion under Rule 14 shall exceed 10 minutes and no other speech on any item before Council shall exceed 5 minutes, except:-
(a) by consent of the Council, or

*(b) the Leader, **or the Leader's nominee** annual budget speech on the setting of the amounts of Council Tax.*

2.09 CPR 19(3) currently states:

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

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

The proposed change is to delete "submitted to" and add the words in bold outlined above. This is to make the requirements regarding amendments clear and it is understood that they are required (within the 7 days) to be both:-

- i) submitted and
- ii) the Chief Executive satisfied that they are financially sustainable

2.10 CPR 19 (4) currently states:

'The Chief Executive shall inform all Members of the Council of any amendments received'

It is suggested to reflect current practice that the following words are added followed the word received '**..and the order of receipt. The amendments shall be considered at the meeting in the same order that they have been received by the Chief Executive..'**

2.11 CPR 19(5) currently states:

Debating the Motion and Amendments

(5) (i) The Mover of any Amendment to the Budget Motion shall speak for no longer than ten minutes, or for the same time taken by the Mover of the Budget Motion, whichever is the longer.

(ii) If a motion or an amendment described in paragraph (1), (2) and (3) above is not carried at the Council meeting, further motions and amendments may be moved and seconded without notice for consideration and determination. Copies of these additional motions or amendments must be made available to each Member of the Council by the mover or seconder before any debate begins.

(iii) In the event that an amendment is approved, thereby becoming the substantive motion, this resolution shall become the Council's budget and no further amendments shall be debated or voted upon.

It is suggested the following words are inserted to provide flexibility to aid debate and discussion when responding to budget motions and amendments

(iv) In order to engage in a full debate about the Budget and amendments these rules will allow reference to be made by a member in the Budget debate, to the Budget Motion and / or any amendments submitted by a political group related to the budget during their contribution to the debate whether that be when speaking on the Budget Motion or an amendment to it.

2.12 CPR 35 refers to the Appointment of Committees, Sub-Committees and Panels. Section 35 (2) is set out below:

(2) The Council subject to any statutory provision:-

(i) Shall not appoint any Member of the Committee so as to hold office later than the next Annual Meeting of the Council;

(ii) May at any time dissolve a Committee, or alter its membership

(iii) Shall not appoint the Leader, the Deputy Leader of the Council or any Members of the Cabinet as Members of the Overview and Scrutiny Committee or its Panels

Following the consideration given throughout the year to the change in approach to DBS checks, it is suggested the following words are added

(iv) Shall require the post holders of Scrutiny Lead Panel Members – Children (including those who attend Children Homes Regulations 44 visits) and Adoption Panel Members to

undertake an Enhanced DBS check in accordance with the DBS policy

As referred at 2.03 a policy will be drafted by the Monitoring Officer that will provide a framework and set out guidance, procedures and relevant legislation.

2.13 CPR 37 currently states:

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

The suggested changes are proposed so that it is clear to the public that they don't have individual speaking rights on particular items unlike attending Cabinet for example. At Council meetings the speaking is limited to deputations and petitions, unless express permission is proved as per above.

2.14 Access to Information Procedure Rules

This has been reviewed during the year and will be updated to reflect some changes in legislation and bring the rules up to date.

2.15 Budget and Policy Framework Rules

This is part of a wider piece of work which is under consideration and is currently being reviewed but there are no proposed amendments this year.

2.16 Executive Procedure Rules

This has been updated using the MO delegation to reflect the new officer titles. No further changes are proposed.

2.17 Financial Procedure Rules

There are proposed amendments and these will be the subject of a separate report to this committee

2.18 Contract Procedure Rules**

There is usually a separate report on Contract Procedure Rule changes. This year however, there are no substantive amendments requiring a separate report.

The rules have been reviewed and updated with some minor amendments to titles following the senior management restructure and updating of the EU threshold figures, for both procedural and numerical purposes. Every two years and most recently on 1st January 2018 the English legislation resets its thresholds at the exchange rate then applicable.

The proposed changes are set out in Appendix D.

2.19 Overview and Scrutiny Procedure Rules**

Following changes in relation to the structure of Scrutiny a piece of work was commissioned in 2015 by the Corporate, Governance and Audit committee to consider practice elsewhere and the development of options linked to the approach of scrutiny in Kirklees.

Following a report to CGA on 9 March 2018 a number of requirements were proposed as changes to support the principles of scrutiny. The committee did approve most of the recommendations made. A copy of the report is included at Appendix G for information. This committee recommended that Council approve the following:

- (1) *That the call in proforma be amended to include a section where a signatory may set out, where appropriate, any steps they have taken to try to resolve their concerns prior to calling in the cabinet decision.*
- (2) *That the Scrutiny Procedure Rules in the Constitution be amended to clarify that supporting evidence and reasons to illustrate how the decision making principle(s) has been breached should be included in the call in request. Officers to amend the call in proforma to allow for evidence to be included.*
- (3) *That the decision making principles in Article 13 of the constitution, as set out in appendix 2 of the report, be simplified in line with good practice and to ensure clarity of interpretation.*
- (4) *That the decision about the validity of a call in request will be determined by the Service Director, Legal, Governance and Commissioning in consultation with the Chair of Overview and Scrutiny.*
- (5) *That any required amendments to the constitution will be considered at the Annual Council Meeting.*

Members are asked to agree the recommendations by the Corporate, Governance and Audit committee on 9th March and to approve the amended overview and scrutiny procedure rules attached at Appendix E.

2.20 Officer Employment Procedure Rules

These have been updated during the year and the changes are set out within Appendix A.

PART 5 – CODES and PROTOCOLS

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

2.22 Members Code of Conduct

The Members Code of Conduct has been subject to a Standards Review and recent updates to the code were approved by full Council on 26 April 2017. This has been reviewed and no changes are necessary.

2.23 Monitoring Officer Protocol

This has been reviewed and no changes are necessary.

2.24 Protocol for Planning Committees and Sub-Committees

This has been reviewed and no changes are necessary.

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

This will be reviewed during 2018/19 and initially referred back to the Standards Committee for any proposed changes for consideration. Any recommended changes will be presented in a report to CGA and back to Council as appropriate.

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

This has been reviewed during 2018/19 and updated, however, will be considered as part of a wider review during 2018/19. The proposed changes are set out in the attached Appendix F.

2.27 Officers Code of Conduct

This requires more comprehensive updating and will be subject to further report during 2018/19.

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

This has been reviewed and no changes are necessary.

2.29 Licensing and Safety Committee Protocol

This has been reviewed following changes made to the statutory guidance and updated using the MO delegation to reflect new legislation and to bring it up to date.

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

No changes are proposed.

2.31 Safeguarding Protocol

No changes are proposed

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 Other implications (Financial, legal etc...)

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.

4. Consultees and their opinions

The Chief Executive and various officers in Legal, Governance and Commissioning have been consulted. The Leader and the changes to DBS checks has been discussed on a number of occasions with Group Business Managers and at the Chief Executive's meeting with Leading Members.

The Corporate, Governance and Audit committee were in agreement to the changes proposed to the constitution at their meeting on 11th May 2018. Slight amendments to the proposed wording have been made to CPR 19(5) at paragraph 2.11 as a result of comments made by them to make the purpose clearer A very minor amendment was also suggested to Appendix C which is reflected in the draft as well.

5. Next steps

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

6. Officer recommendations and reasons

That Council:-

- a. Approve or note the proposed changes set out in the paragraphs marked with a double asterix at 2.04, 2.07, 2.08, 2.09, 2.10, 2.11, 2.12, 2.13, 2.18, 2.19 and 2.26 and the accompanying relevant Appendices and having regard to the comments from Corporate, Governance and Audit Committee.
- b. Delegate authority to the Service Director – Legal, Governance and Commissioning to make appropriate amendments to the constitution which are agreed by Council as well as any consequential amendments to the constitution to reflect the changes agreed.
- c. Delegate authority to the Service Director – Legal Governance and Commissioning to draft the DBS Policy as referred to in paragraphs 2.03 and 2.12.

7. Cabinet portfolio holder recommendation

N/A

8. Contact officer

Julie Muscroft – Service Director – Legal, Governance and Commissioning
01484 221 000

julie.muscroft@kirklees.gov.uk

9. Background Papers and History of Decisions

N/A

10. Service Director responsible

Julie Muscroft – Service Director – Legal, Governance and Commissioning
01484 221 000

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11. Appendices

Appendices

Appendix A - Amendments 2017/18 (Information only)

Appendix B – Article 7 – The Executive (Information only)

Appendix C – Article 13 – Decision Making Principles

Appendix D – Contract Procedure Rules

Appendix E – Overview and Scrutiny Procedure Rules

Appendix F – Protocol on Representatives on Outside Bodies

Appendix G – Report on Amendment Options for the Scrutiny Call-in Process

APPENIDX A

Amendments 2017 - 2018

Changes made to the Constitution authorised either by the Monitoring Officer (MO) under the delegation provided to her or authorised by Council following the relevant report are set out in the tables below for information only.

Amendment	Authorisation	Link to Report
PART 1 – Summary and Explanation		
Removal of references to District Committees	Council	24 May 2017 https://democracy.kirklees.gov.uk/documents/s18501/Draft%20Council%20report%2024%20May%202017Final%20redjm%20commnets.pdf
PART 2 – ARTICLES		
Changes to reflect new officer titles at Heads of Service <ul style="list-style-type: none"> - Head of Environmental Health to Head of Public Protection - Head of Building Control and Licensing to Head of Capital Delivery and Facilities Management - Head of Governance and Democratic Services to Head of Democracy 	Monitoring Officer delegation	-
Removal of reference to District Committee's	Council	24 May 2017 (see above link)
Add word 'Commissioning' Article 7, paragraph 7.2.4	Monitoring Officer delegation	-
Remove word 'support' in Article 14 from title of Service Director – Legal, Governance and Commissioning	Monitoring Officer delegation	-

PART 3 – RESPONSIBILITY FOR FUNCTIONS		
Changes to reflect the departure of the s.151 officer and change of non-exec and executive delegations	Non-Executive functions (Council)	21 March 2018 https://democracy.kirklees.gov.uk/documents/s21994/11.%20Council%20S151%20and%20non-exec%20decision.pdf
	Executive changes	4 April 2018
Addition of Statutory Officer Dismissal Committee	Council	13 December 2017 https://democracy.kirklees.gov.uk/documents/s20962/ITEM%209%20Dismissal%20of%20Statutory%20Officers.pdf
PART 4 – RULES OF PROCEDURE		
Removal of reference to District Committees in Council Procedure Rules	Council	24 May 2017 (see above link)
Update to Officer Employment Procedure Rules	Council	13 December 2017 https://democracy.kirklees.gov.uk/documents/s20962/ITEM%209%20Dismissal%20of%20Statutory%20Officers.pdf
Update to change titles in Executive Procedure Rules	Monitoring Officer delegation	-
PART 5 – CODES AND PROTOCOLS		
Update to Licensing and Safety Committee Protocol to reflect changes in guidance and legislation	Monitoring Officer delegation	-

