

PART 4

RULES OF PROCEDURE

COUNCIL PROCEDURE RULES

1. ANNUAL MEETING OF THE COUNCIL

1.1 Timing and business

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May commencing at 10am.

The annual meeting will:

- 1.1.1 elect a person to preside if the Mayor and Deputy Mayor of the Council is not present;
- 1.1.2 receive any declarations of interest from Members;
- 1.1.3 elect the Mayor of the Council;
- 1.1.4 elect the Deputy Mayor of the Council;
- 1.1.5 approve the minutes of the last meeting;
- 1.1.6 receive any announcements from the Mayor and/or the Chief Executive;
- 1.1.7 elect the Leader, as appropriate;
- 1.1.8 appoint the committees, boards, and other such sub-committees and working parties as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3 of this Constitution) and appoint the Chairmen and Vice-Chairmen as appropriate;
- 1.1.9 decide the allocation of seats in accordance with the political balance rules;
- 1.1.10 make appointments to outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet; and
- 1.1.11 consider any business set out in the notice convening the meeting.

2. ORDINARY MEETINGS

2.1 Business

Ordinary meetings of the Council will take place in accordance with a timetable previously agreed by the Council. The order of business at ordinary meetings will be as follows:

- 2.1.1 elect a person to preside if the Mayor and Deputy Mayor are not present;
- 2.1.2 approve the minutes of the last meeting(s);
- 2.1.3 receive any declarations of interest from Members;

- 2.1.4 receive any announcements from the Mayor, Leader, members of the Cabinet or the Chief Executive;
- 2.1.5 receive questions from, and provide answers to, the public in relation to matters which in the opinion of the Mayor are relevant to the Council's functions;
- 2.1.6 receive petitions from the public in relation to matters which in the opinion of the Mayor are relevant to the Council's functions;
- 2.1.7 receive reports from the Cabinet and the Council's Committees and receive questions and answers on those reports;
- 2.1.8 receive reports about, and receive questions and answers on, the business of joint arrangements and external organisations;
- 2.1.9 consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's budget and policy framework and reports of the Overview and Scrutiny Committee;
- 2.1.10 consider motions;
- 2.1.11 deal with questions from Members in accordance with Rule 10; and
- 2.1.12 deal with any business the Mayor regards as urgent due to special circumstances. The Mayor's reasons for regarding an item urgent must be recorded in the minutes.

2.2 **Variation of Order of Business**

Business falling under paragraphs (2.1.1), (2.1.2) and (2.1.3) above will not be changed but the remaining order of business as set out above may be varied in the following circumstances: -

(i) by the Mayor or, the Member presiding over the meeting, at his or her discretion; or

(ii) by a resolution passed on a motion (which need not be in writing) duly moved and seconded, which will be moved and voted on without debate.

3. **EXTRAORDINARY MEETINGS**

3.1 **Calling extraordinary meetings**

The Chief Executive may call Council meetings in addition to ordinary meetings and those listed below may request the Chief Executive to call additional Council meetings:

- 3.1.1 the Council by resolution at a Council meeting;
- 3.1.2 the Mayor of the Council;
- 3.1.3 any five Members of the Council if they have signed a requisition presented to the Mayor of the Council and he has refused to call a meeting or has

failed to call a meeting within seven days of the presentation of the requisition.

3.2 **Business**

The business to be conducted at an extraordinary meeting shall be restricted to the item of business contained in the request for the extraordinary meeting and there shall be no consideration of previous minutes or reports from committees etc. except that the Mayor may at his absolute discretion permit other items of business to be conducted for the efficient discharge of the Council's business.

4. **TIME, PLACE AND DURATION OF MEETINGS**

4.1 **Time and Place of Meetings**

The time and place of meetings will be determined by the Chief Executive and notified in the summons.

4.2 **Duration of Meetings**

At an ordinary meeting of the Council, when 4 hours have elapsed after the commencement of the meeting, the Mayor shall put to the vote whether the meeting should continue. If it is agreed not to continue then the remaining items on the agenda will be adjourned to the next meeting.