APPENDIX B

ARTICLE 7 - THE EXECUTIVE

7.1 Title, Role and Transitional Provisions

- 7.1.1 The leader of the Council and Cabinet who are in office at the time of the local elections in May 2010 shall remain in office until the annual meeting of the authority following those elections and the scheme of responsibility for the authority's executive functions set out in Part 3.3 of this constitution as at that time shall continue in force unless and until it is amended by the Leader appointed in accordance with article 7.2.2 below;
- 7.1.2 Subject to 7.1.1 above, the authority will operate executive arrangements under section 11(2A) of the Local Government Act 2000 (known as the leader and cabinet executive model) with effect from three days after the date of the ordinary elections of councillors to the authority to be held in May 2010.
- 7.1.3 Under the leader and cabinet executive model the Executive consists of a councillor elected as Leader by the authority and a minimum of two and a maximum of nine councillors appointed to the Cabinet by the Leader. The Executive will carry out all of the authority's functions which are not the responsibility of any other part of the authority, whether by law or under this constitution;

7.2 Leader and Deputy Leader

- 7.2.1 The Leader will be a councillor elected to the position of Leader by the authority.
- 7.2.2 The first Leader to be elected under the arrangements referred to at article 7.1.2 shall be elected at the annual meeting of the authority following the ordinary elections of councillors to the authority to be held in May 2010. If the authority fails to elect a Leader at that meeting the Leader shall be elected at a subsequent meeting of the authority.
- 7.2.3 Subsequent Leaders shall be elected by the authority whenever there is a vacancy in the office of Leader.
- 7.2.4 The Leader shall designate one of the other Cabinet members to be the Deputy Leader. The Leader shall give written notice to the authority's Chief Executive and Service Director – Legal, Governance and of the appointment of the Deputy Leader and the appointment shall take effect upon the day on which the Chief Executive gives written acknowledgment of receipt of the notice. The Leader, if they think fit, may remove the Deputy Leader from office and where a vacancy in the office of Deputy Leader occurs the Leader must appoint another person in their place. The Leader shall give written notice to the authority's Chief Executive and Service Director – Legal, Governance and Commissioning of any such removal of the Deputy Leader from office or appointment of a new Deputy Leader and the removal or appointment shall take effect upon the day on which the Chief Executive gives written acknowledgment of receipt of such notice.

7.2.5 If for any reason the Leader is unable to act the Deputy Leader must act in the Leader's place.

7.2.6 If for any reason the Deputy Leader is unable to act or the office of Deputy Leader is vacant, the Cabinet must act in the Leader's place or must arrange for a member of the Cabinet to act in the Leader's place.

7.3 Form and Composition of Cabinet

7.3.1 The Cabinet will consist of the Leader, together with at least two, but no more than nine councillors appointed to the Cabinet by the Leader. One of the Cabinet members must be the Deputy Leader.

7.3.2 The Leader may appoint each Cabinet member to be responsible for a specific portfolio of functions. The Leader may make adjustments to the detail of those portfolios or add additional responsibilities as they consider appropriate in the light of operational need. Any such changes shall be reported to the next meeting of the Cabinet.

7.3.3 The Leader shall appoint one Cabinet member to be "lead member for children's services" for the purposes of section 19(1) of the Children Act 2004.

7.3.4 The Leader shall, within five working days of being elected as Leader, give written notice to the local authority's Chief Executive and Service Director – Legal, Governance and Commissioning of the details of which councillors have been appointed to Cabinet, of any portfolios of functions which have been allocated to individual Cabinet members and of which Cabinet member has been appointed as lead member for Children's Services. The Leader shall also notify the Chief Executive and Service Director – Legal, Governance and Commissioning if and when he/she makes any changes to these arrangements. Such arrangements shall take effect upon the day on which the Chief Executive gives written acknowledgment of receipt of such notifications.

[7.3.5 The Leader shall require the Cabinet member post holders of Children's and Adults to undertake an Enhanced DBS check in accordance with the DBS Policy](#)

7.4 Other Cabinet Members

7.4.1 Only councillors may be appointed to the Cabinet by the Leader. There may be no co-optees and no deputies or substitutes for Cabinet members. Neither the Mayor nor Deputy Mayor may be appointed to the Cabinet and members of the Cabinet (including the Leader) may not be members of the Overview and Scrutiny Management Committee, or its panels.

7.5 Terms of Office and Removal from Office

7.5.1 The Leader's term of office shall commence upon the day of the Leader's election pursuant to article 7.2.1 or 7.2.2 and, unless article 7.5.2 applies, will expire on the day when the authority holds its first annual meeting after the Leader's normal day

of retirement as a councillor. Accordingly the maximum term of office for the Leader is 4 years.

7.5.2 The Leader's term of office will end before the time specified in article 7.5.1 in the following circumstances:

7.5.2.1 The Leader resigns from office. Such resignation shall be effective when the authority's Chief Executive receives written notice of the resignation from the Leader.

7.5.2.2 The Leader is removed from office by resolution of the authority under article 7.6.1.

7.5.2.3 The Leader resigns as a councillor.

7.5.2.4 The Leader otherwise ceases to be a councillor, except in the circumstances provided for in article 7.5.1.

7.5.3 During any period during which the Leader is suspended by the authority's standards committee or by the First-tier Tribunal (Local Government Standards in England) from being a member of the authority the Deputy Leader shall act in the Leader's place and the Leader shall not be a member of the Cabinet during the term of any such suspension.

7.5.4 The Leader may not be removed from office other than in accordance with this article.

7.5.5 The Deputy Leader is to hold office from the day when they are appointed by the Leader until the end of the term of office of the Leader, unless:

7.5.5.1 The Deputy Leader is removed from office by the Leader in accordance with article 7.2.4. Such removal from office shall be effective when the authority's Chief Executive receives written notice of the removal from the Leader;

7.5.5.2 The Deputy Leader resigns as Deputy Leader;

7.5.5.3 The Deputy Leader ceases to be a member of the authority;

7.5.5.4 The Deputy Leader is acting as Leader pursuant to article 7.6.3 during a vacancy in the office of Leader, in which case the Deputy Leader shall continue to hold office until the election of a new Leader; or

7.5.5.5 The Leader resigns from or dies in office in which case the Deputy Leader shall act as Leader and continue to hold office until the election of a new Leader.

And for the avoidance of doubt in the circumstances described in Articles 7.5.5.4 or 7.5.5.5 the Deputy Leader whilst acting as Leader shall be entitled to appoint a Cabinet in accordance with Article 7.3.

7.5.6 The individual Cabinet members are to hold office from the day when they are appointed by the Leader until the end of the term of office of the Leader, subject to article 7.5.6, unless:

7.5.6.1 They are removed from office by the Leader, or the Deputy Leader acting in the Leader's absence. Any such removal of a Cabinet member from office shall take effect upon the authority's Chief Executive receiving written notice of the removal from office, such notice to be given by the Leader or Deputy Leader as the case may be;

7.5.6.2 They resign as members of the Cabinet; or

7.5.6.3 They cease to be members of the authority.

7.6 Removal from Office of the Leader

7.6.1 The Leader may be removed from office by resolution of the authority.

7.6.2 No such resolution may be considered by the authority unless a notice of motion has been submitted in writing and delivered to the Service Director – Legal, Governance and Commissioning by 10.00 am on the tenth day before the date of the council meeting at which the motion is to be considered. The notice of motion must be signed by not less than one third of the members of the authority.

7.6.3 Where the Leader is removed from office in accordance with article 7.6.1 the authority shall elect a new Leader at the meeting which the Leader is removed from office or at a subsequent meeting. During any period during which the office of Leader is vacant the Deputy Leader will act as Leader.

7.7 Proceedings of the Executive

7.7.1 Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this constitution. The Access to Information Procedure Rules also contain requirements which apply to the Executive.

7.8 Responsibility for Functions

7.8.1 The Leader will ensure that a list is maintained in Part 3 of this Constitution setting out which executive functions the Leader has allocated to himself / herself and which executive functions they have delegated to the Cabinet, specified individual members of the Cabinet, specified committees of the Cabinet or specified officers of the authority.

7.8.2 The Leader shall provide a copy of that list to the authority's Chief Executive and Service Director – Legal, Governance and Commissioning within five working days of being appointed as Leader and shall notify the Chief Executive and Service Director – Legal, Governance and Commissioning Support in writing of any amendments to that list. Following the appointment of a new Leader, all executive functions will vest in the Leader until the day upon which the Chief Executive gives written acknowledgment of receipt of such a list and any amendments to the list

will not take effect until the day upon which the Chief Executive gives written acknowledgment of receipt of such notice of amendment.

7.8.3 Unless the Leader otherwise directs:

7.8.3.1 The Cabinet may arrange for the discharge of any of the executive functions delegated to it by the Leader to be exercised by a committee of the Cabinet or by an officer of the authority.

7.8.3.2 Any member of the Cabinet who has been delegated executive functions may arrange for any of those functions to be exercised by an officer.

7.8.3.3 Any committee of the Cabinet which has been delegated functions may arrange for any of its executive functions to be carried out by an officer

7.8.4 Article 7.8.2 shall not prevent the Leader, the Cabinet, a member of the Cabinet or a committee of the Cabinet from exercising functions which they have previously delegated.

7.9 Executive arrangements in the event of no leader being elected

7.9.1 If at any time there is no leader and no Deputy Leader in office, any act or function that could otherwise be performed by the Leader may be performed by the Chief Executive

[who will act in consultation with the leaders of all political parties]

APPENDIX C

ARTICLE 13 – DECISION MAKING

13.1 Responsibility for decision making

The council will issue and keep up to date a record of which part of the council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this constitution. A record will also be kept (see Section G of Part 3 of the Constitution) of those bodies / working groups / boards within the council which do not have formal decision making roles but which have advisory responsibilities and functions.

13.2 Principles of decision making

The following principles apply to decision-making:-

- a. ~~due regard to all~~ **Relevant Considerations** – ~~Due regard to all relevant considerations~~ and disregard of all irrelevant factors;
- b. **Proportionality** – ~~(i.e. The~~ the action must be proportionate to the desired outcome);
- c. **Consultation** – ~~There will be appropriate consultation and professional advice obtained from officers~~
~~lawfulness and financial propriety and prudence;~~
- d. ~~all due consultation;~~
- e. ~~the taking of professional advice from officers;~~
- f. ~~respect for~~ **Human Rights** – All decisions should reflect respect and application of the ~~for~~ **Human Rights 1998**;
- g. **Openness** – Be open about the decisions and actions the council takes ~~a presumption in favour of openness;~~
- h. **Clarity** - Be clear in our aims and what the Council wants to achieve ~~clarity of aims and desired outcomes;~~
- i. **Options** – An explanation of ~~the~~ the ability to explain the options considered and the reasons for decisions.
- j. **Lawfulness and Financial Propriety** – Decisions should be consistent with relevant legislation, common law and within the powers of the Council. Resources will be used carefully, lawfully and in the interests of the community we serve

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13.3 Types of decision

- a. **Decisions reserved to full council.** Decisions relating to the functions listed in Article 4.2 will be made by the full council and not delegated.
- b. **Key decisions**, which means an executive decision which is likely:
 - to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
 - to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

The meaning for the purposes of this Council's functions is set out in rule 12 of the Access to Information Rules in Part 4 of this constitution.

A decision maker may make a key decision only in accordance with the requirements of the Access to Information Procedure Rules and the Executive Procedure Rules in Part 4 of this constitution.

13.4 Decision making by the full Council

Subject to Article 13.8, the council meeting will follow the Council Procedures Rules set out in Part 4 of this constitution when considering any matter.

13.5 Decision making by the Executive

Decision making in relation to the discharge of executive functions is the responsibility of the Leader. The Leader may discharge executive functions personally, or may arrange for the discharge of those functions by the Cabinet, another Cabinet member, a committee of the Cabinet or an officer of the Council.