5. **NOTICE OF AND SUMMONS TO MEETINGS**

The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules. At least five clear working days before a meeting, the Chief Executive will send a summons to every Member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

6. **CHAIR OF MEETING**

6.1 The Mayor shall ordinarily preside at meetings. Where the Mayor is absent or unable to preside the Deputy Mayor shall preside. Where both the Mayor and the Deputy Mayor are absent or unable to preside, the meeting shall elect one of their members to preside (except where the committee's terms of reference specifies that the quorum includes either the Chairman or Vice Chairman).

6.2 The person presiding at the meeting may exercise any power or duty of the Mayor. Where these rules apply to committee, sub-committee and board meetings, references to the Mayor also include the Chairmen of committees, sub-committees and boards.

7. **QUORUM**

The quorum of a meeting will be one quarter of the whole number of Members. During any meeting if the Mayor counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Mayor. If he does not fix a date, the remaining business will be considered at the next ordinary meeting.

8. QUESTIONS BY THE PUBLIC

8.1 General

8.1.1 Members of the public may ask questions of Members of the Cabinet and Committee Chairmen at ordinary meetings of the Council.

8.1.2 The total time allocated for questions by the public should be limited to 30 minutes.

8.2 Order of questions

Questions will be asked in the order notice of them was received, except that the Mayor may group together similar questions. Where more than one question is received from a member of the public and there are further questions from other members of the public, then the first of the questions received from the person making multiple requests will be put before taking in turn the first question of each and every subsequent questioner. Only when all the members of the public who have submitted questions have had the opportunity to ask one question will a second question be put.

8.3 Notice of questions

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than midday three clear working days before the day of the meeting. Each question must give the name and address of the questioner. The Chief Executive will determine the member of the Council to whom it is to be put.

8.4 Scope of questions

The Chief Executive may reject a question if it:

8.4.1 is not about a matter for which the Council has a responsibility or which affects the Borough;

8.4.2 is defamatory, frivolous or offensive;

8.4.3 is substantially the same as a question which has been put at a meeting of the Council in the past six months, unless there is new information;

8.4.4 requires the disclosure of confidential or exempt information.

8.5 Record of questions

The Chief Executive will keep a record of each question for public inspection and will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for rejection.

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

8.6 **Asking the question at the meeting**

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

8.7 **Supplementary question**

A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The Mayor may reject a supplementary question on any of the grounds set out in Rule 8.4 above.

8.8 **Written answers**

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

8.9 **Reference of question to the Cabinet or a committee**

Unless the Mayor decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Cabinet or the appropriate committee, sub-committee or board. Once seconded, such a motion will be voted on without discussion.

9. **PETITIONS FROM THE PUBLIC**

9.1 **Presentation of Petitions**

The Council's Petition Scheme sets out how the Council will acknowledge and deal with petitions it receives that fall within the criteria set out in the Scheme. If a petition contains more than 1,000 signatures it will be debated by Full Council. The petition organiser will be given a total of ten minutes to present the petition at a Full Council meeting, and may choose to allocate this time to more than one speaker.

9.2 Councillors will debate the subject matter of the petition and decide on a motion. Such response to a petition may include:

- 9.2.1 take the action the petition requests;
- 9.2.2 not to take the action requested;
- 9.2.3 or commission further investigation into the matter, eg by the Overview and Scrutiny Committee;
- 9.2.4 where the issue is one on which the Cabinet are required to make the final decision, the Council will decide whether to make recommendations to inform that decision;

- 9.2.5 the petition organiser will receive written confirmation of this decision which will also be published on the Council website.

9.3 **Number of Petitions**

At any one meeting no person or organisation may present more than one petition.

9.4 **Scope of Petitions**

The Chief Executive on the advice of the Monitoring Officer may reject a petition if it:

- 9.4.1 does not qualify under the scheme;
- 9.4.2 it is vexatious, abusive or otherwise inappropriate;
- 9.4.3 it is a petition qualifying under another enactment;
- 9.4.4 it is excluded by order;
- 9.4.5 it relates to a planning decision;
- 9.4.6 it relates to a licensing decision;
- 9.4.7 it relates to any other matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment.

10. **QUESTIONS BY MEMBERS**

10.1 **On reports of the Cabinet, committees or boards**

At a meeting of the Council, other than the Annual meeting, a Member of the Council may ask the Leader or the chairman of a committee or board any question without notice upon an item of the report of the Cabinet, a committee or a board when that item is being received or under consideration by the Council.