13.6 Decision making by officers

The delegation scheme for officers set out in Part 3 of the Constitution provides for the delegation of Council and Executive functions to the Council's chief officers and the Service Director – Legal, Governance and Commissioning as set out in Article 12.16. The chief officers may arrange for their delegated powers to be exercised by an officer of suitable experience and seniority. However the Chief Officer or Service Director – Legal, Governance and Commissioning remains responsible for any decision taken pursuant to the delegation arrangements.

13.7 Decision making by the Overview and Scrutiny Committees and scrutiny panels and commissions

The Overview and Scrutiny Committee and scrutiny panels and commissions will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this constitution when considering any matter.

13.8 Decision making by other committees and sub-committees established by the council

Subject to Article 13.9, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this constitution which apply to them

13.9 Decision making by Council bodies acting as tribunals

The council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

13.10 Decision making by boards of council officers

The chief executive has delegated authority to establish such officer boards as he/she considers necessary to oversee the proper administration, management and strategic direction of the Council and its service delivery functions and responsibilities. Details of the currently established officer boards together with their terms of reference and decision making powers are set out in Section H of Part 3 of the Constitution.

13.11 Access to Information

The Access to Information Procedure Rules set out in Part 4 of this constitution apply to all decision-making processes as specified in those Rules.

APPENDIX D

KIRKLEES COUNCIL

CONTRACT PROCEDURE RULES

JUNE 20187

CONTRACT PROCEDURE RULES

Definitions

Introduction

1. **CONDUCT AND COMPLIANCE AND WAIVER**
2. **PREPARATION AND PROCESS**
3. **CHOICE OF PROCUREMENT PROCESS**
4. **ADVERTISING**
5. **COMPETITION AND SUPPLIER SELECTION**
6. **QUOTATION RECEIPT & EVALUATION**
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DEFINITIONS

Award Criteria	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.
Chief Executive	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.
Chief Finance Officer	Means the Service Director – Finance, Professional & Transactional Services
Commissioning	The relationship between commissioning and procurement is described in the diagram in Appendix 4.
Conflict of Interest	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shall at least cover any situation where relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of a Procurement or sale procedure.
Concession	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.
CPR	Means these Contract Procedure Rules.
Data Protection Legislation	Means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, and all other laws and regulations relating to the processing of personal data and privacy, and also where applicable the guidance and codes of practice issued by the Information Commissioner.
Dynamic Purchasing System	is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements (as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for contracts, and it should be set up using the restricted procedure.
European Single Procurement Document	is a standard electronic document that a tenderer for a contract to which the EU Procurement Rules apply may use to declare that none of the exclusion grounds apply to it and that it meets the necessary regulatory criteria or relevant commercial capability requirements. Only the preferred bidder will be required to submit all documentation to evidence the content of the form.

EU Procurement Rules	The rules on procurement for Supplies above the EU Threshold prescribed by the EU in Directives relating to public contracts - as amended and supplemented by the European Court of Justice. These rules also normally extend to the WTO Government Procurement Agreement signatories, which (in 2016) are Armenia, Aruba, Canada, the EU, Iceland, Israel, Japan, Hong Kong China, Liechtenstein, Montenegro, New Zealand, Norway, Singapore, South Korea, Switzerland, Chinese Taipei, and the US.
EU Threshold (or *)	The financial threshold from time to time at which the EU Procurement Rules are applicable to a Supply. Recent and current EU Thresholds are set out in Appendix 2.
Financial Ratio	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
FPR	The Financial Procedure Rules.
Framework Agreement	Means an agreement between the Council and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Framework Agreements which deal with Supplies that are above, or aggregate above, the EU Threshold are subject to the EU Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework' and 'Framework Suppliers' shall be construed accordingly.
Grant	<p>A grant is a gift which may be linked to outputs and outcomes, but is not a contract for works, goods or services. A contract for Supplies involves the exchange of works, goods or services for money (or money's worth) or a Concession. The distinction is crucial:</p> <ul style="list-style-type: none"> • for contracts these CPR apply; for grants see FPR 4 for rules about accepting grants and FPR 20 about giving grants; • The remedies in respect of failure are very different; • The EU Procurement Rules do not apply to Grants; • State aid rules may apply to gratuitous benefit but not to purchases at market rate.
Head of Corporate Property Management	Means the officer appointed by the Service Director – Economy, Regeneration & Culture who is responsible for corporate property management functions.
Head of Internal Audit	Means the officer appointed by the Chief Executive who is responsible for internal audit.
Head of Procurement	Means the officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.
Local Government Transparency Requirements	Means the statutory codes and legislation requiring the Council to publish information, such as [†] the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.
Income Contract	An Income Contract is one where the main object of the contract is that the Council does something listed in CPR 10.1.1 – 10.1.23 <u>in relation to a Council</u>

asset¹ and includes situations where the Council does so at nil value (subject to this not being a Grant – see CPR 10.2).

Official Council Order	A standard form of contract for a Supply for a value of less than £160,000 currently approved by the Head of Legal Services <u>Solicitor to the Council</u> whether attached electronically or by paper to an order for Supplies.
Personal Data	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.
Procurement	The purchase, contract hire, lease, rental ² 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.
Procurement Strategy	The Council's Corporate Procurement Strategy 2013-2017, which can be found here: http://www.kirklees.gov.uk/business/businessWithCouncil/pdf/procurementStrategy.pdf
Quotation:	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
Service	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director (see Appendix 5).
Senior Manager	Means an officer who reports directly to a Head of Service.
Service Director	Means the most senior officer responsible for the day to day functions of each Service. The Service Directorates as at 1 April 2017 are shown in the Council Structure diagram in Appendix 5.
Head of Legal Services<u>Solicitor to the Council</u>	Means the Service Director – Legal, Governance & Commissioning in her role as legal advisor to the Council.
Specification	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

¹ For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

² Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or his delegate [See the FPR].

personnel qualities, communication requirements, returns policies and tolerances.

Special Purpose Vehicle	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with others to provide specific Supplies to the Council.
Standing List	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 7.
Suitability Criteria	Relate to the assessment or vetting of suppliers' general capability, fidelity, skill, competence, etc. to carry out the contract. 'Suitability' shall be interpreted accordingly.
Supply	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).
Supplier	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.
Value for Money	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
Whole Life Costing Approach	<p>is an approach which addresses all the elements of a Supply over its life cycle such as:—</p> <ul style="list-style-type: none">• costs relating to acquisition,• costs of use, such as consumption of energy and other resources,• maintenance costs,• end of life costs, such as collection and recycling costs <p>which can be used to produce a spend profile of the Supply over its anticipated lifespan.</p>
YORTender	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts.

* In the text a * means the value will track the EU threshold rounded down to the nearest ~~£10,000~~£5,000. Also, see "EU threshold"

† The words "including", "include", "for example", "e.g.", and "such as" in these CPRs indicate examples and are not intended to be limiting

INTRODUCTION

These Contract Procedure Rules aim to promote the highest standard of probity, integrity, and impartiality in making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition. To that end procurers shall follow the 'Procurement Principles' referred to below.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts. Service Directors should recognise the Council's view of the difference between Commissioning and Procurement (see Appendix 4).

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly related to and proportional to the need which the Supply fulfils and should appropriately balance the value of and risks associated with any proposed action.

EU Procurement Rules, which are often more onerous, also apply to the procurement of all works, goods and services exceeding the EU Threshold, and where there is a conflict between these Contract Procedure Rules and the EU Procurement Rules, the EU Procurement Rules prevail. The GDPR principles of data protection by design and by default and by minimization should also be taken into consideration in the context of contracts and their award procedures that involve the transfer of personal data.

The Council's Financial Procedure Rules must also be complied with. In particular if you are giving a Grant then FPR 20 will apply.

Procurement Principles:

The aim of every procurement exercise should be value for money. In pursuit of that aim, procurers shall endeavour to treat market operators equally and without discrimination, and to act in a transparent and proportionate manner. Without detracting from those principles, procurers should consider how social value might be enhanced in contracts and procurement processes, including encouraging the participation of local businesses in Council tenders

RULE 1 – CONDUCT AND COMPLIANCE

- 1.1. All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
- 1.2. Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular:
 - 1.2.1. the legality of the proposed non-compliant process or action; and
 - 1.2.2. the reputational and financial risks associated with the proposed non-compliant process or action.
- 1.3. Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
- 1.4. Each Service Director must ensure: -
 - 1.4.1. Compliance with these CPRs and the FPRs, using training, instruction and internal control processes
 - 1.4.2. Appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures
- 1.5. When authorizing staff to procure Supplies on his or her behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations.
- 1.6. The Head of Procurement may
 - 1.6.1. authorise officers who are not procurement officers under his or her managerial responsibility to act on his or her behalf in respect of any role assigned to the Head of Procurement in these CPRs;
 - 1.6.2. issue waivers in relation to the need to consult him or her under CPR 2.3.

The Head of Procurement must record the precise extent of such authorizations and the officer to which roles have been delegated and share these authorizations with the [Head of Legal Services Solicitor to the Council](#) and the Head of Internal Audit.
- 1.7. A Service Director has authority to commence any Procurement subject to:
 - compliance with these CPRs and FPRs, and
 - having appropriate delegated authority, and
 - compliance with management processes designed to ensure that proposed projects meet the Council's business needs, and
 - seeking Value for Money
- 1.8. These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by European and UK law and agreements with Grant funding organisations.
- 1.9. The Head of Procurement, the [Head of Legal Services Solicitor to the Council](#) and the Head of Internal Audit may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:

- 1.9.1. The Head of Procurement – Good Procurement Practice;
- 1.9.2. ~~Head of Legal Services~~Solicitor to the Council – The EU Procurement Rules and other laws and Corporate Governance;
- 1.9.3. Head of Internal Audit – Procurement project related financial management, Best Value and Risk.

1.10. Any dispute concerning interpretation of these CPRs must be referred to the Head of Internal Audit who, in consultation with the ~~Head of Legal Services~~Solicitor to the Council, may provide clarification and determination.

1.11. Subject to Part 3 of the Council's constitution and without prejudice to the role of the Monitoring Officer or the Chief Finance Officer, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of Internal Audit, ~~the Head of Legal Services~~, and the ~~Head of Legal Services~~Solicitor to the Council provided that:

- 1.11.1. the post holders to whom these duties are assigned must hold general competencies in respect of:
 - Public sector procurement in respect of duties reassigned from the Head of Procurement;
 - Finance in respect of duties reassigned from the Head of Internal Audit;
 - Law and Court procedure in respect of duties reassigned from ~~Head of~~Legal ServicesSolicitor to the Council.

1.11.2. the same degree of separation of officer responsibility for the duties is maintained.

1.12. **Conflicts of Interest and Integrity³:**

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

1.12.2. Any Officer, Member or other person acting on the Council's behalf in Procuring a Supply must declare any potential Conflict of Interest as soon as he or she becomes aware of a potential Conflict of Interest and update the declaration in the event of any changes.

1.12.3. Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.

1.12.4. In exercising the decisions delegated to them, the Head of Procurement, Head of Internal Audit and Solicitor to the Council (or any other persons undertaking their responsibilities by application of CPR 1.11 or CPR 1.6) must reach their decisions independently.

RULE 2 – PREPARATION AND PROCESS

2.1 Each Service Director must ensure:-

- (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

³ Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.7 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

the scope of these CPR or the EU Procurement Rules, unless justified by objective reasons.

- (2) Each Procurement complies with the following:
 - a. It is justified by a business case (that includes a risk assessment) approved personally by a Senior Manager with relevant authority to purchase, and
 - b. A Whole Life Costing Approach underpins the specification of the Supply and
 - c. It aligns with the Procurement Strategy, and
 - d. It complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 8.12), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions that have been made under CPRs 8.10 & 8.11 and contracted suppliers).
- (3) The Supply is likely to be within budgetary provision (see CPR 12.1).
- (4) An estimate of the full cost of the Supply contract or Framework Agreement which is as accurate as possible is made. Valuations must:
 - a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
 - b. assess the gross value of a Framework Agreement to be the reasonably estimated value of all Supply contracts which might be made through it;
 - c. where the Supply contract includes a fixed duration, cover the entire possible duration of the contract (i.e. including any options, such as for extension or renewal);
 - d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
 - e. include any Grant funding;
 - f. exclude VAT.
- (5) Where the cost of the Supply is less than the EU Threshold and an approved Framework Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the EU Procurement Rules.
- (6) Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.
- (7) The process can be adequately resourced.
- (8) The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.1(10) below) and other procurement documentation. The documents must be likely to be understandable by all reasonably well informed people in the relevant industry in the same way.
- (9) For contracts up to £160,000, other than Land Contracts (as to which see CPR 11); where an appropriate Official Council Order exists, the Service Director shall wherever possible use such contract terms. Otherwise every contract for Supplies or Income Contract must set out:
 - a. Details of the Supply to be made or to be disposed of;

- b. The price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
 - c. The time(s) within which the contract is to be performed;
 - d. Termination provisions and break clauses, if appropriate;
 - e. Appropriate data protection clauses where personal data is involved; and
 - f. Such other matters as the Head of Legal Services Solicitor to the Council considers to be necessary (the Head of Legal Services Solicitor to the Council need not be consulted, but guidance must be followed).
- (10) For contracts above £160,000, other than Land Contracts (as to which see CPR 11); the Service Director must consult with the Head of Legal Services Solicitor to the Council who will prepare contract documentation appropriate for the contract.
- (11) Where a competitive process is being carried out: a transparent, unambiguous and clearly set out schedule of Award Criteria, which are objectively verifiable and non-discriminatory and are appropriately prioritised, must be prepared and advertised. These criteria must be linked to the subject matter of the contract, must not include unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR 5.2 – 5.7) and must be proportional to the contract's main objectives.
- (12) Consideration of whether it would be appropriate to divide large procurements into contract Lots⁴ and must record the decision and reasoning.
- (13) The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding ~~£160~~£180,000*.
- (14) The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.
- (15) That (unless Cabinet authorises otherwise) the formal Council policies and/or guides referred to in Appendix 1 are followed.
- (16) All supply contracts in excess of £300,000 will be bonded in the sum of 10% of the Quotation value, except where the Head of Legal Services Solicitor to the Council and Head of Internal Audit agree either:
- a. No bond is necessary; or
 - b. A different value (or percentage) is appropriate; and or
 - c. A parent company guarantee or other form of surety can be accepted instead.
- (17) A risk log is maintained during the Procurement process.

2.2 If you are considering conducting interviews or receiving presentations you should discuss this with the Head of Procurement at the preparatory stage (also see CPRs 6.16-6.18)..

2.3 Before commencing any process to obtain any Supply having an estimated cost exceeding £20,000, 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

⁴ This is not the same thing as disaggregation. Please contact Corporate Procurement if there is any doubt about what this means.

consultation with the ~~Head of Legal Services~~ Solicitor to the Council and / or the Head of Internal Audit, and undertake these consultations as necessary.

- 2.4 The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with EU Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the Official Journal of the European Union (OJEU) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.5 Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier, and no technical advice may be sought or accepted from any supplier in relation to the preparation of any specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.
- 2.6 In preparing a Specification, the Service Director should consider how the procurement activity might meet the Council's wider policy and strategy but subject always to ensuring full compliance with EU and UK procurement legislation. In respect of contracts for services, Service Directors must also consider (a) how what is proposed to be procured might improve the economic, social and environmental well-being of Kirklees, (b) which proportionate actions (which must comply with the EU Procurement Rules) might be taken in the Procurement with a view to securing that improvement, and (c) whether any consultation might be needed to inform them in relation to 2.6(b).
- 2.7 Where any Supplier is given possession of or access to any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation, any Information Commissioner's Office directions to the Council and the undertaking which the Chief Executive gave to the Information Commissioner in July 2011. The Service Director must follow the Council's Information Security Policy, in particular regarding contracting with data processors and sharing data, and consult with the Information Governance Team. The Service Director must ensure that:
- A. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
 - B. appropriate guarantees of the security of the personal data are included within a written contract;
 - C. the performance of the contract is appropriately monitored;
 - D. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
 - E. appropriate steps are taken to minimise as far as possible the impact of a breach of data security.
 - F. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.
- All contracts that involve the processing or sharing of personal data must be reported to the Information Governance Team, who will keep a log of these contracts. The log will be reviewed by the Information Governance Board on a six-monthly basis.

Collaboration

- 2.8 The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.

2.9 However, the EU Procurement Rules provide for joint liability where one authority procures on behalf another (other than as a central purchasing organisation, e.g. YPO). This increases the risks for the passive partner(s). So when taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organization and the Crown Commercial Service); addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

RULE 3 - CHOICE OF PROCUREMENT PROCESS

3.1 Subject to complying with the law, the process for procurement must comply with the following:

Value of Supplies	Requirement
Up to £200	Any Procurement means is permitted
between £200 and £20,000	<p>Any reasonable means to select the Supply is permitted. Reasons to justify the decision taken must be recorded. Where practicable Supplies from a Supplier within the Council's area must be considered in addition to Supplies from Suppliers outside the area (although the best value Supply must always be chosen).</p> <p>Reasonable Means to Select; this requires methods of selection which reflect reasonable trade practice. For Supplies below £20,000, it might include informal briefs, supplier written quotations or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet. The Service Director remains responsible for ensuring that the supplier selected is appropriate in terms of Suitability.</p>
above £20,000	<p>One of the following:</p> <ul style="list-style-type: none"> ◆ Quotations (CPRs 4 - 6) ◆ Framework Suppliers, Standing Lists, Etc. (CPR 7) ◆ Exemptions (CPR 8) ◆ Internal, Consortia & Compulsory (CPR 8)

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.

RULE 4 - ADVERTISING

4.1 The Service Director must advertise for Suppliers and/or quotations as follows.

Estimated Value of Contract ⁵		Advertising Requirement
Works; above £4, 100 550,000* Goods; above £ 160 180,000* Services other than 'Light Touch Regime' services; above £ 160 180,000* 'Light Touch Regime' services; above £ 580 615,000*		Advertise on YORTender, Contracts Finder and OJEU- and in other media if appropriate (OJEU first); or Use approved Framework Agreement; or Use approved Dynamic Purchasing System
<u>From</u> Works £100,001 Goods £20,001 Services £20,001	<u>Up to</u> Works; £4, 100 550,000* Goods; £ 160 180,000* Services other than 'Light Touch Regime' services; £ 160 180,000* 'Light Touch Regime' services; £ 580 615,000*	If Standing List Exists From standing list; or Use approved Framework Agreement; or Use approved Dynamic Purchasing System If Standing List Does Not Exist Advertise on YORTender, Contracts Finder PLUS other reasonable advertising means; or Use approved Framework Agreement; or Use approved Dynamic Purchasing System
<u>Goods or services from £200 up to £20,000</u> <u>Works from £200 to £100,000</u>		Any reasonable means.
<u>Below £200</u>		Any means (advertising is not necessary)

RULE 5 – COMPETITION AND SUPPLIER SELECTION

Number of Quotations

5.1 A Service Director must invite at least the following number of suppliers to submit a written Quotation:

Estimated Value of Contract	Minimum Number
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⁵ Please refer to CPRs 2.1(1) and 2.1(4)

£20,000 to £99,999	3
£100,000 up to EU Threshold or £160,180 £180,000* (whichever is lower)	4
Above EU Threshold or £160,180 £180,000* (whichever is lower)	5

Unless

- 5.1.1 an **approved**⁶ Framework Agreement or Dynamic Purchasing System is being used (and in which case the rules of the Framework Agreement or the Dynamic Purchasing System must be followed); or
- 5.1.2 it is otherwise agreed with the Head of Internal Audit in consultation with the ~~Head of Legal Services~~ Solicitor to the Council,

The Suppliers must have indicated that they are willing to submit a Quotation. If it is not possible to identify the number of willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

Supplier Selection

- 5.2 Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.
- 5.3 Where the procurement process has an overall value of less than ~~£181,302~~ £164,176, 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.
- 5.4 When operating a procurement process with a value of ~~£181,302~~ £164,176 or above, and subject to CPR 5.5, the Service Director must use the Council's standard form of Suitability questionnaire (which is based on the 'selection questionnaire' requirements of procurement policy note 8/16) to establish Suitability and/or to establish a shortlist. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary (e.g. through mysteryshopper@crowncommercial.gov.uk).
- 5.5 The European Single Procurement Document must be accepted where applicable.
- 5.6 The selection of any potential Supplier to submit a Quotation must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. Selection Criteria must be transparent and financial ratios to be used as part of the evaluation must be disclosed. When conducting a procurement process which is subject to the EU Procurement Rules, minimum standard and/or pass marks must be published in the relevant OJEU contract notice or invitation to confirm interest.

⁶ See CPR 7.17~~8~~

- 5.7 Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

RULE 6 – QUOTATION RECEIPT & EVALUATION

- 6.1 For Procurements which are valued above ~~£160~~**£180,000***, suppliers must be required to submit Quotations by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the YORTender system unless the Head of Procurement agrees otherwise.
- 6.2 All invitations must state clearly the date and time of return. Electronic quotations must be returned in accordance with the approved tendering system requirements. Paper quotations must be returned to:-

Estimated Value	Returned to
£20,000 to £99,999	Service
£100,000 and above	Head of Procurement

- 6.3 Paper quotations must be returned in a sealed envelope inscribed with the words: "Quotation for" and contain no other wording or marking to identify the sender.
- 6.4 All of the paper quotations must be kept securely and unopened. If any quotation bears any name or identifying mark of the bidder, this should be removed or obliterated.
- 6.5 All paper and electronic quotations received by the appointed time will be opened at the same time by:

	Estimated Value	Representatives (at least)
A	£20,000 to £99,999	Two Service based officers who are independent of the procurement
B	£100,000 and above	One Internal Audit representative & One Corporate Procurement officer

A Legal Services Officer can act as substitute for one of the officers in C above.

- 6.6 At the quotation opening the Service Director (quotations estimated under £100,000) or Head of Procurement (quotations estimated at £100,000 or over) will maintain a written record of the:-
- 6.6.1 Nature of the Supply
 - 6.6.2 Name of each supplier submitting a Quotation and the date/time of receipt
 - 6.6.3 Name of suppliers failing to submit prices/proposal
 - 6.6.4 Prices from each supplier
 - 6.6.5 Names of the persons present at the opening
 - 6.6.6 Date and time of opening of Quotations
 - 6.6.7 Any reason for rejecting any Quotation

Each person present at the opening will initial each paper Quotation document, alongside the submitted price.