10.2 **Questions on notice at Full Council**

Subject to Rule 10.4, a Member of the Council may ask:

- 10.2.1 the Mayor;
- 10.2.2 a member of the Cabinet; or
- 10.2.3 the chairman of any committee, sub-committee or board,

a question on any matter in relation to which the Council has powers or duties or which affects the Borough.

10.3 **Questions on notice at Committees and Sub-Committees**

Subject to Rule 10.4, a member of a committee, sub-committee or board may ask the chairman of it a question on any matter in relation to which the Council has powers or duties or which affects the Borough and which falls within the terms of reference of that committee, sub-committee or board.

10.4 **Notice of questions**

A Member may ask a question under Rule 10.2 or 10.3 if either:

- 10.4.1 they have given notice of the question in writing or by electronic mail no later than midday 3 clear working days before the day of the meeting to the Chief Executive; or
- 10.4.2 the question relates to urgent matters, they have the consent of the Mayor or Member to whom the question is to be put and the content of the question is given to the Chief Executive by 9.00am on the day of the meeting.

10.5 **Scope of Questions**

The Mayor, on the advice of the Chief Executive, may reject a question if it:

- (i) is not about a matter for which the Council has a responsibility or which does not affect the Borough; or
- (ii) is defamatory, frivolous or offensive; or
- (iii) is substantially the same as a question which has been put at a meeting of Full Council in the past six months, unless there is new information; or
- (iv) requires the disclosure of confidential or exempt information

10.6 **Order of Questions**

Questions of which notice has been given under Rule 10.2 or 10.3 will be asked in the order in which notice was received, except that the Mayor may group together similar questions. Where more than one question is received from a member and there are further questions from other members, then the first of the questions received from the member making multiple requests will be put before taking in turn the first question of each and every subsequent questioner. Only when all the members who have submitted questions have had the opportunity to ask one question will a second question be put.

10.7 **Asking a Question at a Meeting**

The Mayor will invite the member to put his or her question to the member named in the Notice or to the most suitable member of the Council. A member who has submitted a written question and is unable to be present, may ask the Mayor to put the question on his or her behalf.

The Mayor may then ask the question on the member's behalf, indicate that a written reply will be given or decide, in the absence of the member, not to deal with it. If the Mayor decides not to deal with it then the member will be notified and informed that they may ask the question again at the next ordinary meeting.

10.8 **Content of Questions**

Questions under Rule 10.2 or 10.3 must, in the opinion of the Mayor:

- 10.8.1 contain no expressions of opinion;
- 10.8.2 relate to matters on which the Council has or may determine a policy;

10.8.3 not relate to questions of fact.

10.8.4 not require the disclosure of confidential or exempt information.

10.9 Response

An answer may take the form of:

10.9.1 a direct oral answer at the meeting;

10.9.2 where the desired information is in a publication of the Council or other published work, a reference to that publication; or

10.9.3 where the reply cannot conveniently be given orally, a written answer circulated within 10 working days to the questioner.

10.10 Supplementary question

A Member asking a question under Rule 10.2 or 10.3 may ask one supplementary question without notice of the Member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

10.11 Time Allowed for Questions at Council Meetings

10.11.1 The time allowed for consideration of questions submitted under Rule 10.2 shall not, without the consent of the Council, exceed 30 minutes from the start of the first question.

10.11.2 At the conclusion of the answer to the question under consideration at the expiry of 30 minutes (or such longer period to which the Council has consented) from the time when the first questioner started to speak, the Mayor shall conclude and move to the next item of business on the agenda.

10.11.3 Any remaining questions shall be responded to in writing before the next ordinary meeting of the Council.

11. MOTIONS ON NOTICE

11.1 Notice

Except for motions which can be moved without notice under Rule 12, written notice of every motion, must be delivered to the Chief Executive not later than 5.00pm on the seventh working day before the Council meeting at which it is to be considered. Motions received will be recorded for public inspection.

11.2 Motion set out in agenda

Motions for which notice has been given will be listed on the agenda in the order determined by the Mayor.

11.3 Scope

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

Motions should not normally exceed 250 words and must not commit the Council to taking action without first obtaining professional advice as to the financial and legal implications.