- 6.7. Late Quotations must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder which submits the late Quotation. Any decision to accept a late quotation will be made by the Head of Procurement following both (a) such verification as he or she feels appropriate and (b) approval by the Head of Internal Audit. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.
- 6.8. Suppliers must always be required to submit bids which comply with the tender documents. Variant bids may be permitted providing that the tender documents:
- Say whether a standard or reference bid is also required;
 - Include the minimum requirements to be met by the variants;
 - set award criteria which can be applied to the variants;
- and the variants which are submitted must conform to the requirements of the tender documents.
- Quotations which do not comply with the above in this CPR 6.8 may be accepted by the Service Director, only after approval by the Head of Internal Audit.
- 6.9. The Service Director will carry out an evaluation of the Quotations received against the pre-set Award Criteria (CPR 2.1(11)) and keep a written record of the analysis and outcome.
- 6.10. The use of or participation in e-auctions to set prices is permitted where:
- I. bids can be ranked automatically and
 - II. the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed, and
 - III. the written agreement of the Head of Internal Audit has been given, and
 - IV. the process is subject to supervision by the Head of Procurement.
- 6.11. The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.
- 6.12. The Service Director must ensure that, where required by EU procurement rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the Head of Legal Services Solicitor to the Council that the debrief process has completed satisfactorily prior to formal acceptance of any quotation.
- 6.13. 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 6.15) take action as necessary, taking guidance from the Head of Legal Services Solicitor to the Council and the Head of Internal Audit.
- 6.14. If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the Head of Legal Services 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 Head of Legal Services Solicitor to the Council advises about confidentiality and Legal Privilege.

Clarifications, Presentations and Interviews

- 6.15. 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:
- 6.15.1. Set an appropriate time limit for a reply; and
 - 6.15.2. Do not request changes or otherwise seek to influence the bidder; and
 - 6.15.3. Deal with all of the matters in the Quotation which are incomplete or erroneous or unclear; and
 - 6.15.4. Treat all tenderers equally and fairly and so, for example, the request:
 - 6.15.4.1. Must not occur before all of the bids have been subject to an initial evaluation
 - 6.15.4.2. must not unduly favour or disadvantage the bidder to whom the request is addressed, and
 - 6.15.4.3. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 6.16. 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 (but the presentation itself must not be scored). All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.
- 6.17. Interviews and / or presentations which form part of the bid (rather than clarification of a submission) are discouraged and must be authorized by the Head of Procurement in writing. They must also be:
- 6.17.1. comprehensively recorded; and
 - 6.17.2. assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
 - 6.17.3. supervised by the Head of Procurement.
- 6.18. Where interviews and / or presentations are to be used, unless the Head of Procurement agrees otherwise, all bidders must be invited to participate.

RULE 7 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS AND FRAMEWORK AGREEMENTS: CREATION AND USAGE

- 7.1. The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

Standing Lists

- 7.2. The Head of Procurement will determine for which types of Supply Council-wide Standing Lists must be kept (see CPR 8.10). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.
- 7.3. Standing Lists may be used for Supplies where the aggregated value (in compliance with the EU Procurement Rules) of the Supply in question does not exceed the relevant EU Threshold.

Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant EU Threshold.

- 7.4. Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the YORTender web site, Contracts Finder and one appropriate printed newspaper or journal. Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.
- 7.5. Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation, of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.
- 7.6. The Head of Procurement (in consultation with the ~~Head of Legal Services~~Solicitor to the Council) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.
- 7.7. If there are insufficient suppliers on a Standing List, or too few are willing to submit Quotations, to meet the CPR's quotation requirements potential Suppliers must be sought as if a Standing List is not maintained.
- 7.8. Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

Council Framework Agreements and Dynamic Purchasing Systems

- 7.9. Framework Agreements and Dynamic Purchasing Systems may be used to source contracts for appropriate types of Supplies (subject to compliance with the EU Procurement Rules, as applicable). However they must not be used to attempt to create further Framework Agreements or Dynamic Purchasing Systems.
- 7.10. Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract (but must not be procured through a standing list, another framework agreement or a Dynamic purchasing system) and in accordance with the EU Procurement Rules.
- 7.11. All Framework Agreements will be in the form of a written contract detailing the method by which the Council will call off Supplies during the duration of the Framework Agreement and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.
- 7.12. Framework Agreements above the EU Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
- 7.13. Contracts created through Framework Agreements must not be greater than 4 years in duration without being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
- 7.14. Dynamic Purchasing Systems must:
 - 7.14.1. be set up by an advertised competitive process which is approved by the Head of Procurement; and

- 7.14.2. remain advertised; and
 - 7.14.3. not limit the number of suppliers admitted to the system (but the system may be split into categories); and
 - 7.14.4. be set up with clear operative rules which involve obtaining quotations from all suppliers on the system, or on the relevant category on the system, as appropriate; and
 - 7.14.5. be operated wholly electronically; and
 - 7.14.6. be open to new entrants; and
 - 7.14.7. not last longer than 5 years.
- 7.15. When using Framework Agreements or Dynamic Purchasing Systems, the Council must follow the procurement rules set out in the Framework Agreement or the Dynamic Purchasing System.
- 7.16. The Head of Procurement will ensure that the use of Framework Suppliers and Dynamic Purchasing Systems provide value for money, considering all procurement costs and alternative approaches.
- 7.17. The Head of Procurement will maintain a list of all approved Framework Agreements and Dynamic Purchasing Systems (noting which of these comply with the EU Procurement Rules) which Service Directors are permitted to use.

Use of Third Party Procurement Facilities

- 7.18. Supplies may be obtained through third party Frameworks Agreements that:
- 7.18.1. Are created by a public body or a private sector party as agent of a public sector body which is approved by the Head of Procurement (see also CPR 7.1);
 - 7.18.2. Have valid mechanisms that exist to enable the Council to use the Framework Agreement (including appropriate transparent referencing in the procurement documents and inclusion in the framework call of conditions);
 - 7.18.3. Comply with the Council's Contract Procedure Rules, or in the opinion of the Head of Internal Audit, rules which are broadly comparable;
 - 7.18.4. Are included in the CPR 7.178 approved list (and, if the Supply which is to be procured is above the EU Threshold, is noted in the list as being compliant with the EU Procurement Rules);
 - 7.18.5. Where the EU procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

RULE 8 – EXCEPTIONS FROM COMPETITION

- 8.1 Subject to compliance with the EU Procurement Rules the following are exempted from the competitive requirements of these CPR ⁷:
- 8.1.1 Where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

⁷ When the EU Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

- 8.1.2 Items purchased or sold by public auction (in accordance with arrangements agreed by the Head of Internal Audit).
- 8.1.3 The selection of a supplier whose usage is a condition of a Grant funding approval.
- 8.1.4 The selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party.
- 8.1.5 Where CPR 8.10 applies.
- 8.1.6 Counsel or other external legal advice, provided that the Head of Legal Services Solicitor to the Council takes steps to ensure that value for money is being obtained.
- 8.1.7 A necessary Supply required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of Internal Audit.
- 8.1.8 Direct award from an approved Framework Agreement (see CPR 7.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the EU Procurement Rules.

The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an exception in respect of a supply valued in excess of £100,000.

- 8.2 **Trial Purchases:** Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000, to ascertain if the Supply is of interest to the Council, without competition. Where an exception to competition in CPR 8.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply. Arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £20,000.

< There are substantial restrictions on the use of negotiated contracts where EU Procurement Rules apply >

- 8.3 The procuring Service Director and the Head of Procurement may decide that;
 - 8.3.1 an alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason for their decision and obtain the approval of the Head of Internal Audit.
 - 8.3.2 Following receipt of Quotations for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Quotations.
 - 8.3.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Quotation for the Supply.
 - 8.3.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the council without competition is appropriate (although subject to EU Procurement Rules).

Note in the above, in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by his or her own Service Director, there must be consultation with the Head of Internal Audit.

Negotiated Contracts

- 8.4 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.
- 8.5 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 8.6 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of Internal Audit of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

Legal Issues

- 8.7 The ~~Head of Legal Services~~Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed £160,000 (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).
- 8.8 Before a decision pursuant to CPRs 8.1 to 8.3 is made, the Head of Procurement will determine whether the likely level of interest from suppliers based in other EU Member States is sufficiently low so that the EU Procurement Rules do not require the Procurement to be advertised.
- 8.9 Before a decision pursuant to CPRs 8.1 to 8.3 is made, the Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to be achieved, he/she must consult with the ~~Head of Legal Services~~Solicitor to the Council about the possibility of state aid before approving the exemption from competition.

MANDATORY SUPPLIERS, FRAMEWORKS AGREEMENTS OR DYNAMIC PURCHASING SYSTEMS

- 8.10 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the EU Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.
- 8.11 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework Agreement or a Dynamic Purchasing System or Standing Lists, and set standards to be established in those arrangements.
- 8.12 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:
 - 8.12.1 Where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;
 - 8.12.2 In respect of the outsourcing of an activity having a value below £100,000;
 - 8.12.3 In respect of services provided within schools;
 - 8.12.4 In respect of ad hoc services for the design and construction of buildings or parts of buildings.

RULE 9 - RECORD KEEPING AND REPORTING.

- 9.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation).

To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on —

- 9.1.1 communications with economic operators and internal deliberations,
- 9.1.2 preparation of the procurement or sale documents,
- 9.1.3 any interviews, other dialogue or negotiation,
- 9.1.4 supplier vetting, and
- 9.1.5 reasons for award of the contract.

The documentation must be kept for a period of at least 3 years from the date of award of the contract.

- 9.2 A full trail of electronic quotations received must be recorded in YORTender or retained in a database approved by the Head of Internal Audit.
- 9.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 3).
- 9.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the EU Procurement Rules.
- 9.5 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 3.
- 9.6 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 9.3 above).
- 9.7 The Service Director must keep a written record of the reasons for using a negotiated procedure

RULE 10 - INCOME CONTRACTS & CONCESSIONS

- 10.1. CPRs 10.2 to 10.6 apply when the Council intends to derive income from:
 - 10.1.1. The disposal of property (other than Land);
 - 10.1.2. The sale of a right to exploit a business opportunity;
 - 10.1.3. The operation of business activity.

CPR 10 does not apply to Land (See CPR 11).

- 10.2. Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of Internal Audit must be consulted and he will decide whether this amounts to a Grant (and so FPR 20 applies instead of CPR 10).

The disposal of an asset

- 10.3. The procedure for the Disposal of assets is;
 - 10.3.1. Assets valued at below £200 may be disposed of by any means.
 - 10.3.2. Assets valued at between £200 and up to £20,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained.
 - 10.3.3. Assets valued above £20,000 must be disposed of following public notice either by open quotation process, closed quotation process involving at least 3 prospective

purchasers or public auction. The use of the Council web site is permissible for this purpose.

Leased assets must be disposed of only in accordance with the instruction of the lessor.

The sale of a right to exploit a business opportunity

- 10.4. The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process as set out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.
- 10.4.1. A business opportunity contract that will not generate income in excess of £20,000 over the duration of the contract may be sourced by any reasonable means to select (see an explanation of this phrase in respect of Supplies in CPR 3.1) arranged and undertaken by the Service Director responsible for the activity.
- 10.4.2. The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £20,000.

The operation of business activity, beyond that normally undertaken by a local authority.

- 10.5. If ~~the income from~~ an Income Contract (~~e.g. a traded service~~) is intended to be or become profitable or be commercial in nature, advice must be obtained from the Head of Legal Services Solicitor to the Council.
- 10.6. If an Income Contract has any potential to distort the relevant market (~~e.g. service provision at below market rate costs~~) advice must be obtained from the Head of Legal Services Solicitor to the Council.

Concession Contracts

- 10.7. Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

Concession contracts for works or services with a value of £4,104,000 or more are subject to the Public Concessions Regulations 2016 and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with these Regulations.

Valuation

- 10.8. The value of a Concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the Supplies which are the object of the Concession contract and for any ancillary Supplies.
- 10.9. The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.

- 10.10. When calculating the estimated value of a Concession contract or Income Contract, Service Directors shall, where applicable, take into account: -
- 10.10.1. the value of any form of option and any extension of the duration of the contract;
 - 10.10.2. revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;
 - 10.10.3. payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;
 - 10.10.4. the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;
 - 10.10.5. revenue from sales of any assets which are part of the contract;
 - 10.10.6. the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;
 - 10.10.7. any prizes or payments to candidates or tenderers.

RULE 11 - LAND

- 11.1 Procurement of Land will generally be by the means described in this CPR 11. The Head of Corporate Property Management must be consulted in respect of all Land transactions of any value except where the ~~Head of Legal Services~~Solicitor to the Council authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 11.2 The Head of Corporate Property Management (and any other Director authorised so to do) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to him by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to him from the Cabinet.
- 11.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Property Management and the ~~Head of Legal Services~~Solicitor to the Council, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 11.4 Where Land is sold at a public auction, the Head of Corporate Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made. If a successful bid is less than the reserve price then the Head of Corporate Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

RULE 12 – EXECUTING CONTRACTS

SUPPLIES

- 12.1. A contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is likely to be sufficient ongoing funding to meet the contractual cost through the anticipated life of the contract.
- 12.2. Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and Framework Agreements up to and including £160,000 must be in writing and can be made by the Service Director either:-

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

If the Service Director and Head of Legal Services Solicitor to the Council decides that it is appropriate for the contract to be sealed (or if it is required by law), the contract will be executed by the Head of Legal Services Solicitor to the Council.

The Head of Procurement must ensure that the Councils electronic procurement systems are set up so that the most appropriate Official Council Order are available to be attached to the supply being purchased.

- 12.3. Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and every Framework Agreement with an estimated value of more than £160,000 must be in writing and must (subject to CPR 12.4) be either:-
 - (a) Made under the corporate common seal of the Council, attested by one legal officer,
or
 - (b) Signed by two legal officers

who have been nominated as contract signatories by the Head of Legal Services Solicitor to the Council under her Scheme of Officer Delegations.

- 12.4. Notwithstanding CPR 12.3, the Head of Legal Services Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist contracts for Supplies of above £160,000. Two authorised officers must sign each such contract.
- 12.5. The Head of Legal Services Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant contracts and suitable record keeping, provide third parties with a power of attorney to sign Council contracts of £160,000 or below.

LAND

- 12.6. The Head of Legal Services Solicitor to the Council will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies (with the exception of the granting of tenancies for housing and associated properties for rent which is delegated to Kirklees Neighbourhood Housing Ltd) and other deeds and documents associated with Land. The Head of Legal Services Solicitor to the Council may nominate other officers to enter into Land commitments and arrangements using documentation previously approved by the Head of Legal Services Solicitor to the Council.
- 12.7. Any contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed by, or have the corporate common seal affixed in the presence of, the Head of Legal Services Solicitor to the Council (or by a legal officer nominated by him or her).

Additionally, the Head of Legal Services Solicitor to the Council may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR11.1.

GENERAL

- 12.8. The ~~Head of Legal Services~~Solicitor to the Council is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 12.3 and provided that this is not subject to any contrary direction from the Council or Cabinet.

RULE 13 – VARIATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS

- 13.1. A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.
- 13.2. A Service Director, in consultation with the ~~Head of Legal Services~~Solicitor to the Council, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.
- 13.3. The ~~Head of Legal Services~~Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.
- 13.4. The Head of Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the ~~Head of Legal Services~~Solicitor to the Council accept such proposed sums.
- 13.5. Service Directors may vary contracts by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract.
- 13.6. Any variation with a value above £20,000 to a contract which cannot be fulfilled by following CPR 13.5 must be subject to the approval of the Head of Procurement.
- 13.7. Any variation to a contract which cannot be fulfilled by following CPR 13.5 must be made in writing and signed in accordance with CPR 12 even if it does not need a competitive Procurement process.

RULE 14 - MISCELLANEOUS

- 14.1 A Special Purpose Vehicle (as a limited liability company or otherwise) to be wholly or partially owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the ~~Head of Legal Services~~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 ~~24 May 2017 and Corporate Governance & Audit Committee 12 May 2017~~2018
Apply from 1 June 20187

Contact Officer:
Mark Barnes

Appendix 1

Examples of Policies which are relevant to CPR 2.1(15)

Kirklees Council Social Value Policy Statement (see: http://www.kirklees.gov.uk/business/businessWithCouncil/pdf/socialValuePolicyStatement.pdf)
Information Security Policy
The Council's "Project Management Handbook" and "Framework for Successful Projects" when the Head of Procurement advises that they are relevant
Evaluation Panel Guide

Appendix 2

EU Procurement Rules Thresholds

	EU Thresholds 2014-2015	EU Thresholds 1 Jan 2016 –31 Dec 2017	EU Thresholds 1 Jan 2016 –31 Dec 2017
Supply and service contracts	£172,514	£164,176	<u>£181,302 (£180,000*)</u>
Light Touch Regime Contracts (Annex XIV)	£625,050	£589,148	<u>£615,278 (£615,000*)</u>
Works contracts	£4,322,012	£4,104,394	<u>£4,551,413 (£4,550,000*)</u>
Small lots – supplies & services	£66,672	£62,842	<u>£65,630 (£65,000*)</u>
Small lots – works	£833,400	£785,530	<u>£820,370 (£820,000*)</u>

* These are current the values for the purposes of these CPRs.

Appendix 3

Information to be Reported to the Head of Procurement (CPR 11)

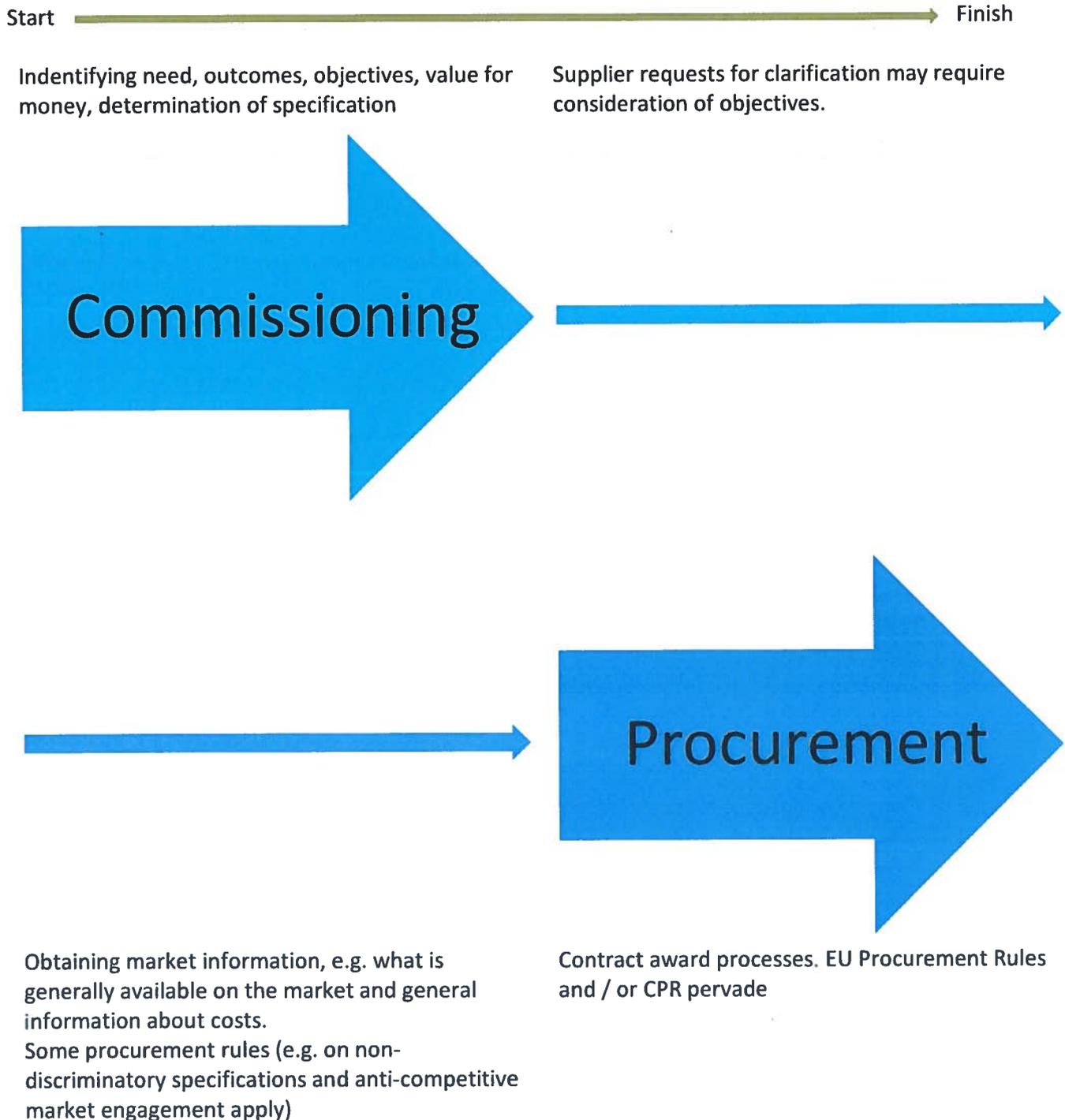
	Information	When
A.	Details of all contracts awarded for Supplies of £100,000 or above following a competitive process including the name of the Supplier, and amount of the Quotation and if the chosen supplier was not the cheapest, then the same information in relation to unsuccessful Suppliers, and 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 £20,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue of CPR 7.1, including the reason for the exemption.	When Requested
D.	Contracts with a value of £5,000 or more (see CPR 11.1), with the following information: <ol style="list-style-type: none"> 1. reference number 2. title of agreement 3. local authority department responsible 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. Value Added Tax that cannot be recovered 8. start, end and review dates 9. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and 10. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number 	In All Cases On Contract Award
E.	all other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases On Request
F.	Copies of Regulation 84 reports	All cases where the EU Procurement Rules apply On Contract Award