11.4 **Referral to Cabinet or Committee**

If the subject matter of a motion comes within the remit of the Cabinet, a committee or a board it may, upon being moved and seconded, be referred without discussion to the Cabinet, a Committee or a board for consideration and report.

11.5 **Motion to remove the Leader**

11.5.1 A motion to remove the Leader cannot be moved unless the notice of motion is signed by at least 33% of the Council (16 Members) and which includes Members from at least two political groups, made at least 10 days prior to the Council meeting.

11.5.2 In order for such a motion to be carried it must have the support of at least two thirds of those Members voting and present in the room at the time the question was put.

11.5.3 A motion to remove the Leader cannot be moved more than once in any rolling 12 month period.

11.6 **One Motion per Member**

No Member may give notice of more than one motion for any Council meeting, except with the consent of the Mayor.

11.7 **Rejection of a Motion**

If the Chief Executive considers that any motion for which notice has been given is unlawful, irregular, improper or vexatious, he will immediately advise the Mayor and the notice will not be accepted unless on a specific direction of the Mayor. If the notice is not accepted, the Chief Executive will inform the Member(s) who gave the notice of the motion and the reasons for its rejection.

12. **MOTIONS WITHOUT NOTICE**

The following motions may be moved without notice:

- 12.1 to appoint a Chairman of the meeting at which the motion is moved;
- 12.2 in relation to the accuracy of the minutes;
- 12.3 to change the order of business in the agenda;
- 12.4 to refer something to an appropriate body or individual;
- 12.5 to appoint a committee, board or Member arising from an item on the summons for the meeting;
- 12.6 to receive reports or adoption of recommendations of committees, boards or officers and any resolutions following from them;

- 12.7 to withdraw a motion;
- 12.8 to amend a motion, subject to the provisions of the Budget and Policy Framework Procedure Rules in relation to amendment of the Cabinet's proposals for the Council's Budget and Policy Framework;
- 12.9 to proceed to the next business;
- 12.10 that the question be now put;
- 12.11 to adjourn a debate;
- 12.12 to adjourn a meeting;
- 12.13 to suspend a particular Council Procedure Rule;
- 12.14 to exclude the public and press in accordance with the Access to Information Procedure Rules;
- 12.15 to not hear further a Member named under Rule 22.3 or to exclude them from the meeting under Rule 22.4; and
- 12.16 to give the consent of the Council where its consent is required by this Constitution.

13. RULES OF DEBATE

13.1 No speeches until motion seconded

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

13.2 Right to require motion in writing

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

13.3 Secunder's speech

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

13.4 Content and length of speeches

- 13.4.1 Speeches must be directed to the question under discussion or to a personal explanation or point of order.
- 13.4.2 A speech by the mover of a motion may not exceed ten minutes without the consent of the Mayor.
- 13.4.3 Subject to paragraph 13.4.4 below, speeches by other Members may not exceed ten minutes without the consent of the Mayor.
- 13.4.4 When the Council's annual budget is under discussion, the leader of each political group on the Council may speak for up to ten minutes or such longer period as the Mayor shall allow.

13.5 **When a Member may speak again**

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

- 13.5.1 to speak once on an amendment moved by another Member;
- 13.5.2 to move a further amendment if the motion has been amended since he last spoke;
- 13.5.3 if his first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he spoke was carried);
- 13.5.4 in exercise of a right of reply;
- 13.5.5 on a point of order; and
- 13.5.6 by way of personal explanation.

13.6 **Amendments to motions**

13.6.1 An amendment to a motion must be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration;
- (b) to leave out words;
- (c) to leave out words and insert or add others; or
- (d) to insert or add words

as long as the effect of (b) to (d) is not to negate the motion; and

the effect of (d) does not take the motion as amended over the word limit for a motion referred to in paragraph 11.3.

- 13.6.2 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- 13.6.3 If an amendment is not carried, other amendments to the original motion may be moved.
- 13.6.4 If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- 13.6.5 After an amendment has been carried, the Mayor will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

13.7 **Alteration of motion**

- 13.7.1 A Member may alter a motion of which he has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- 13.7.2 A Member may alter a motion which he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- 13.7.3 Only alterations which could be made as an amendment may be made.