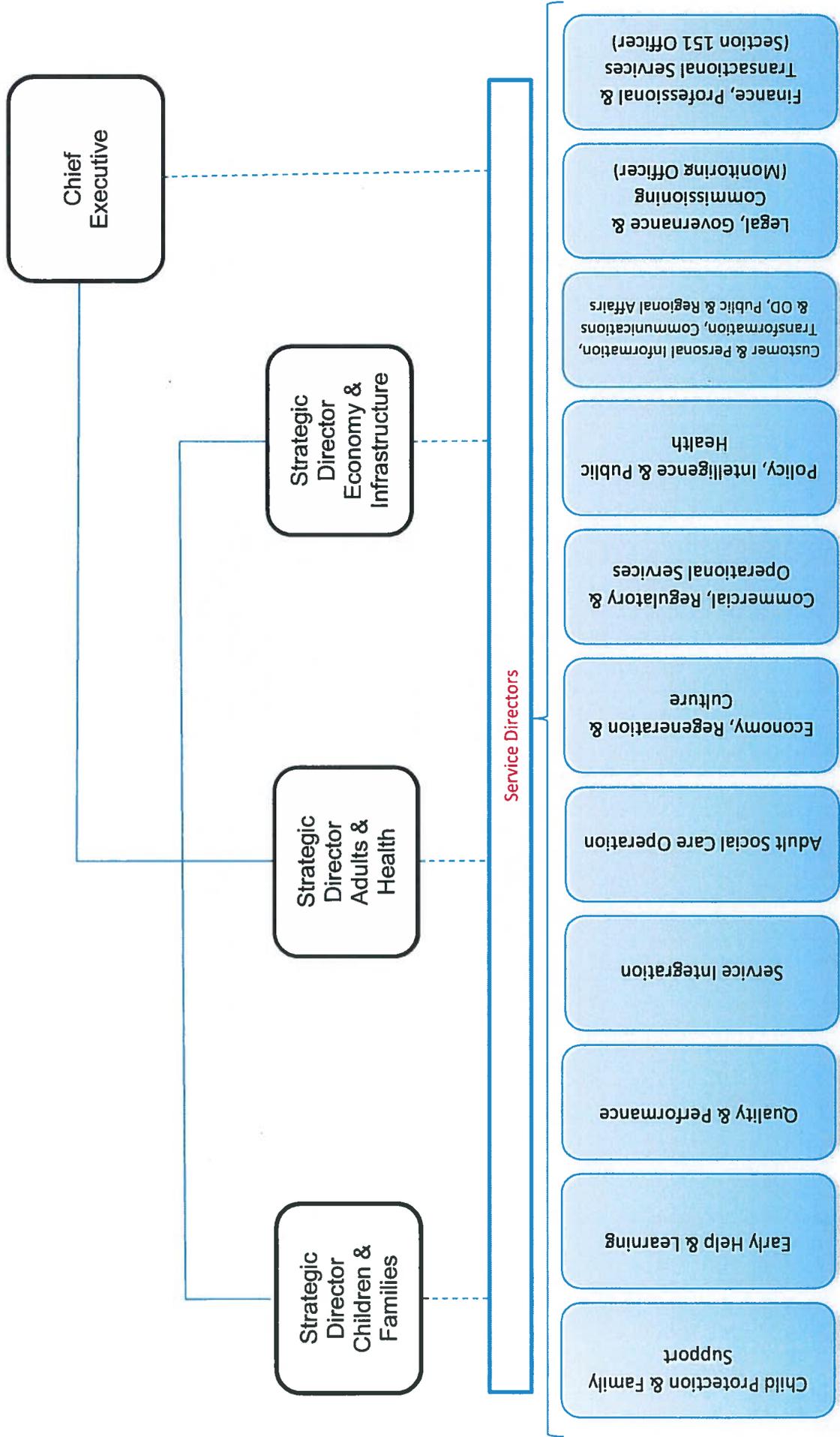
Appendix 4

Relationship between Commissioning and Procurement

The arrows indicate the stages of the whole resourcing process



**Appendix 5
Council Structure as at 1 April 2017**



APPENDIX E

OVERVIEW AND SCRUTINY PROCEDURE RULES

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18. Call-in - procedure

- 18.1 The decision summary of Cabinet/Cabinet Committee and any other executive decision will be published within 2 working days of the decision and sent to the members of the appropriate Overview and Scrutiny Panel – e.g. this will be the Friday following a Cabinet Meeting on Wednesday.
- 18.2 There will be a standard period of 5 full working days (commencing the next working day following the day the decision is taken and ending at 5.30 p.m. on the fifth working day) before decisions can be implemented (eg call in period will end at 5.30 p.m. on Tuesday following a Cabinet/Cabinet Committee meeting the previous Tuesday). A decision can be called-in only during this period.

~~18.3~~ ~~18.3~~ — To call in an executive or a delegated executive decision, the following will apply:-

- (i) written notice must be given to the Service Director Legal, Governance and Commissioning as the main recipient, with a copy for information to the Chief Executive and the Chair of the Overview and Scrutiny Management Committee. An electronic pro-forma and guidance information will be made available from the Governance Team to make this easier.
- (ii) The notice shall (where possible) include supporting evidence and reasons to illustrate how the decision making principle(s) have been breached
- (iii) the validity of a call in request will be considered and determined by Service Director, Legal Governance and Commissioning in consultation with the Chair of Overview and Scrutiny.

18.4 A decision can be called in by:

- either, 5 non-executive Councillors
- or 2 members of the Overview and Scrutiny Management Committee, one of whom should be the Chair
- or 2 Members of the relevant Overview and Scrutiny Panel, one of whom should be the Chair

All efforts should be made to consult with the Chair of the Overview and Scrutiny Management Committee.

18.5 To be valid a call-in must be submitted in writing (on paper or electronically) on the proforma provided signed by all parties to the call in and must state the reasons for the suspension of the decision and request for a review.

18.6 When a valid written notice is received within the period referred to above, all action to implement the decision must be suspended for 2 weeks from the end of the call-in period, during which time the appropriate Overview and Scrutiny Panel must meet. If the issue that has been called-in falls between or overlaps with the responsibility of more than one panel, the Service Director Legal, Governance and Commissioning Monitoring will take the advice of the Overview and Scrutiny

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Management Committee, which will determine which Panel to refer the matter to or indeed whether it should be considered by the Overview and Scrutiny Management Committee.

- 18.7 When a valid written notice is received the Service Director Legal, Governance and Commissioning will notify all Cabinet Members and the Leader of the Council. A meeting of the appropriate Overview and Scrutiny Panel will take place within two weeks of the call-in, giving notice required by Rule 4 of the Access to Information Procedure Rules. If the decision has been called-in by 5 non-executive Members they must attend, if possible, the Overview and Scrutiny Panel Meeting. At least one signatory to the call-in notice is required to be present during the call-in hearing. The Service Director Legal, Governance and Commissioning will also notify all Members that this decision has been called-in.
- 18.8 The Service Director of Legal, Governance and Commissioning, and in his/her absence the Chief Executive - shall have discretion to extend the period during which the appropriate Overview and Scrutiny Panel must meet, where in his/her opinion, exceptional circumstances so require.
- 18.9 Once signed and submitted to the Service Director of Legal, Governance and Commissioning, a Notice of Call In cannot be withdrawn unless all five signatories to the call in submit, in writing, their agreement to withdraw the call-in.
- 18.10 When the Overview and Scrutiny Panel meets it will have access to all papers considered by the decision maker. The Panel can invite witnesses appropriate to the grounds of the call in to assist them in their review of the decision. Decisions as to the individuals to be invited shall be made in consultation with the Service Director of Legal, Governance and Commissioning or in his/her absence the Chief Executive.
- 18.11 In the case of delegated executive decisions, made by an officer, the Leader/Cabinet Member is accountable for the decision (see section 16.6). However the officer who made the decision should also be present at the call-in hearing wherever possible.
- 18.12 Having considered the decision in question, the Overview and Scrutiny Panel must resolve either to
- Free the decision for implementation; or,
 - Refer it back to the Cabinet /Cabinet Committee or decision-maker with a recommendation for amendment; or,
 - In exceptional circumstances, refer the issue to the next Council Meeting if the decision is not consistent with the budget or any policy previously agreed by the council. This can only be done with advice from the relevant senior officers and the Service Director Legal, Governance and Commissioning.

If the Overview and Scrutiny Panel refers the decision back to Cabinet/Cabinet Committee with a recommendation, it will be considered at the next meeting of the Cabinet/Cabinet Committee. The Cabinet/Cabinet Committee may:

- Accept the recommendation in full or in part of the Overview and Scrutiny Panel and amend its decision accordingly;
- Decide that further work needs to be done and defer the item until this is completed. The Overview and Scrutiny Panel/non-executive members should be kept informed of the work as it progresses and be formally notified of when it is to be reconsidered;
- Not accept the view of the Overview and Scrutiny Panel and confirm its original decision;
- Refer the issue for discussion at the next appropriate Council meeting.

18.13 If the Cabinet/Cabinet Committee rejects the recommendation from the Overview and Scrutiny Panel and confirms its decision it can be implemented immediately as there is no scope for further review and challenge. Whilst unable to challenge the final decision, the outcome of called-in decisions will be reported to the next Council meeting and Scrutiny can use its time to explain its views to Council.

18.14 A decision may only be reviewed once.

18.15 Urgent decisions that require quick implementation - The right to suspend and review an executive decision cannot be exercised where the Cabinet/Cabinet Committee or the decision-maker, with the agreement of the Chair of the Overview and Scrutiny Management Committee or his/her nominee, resolves that the decision is urgent for reasons stated in the resolution.

18.16 Once decisions have been taken and recorded, and are being implemented Overview and Scrutiny has the subsequent right to programme reviews on any matters decided by the Executive.

18.17 The Chair of the Overview and Scrutiny Management Committee will be responsible in consultation with the Leader and the Chief Executive for monitoring the use of call-in and reviewing the procedure to ensure that it does not unduly defer or disrupt proper decision-making processes but rather plays its proper role in overseeing and holding to account the Cabinet/Cabinet Committee in a constructive and supportive way.

18.18 Delegated executive decisions taken by officers – If an executive decision is to be taken by an officer under the scheme of delegation, all councillors and Overview and Scrutiny will have the same rights to information and to use the procedures set out above for the call-in of decisions.

19. Call-in of decisions outside the budget or policy framework.

19.1 Where the stated reason for a request for call-in made under Rule 19 is that the decision is contrary to the budget or policy framework, the procedure in Rule 19 will apply, but with the following amendments.

19.2 Before considering a request, the Overview and Scrutiny Panel must seek the advice of the Monitoring Officer and/or the Head of Governance and Democratic

Services and any other relevant officer. If that advice is that the decision is not outside the framework, the Panel may either:

- Accept that advice and free the decision for implementation; or
- Decide to follow the procedure set out in Rule 19.3.

19.3 If the advice is that the decision is or may be outside the Budget or Policy Framework, the Overview & Scrutiny Panel must resolve either:

- To refer the decision to the Cabinet/Cabinet Committee, with a recommendation for amendment to comply with the budget and policy framework; or
- Refer the issue to the next Council meeting.

19.4 If the Panel refers the decision back to the Cabinet/Cabinet Committee, it will be considered at the next meeting of the Cabinet/Cabinet Committee. The Cabinet/Cabinet Committee may take any of the actions set out in Rule 18 other than to confirm its original decision.

19.5 If the decision is referred to the Council, it will be considered at the next ordinary Council meeting, or, if urgent, at an additional meeting to be called as early as practicable. The council will receive reports from the Overview & Scrutiny Panel and the Cabinet/Cabinet Committee. The council may either:

- Decide that the decision is within the existing budget and policy framework, in which case it will be freed for implementation;
- Decide that the decision is contrary to the budget and policy framework, but agree to the decision, with immediate effect; or;
- Decide that the decision is contrary to the budget and policy framework; that the council is not prepared to agree to the decision; and require the Cabinet/Cabinet Committee to re-consider the matter in accordance with the advice of the Monitoring Officer and/or Chief Finance Officer.

**PROTOCOL ON THE ROLE OF
REPRESENTATIVES ON KEY OUTSIDE
BODIES IN REPRESENTING THE
INTERESTS OF THE COUNCIL**

The role of representatives on key outside bodies in representing the interests of the Council

The role of Leader of the Council requires that the post holder should represent the interests of the Council and the Kirklees community as a whole through contacts with statutory external agencies and partnerships, neighbouring councils, sub-regional, regional, national and international bodies. The Deputy Leader is expected to fulfil the same role when the Leader is not available or when deputed to do so.

Similar expectations apply to Cabinet Members where the external contacts relate to their portfolios or at the Leader's request and other Members representing the Council.

The prime source of the authority of the Leader, Deputy Leader, Cabinet member and other representatives in these external contacts derives from his or her status as the person elected to the role by the full Council.

The Leaders and portfolio holders of all Groups have a duty to ensure that their Members views are openly and fully expressed in these briefings and meetings.

Steps should be taken by all representatives to make sure that they report as accurately as possible the balance of views across the Council and the community as a whole. They may also wish to indicate a distinct view based on discussions within the Executive.

All representatives must ensure that a record is available of significant discussions with external bodies, either in the form of minutes or meeting notes, or in the form of a personally prepared note, subject to constraints of confidentiality.

Cabinet Committee All-party Briefings on portfolio issues should be used to report back issues which may be of **substantial** interest across the Council.

All representatives will be expected to keep the Council informed of significant issues arising from external contacts and to respond at Cabinet and Cabinet Committee All-party Briefings to questions arising from such contacts.

Process

- As a standard item on Cabinet Committee All-party Briefings this will cover feedback on activity undertaken in the previous period and activity planned in the next period. Depending on timescale this will be written feedback, using an agreed simple template, or a verbal report.
- The Council Meeting procedure rules include provision for Members to ask questions about this activity.
- A feedback form will be required when Members are involved in informal discussions on issues of major concern outside formal meetings and when they are representing the views of Council.
- This process has to be subject to the confidentiality rules of organisations and to the requirements of Company Law.

- When the representatives are not members of the Cabinet they will be expected to attend the appropriate meeting of the Cabinet Committee All-party Briefings when **substantial** issues have been raised. These meetings provide an opportunity for an in-depth assessment of what Kirklees is trying to achieve, how successfully we are doing that and future tactics.
- If there is more than one representative at a meeting they can either all complete a pro-forma to feedback or agree a common collective one (if there is a designated lead member s/he could take the lead on this, if not it should be the cabinet member or other senior member).

- Any members nominated to any associated party (being a public body, or other unincorporated organisation) must follow the principles contained within this document-, particularly in ensuring an approach that aligns with council policy, recognises the position of all parts of the council (especially if views are not unanimous) and specifically not represent a personal partisan approach.

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- Those nominated to companies and charitable bodies should attempt to achieve broadly the same intentions, but recognise that in acting as a director, or trustee, the needs and interests of the ~~body~~ party must be the primary consideration. Any doubts or concerns about an approach to be taken should be discussed with the monitoring officer.

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Name of meeting: Corporate Governance and Audit Committee

Date: 9 March 2018

Title of report: Amendment Options for the Scrutiny Call in Process

Purpose of report:

Following previous discussions at the Committee to consider the findings of more detailed work into options for the call in process in Kirklees.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	Not applicable
Date signed off by <u>Strategic Director</u> & name	
Is it also signed off by the Service Director for Finance IT and Transactional Services?	No – n/a
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes 1 March 2018
Cabinet member portfolio	Cllr Graham Turner

Electoral wards affected: All

Ward councillors consulted: Not applicable

Public or private: Public

1. Summary

- 1.1 In 2015, following a number of call in hearings, the Corporate Governance and Audit Committee (CGA) requested that a piece of work be undertaken to examine the approach to Call-in in Kirklees to determine whether any changes or clarification of current arrangements were required.

An initial report to CGA set out a number of recommendations to refine the approach to call in which aimed to address learning from the recent call in meetings whilst ensuring a transparent process going forward. The amendments fell within the remit of the Overview and Scrutiny Management Committee to implement and did not require any amendments to the Constitution.

Whilst officers were working on implementing the decision of CGA there were a number

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of changes in relation to the structure of Scrutiny. As a result of these changes there is now a greater emphasis on pre-decision scrutiny. The CGA asked for further detailed work to look at call in practice elsewhere and the development of potential options which linked to the approach to Scrutiny in Kirklees.

This report sets out the findings of benchmarking work and potential options as to how the call in process might be amended in line with the principles that underpin Scrutiny practice in Kirklees.

2. Information required to take a decision

Principles of Scrutiny

2.1 Since its formal establishment in 2000, Overview and Scrutiny in Kirklees has always operated under a number of key principles which include:

- Leave the party politics at the door
- Wherever possible influence the decision before it is made
- Scrutiny findings and recommendations are evidence based

National Government guidance emphasises that the power of call in should be exercised infrequently and only as a last resort when there is a clear and demonstrable breach of the decision making principles. Like any other process, Call in requires Scrutiny to look at the evidence; to look at how a decision has breached the decision making principles; rather than providing a platform to air differing points of view on a decision.

3. Current Position

- 3.1 Officers have considered the approach to call in in light of the above principles. Benchmarking has been undertaken to look at practice elsewhere. Officers have also reviewed the decision making principles to bring them in line with current best practice and provide a clear explanation of the meaning of each.
- 3.2 Research has indicated that in most local authorities in the region there is a more robust approach to determining whether a call in request is valid. A summary is attached at appendix 1. In Kirklees validation has been limited to meeting current process requirements, i.e. number of signatories, submission within the deadline etc. From the research sample it can be seen that the majority have additional considerations as part of the initial call in request. There are also a number of steps required prior to holding a call in meeting, to evidence that there have been efforts to try and resolve concerns before moving to a call in hearing e.g. having discussions with Cabinet portfolio holder(s) and lead Directors.
- 3.3 In an economic climate where delaying an executive decision due to call in can also have financial implications for achieving budgetary savings within necessary timescales, then a process that tries to resolve concerns before the decision is made, is prudent.
- 3.4 In the same way that Scrutiny already has the opportunity to consider the information that Cabinet used to reach its decision, so in a balanced process Scrutiny should also be able to see any evidence that the call in is based on. If a reason for call in refers to specific information, outside of the Cabinet papers, then the Scrutiny Panel / Committee should be able to see that evidence.

- 3.5 It is suggested that one of the measures of validity is that the call in pro forma includes reasons why the signatories to the call in believe the decision making principle (s) have been breached. If reference is made to evidence to support the signatories views then that should be made available for Scrutiny to consider.
- 3.6 Previous call ins illustrated that some of the decision making principles had been open to individual interpretation which led to confusion. It is suggested that it is timely to update the decision making principles in line with good practice and provide a narrative to clarify the legal interpretation. A copy of the revised decision making principles is attached at appendix 2.
- 3.7 The other Scrutiny principle which might form part of the approach to call in, is the principle of trying to influence the decision before it is made. Most call in requests in Kirklees are not generated by the scrutiny panels. All consultees recognised that discussion to try to resolve an issue without the need for call in is desirable. The initial discussion paper suggested that councillors who were considering calling in a Cabinet decision should try to resolve concerns before submitting a call in request by talking to the portfolio holder and the Strategic / Service Director. This could also include speaking at the Cabinet meeting before the decision has been taken and responding to ward member consultation on the proposals. The call in proforma would include a space to summarise actions taken to address concerns prior to call in.

Feedback on this option was mixed, with particular concern that this should not be a barrier to calling in a decision. Some felt it should be a recommended course of action rather than a requirement. It should be noted that previous optional steps in the call in process have not usually been followed.

- 3.8 It is proposed that the decision about the validity of a call in request will be determined by the Service Director, Legal Governance and Commissioning in consultation with the Chair of Overview and Scrutiny.

3. Implications for the Council

- 3.1 **Early Intervention and Prevention (EIP)**
None specific
- 3.2 **Economic Resilience (ER)**
None specific
- 3.3 **Improving Outcomes for Children**
None specific
- 3.4 **Reducing demand of services**
None specific
- 3.5 **Other (eg Legal/Financial or Human Resources)**
None specific

4. Consultees and their opinions

In preparing this report, the views of the Overview and Scrutiny Management Committee, the Leadership Management Team and political groups have been sought. A summary of views is set out below:

i. LMT was supportive of a discussion prior to call in to try to resolve the concerns. The clarification of the decision making principles was welcomed to try and ensure consistent interpretation by all parties.

ii The Scrutiny Committee was supportive of a balanced process based on Scrutiny principles. Whilst agreeing that trying to avoid call in by resolving concerns through discussion was desirable, the OSMC had reservations about making it a formal requirement. It was suggested that if there were to be a requirement to try to resolve concerns then consideration should be given to the length of timescale in which to carry out this requirement. The OSMC was keen to ensure that there are no obstructive barriers to legitimate call ins. The OSMC also welcomed the clarification and updating of the decision making principles.

iii The Independent Group: Fine with the proposals

iv The views of the Conservative Group are:

- As there have been no call-ins in the last year, we don't feel the need to change the system for call-in as there is no evidence that it is being used inappropriately. The proposals seem to be geared towards discouraging and disallowing call-in requests, and this is not helpful to the openness or reputation of the scrutiny process.
- We would agree that conversations before the decision are helpful, and that this is one of the purposes of Scrutiny, but that most Cabinet papers are released with only one week's notice. This gives little time to be able to affect the decision, apart from coming to the cabinet meeting to speak. So demonstrating how one has tried to influence a decision will not be useful in most cases.
- We do not agree that call-in lead signatories should have to put their arguments in the call-in papers. That is the purpose of holding a call-in meeting.
- There would be more pressure on the OSMC Chair and Head of Governance to allow/disallow a call-in request.
- We have no problem with up-dating decision-making principles

v. Cllr Andrew Cooper responded:

My own personal view is that we need to stress the 'Critical Friend' role of Scrutiny explicitly so people pursuing a Call in are very clear about the spirit in which they are submitting it.

Perhaps stressing what the overtly party political alternatives are to a Call in might also be of value so members are directed towards more appropriate routes if needed.

5. Next steps

Following discussions at the CGA Committee, any consequential changes to the Council's Constitution will be prepared for consideration at the Annual Council meeting. Any update in practice, including supporting guidance notes, will be implemented from the beginning of the new municipal year.

6. **Officer recommendations and reasons**

That consideration be given to the options set out in the report and pending the outcomes of the discussion, any consequent changes to the constitution be presented to Council for consideration. In summary the options are:

- a. In line with trying to influence the decision before it is made, introduce a requirement for the Lead Councillor (signatory) to the call in to demonstrate the steps taken to raise / resolve concerns prior to the Cabinet decision being called in. This would require a change to the Constitution.
- b. To amend the constitution to clarify that supporting evidence and reasons to illustrate which decision making principle(s) has been breached is included in the call in request.
- c. If a and b above are agreed then the Call in proforma would be amended to introduce a requirement for signatories to provide this information. This would be an administrative change as the proforma is not part to the constitution.
- d. To update the decision making principles in Article 13 of the constitution as set out in appendix 2, to simplify in line with current good practice and ensure clarity of interpretation.
- e. That the decision about the validity of a call in request will be determined by the Service Director, Legal Governance and Commissioning in consultation with the Chair of Overview and Scrutiny.

Following discussion any options agreed which require amendments to the Council's constitution will be considered at Annual Council with other changes to the constitution.

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

Not applicable

8. **Contact officer**

Penny Bunker - Governance and Democratic Engagement Manager
Samantha Lawton - Senior Legal Officer

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

Briefing note "Proposals to Amend the Call In Process"

10. **Service Director responsible**

Julie Muscroft – Service Director for Legal, Governance and Commissioning