13.8 **Withdrawal of motion**

A Member may withdraw a motion which he has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

13.9 **Right of reply**

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

13.10 **Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- 13.10.1 to withdraw a motion;
- 13.10.2 to amend a motion;
- 13.10.3 to proceed to the next business;
- 13.10.4 that the question be now put;
- 13.10.5 to adjourn a debate;
- 13.10.6 to adjourn a meeting;
- 13.10.7 that the meeting continue beyond 4 hours in duration;
- 13.10.8 to exclude the public and press in accordance with the Access to Information Procedure Rules;
- 13.10.9 to not hear further a Member named under Rule 22.3 or to exclude them from the meeting under Rule 22.4; and
- 13.10.10 to suspend a particular Council Procedure Rule.

13.11 **Closure motions**

13.11.1 A Member may move, without comment, the following motions at the end of a speech of another Member;

- (a) to proceed to the next business;
- (b) that the question be now put;
- (c) to adjourn a debate; or
- (d) to adjourn a meeting.

13.11.2 If a motion to proceed to next business is seconded and the Mayor thinks the item has been sufficiently discussed, he will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

13.11.3 If a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, he will put the procedural motion to the vote. If it is passed he will give the mover of the original motion a right of reply before putting his motion to the vote.

13.11.4 If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

13.12 **Point of order**

A point of order is a request from a Member to the Mayor to rule on an alleged irregularity in the procedure of the meeting. A Member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule or law and the way in which he considers it has been broken. The ruling of the Mayor on the matter will be final.

13.13 **Personal explanation**

A Member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Member which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

14. **PREVIOUS DECISIONS AND MOTIONS**

14.1 **Motion to rescind a previous decision**

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

14.2 **Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least ten Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

15. **VOTING**

15.1 **Majority**

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

15.2 **Mayor's casting vote**

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

15.3 **Method of Voting**

Unless a recorded vote is demanded under Rule 15.4 the Mayor will take the vote by show of hands, or by use of the Council's electronic voting system if any, or if there is no dissent, by the affirmation of the meeting.

15.4 **Recorded vote**

If any Member present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

15.5 **Right to require individual vote to be recorded**

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

15.6 **Voting on appointments**

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. Nominations will be voted on without debate.

15.7 **Recorded Vote for any Budget or Council Tax Decision**

Any vote on a motion, including any vote on any amendment, that is taken at a meeting of Full Council relating to the approval of the Council's Budget or the setting of Council Tax must be a Recorded Vote showing the names for and against the motion, or amendment, as well as those abstaining from voting.

16. MINUTES

16.1 Signing the minutes

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

16.2 No requirement to sign minutes of previous meeting at extraordinary meeting

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

16.3 Form of minutes

Minutes will contain all motions and amendments in the form and order the Mayor put them.

17. RECORD OF ATTENDANCE

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

18. RIGHT OF MEMBERS TO ATTEND MEETINGS

Members of the Council have the right to attend any committee, sub-committee or board meeting with the exception of a sub-committee meeting convened to deal with Code of Conduct complaints.

Members of the Council who attend under this rule are entitled to speak, but not vote, at meetings, provided they have given notice to the Chairman of the meeting or Democratic Services Officer by 4pm on the previous working day of their intention to speak on an item.

Any member may attend a meeting of a committee, sub-committee or board that they are not a member of and, after due notice to the Chairman of that meeting, will have the right to speak but not to vote at the meeting. No speech may exceed three minutes without the consent of the Chairman. Members must be aware that the rules regarding declaring interests will still apply.

For the purposes of members of the public and non-committee members contributing to meetings, words such as 'attend', 'speak', 'present', 'presented', 'ask', 'put', 'in person', 'take part' shall be construed to include being carried out remotely without needing to be physically present.

For members of the public and non-committee members 'present' shall be construed to include attending a meeting remotely provided that the member of the public or non-

committee member is able, as a minimum, at that time, to hear and be heard by the other parties in attendance.

19. PUBLIC'S RIGHT TO SPEAK

A member of the public may speak at any formal meeting of Tunbridge Wells Borough Council at the invitation of the Mayor, subject to paragraphs 19.1, 20 and 22 below. The issue on which the person or organisation wishes to speak must be on the agenda for that particular meeting. After the member of the public has used the allocation of time set out in paragraph 19.2. below, he or she may not speak further unless asked to do so by the Mayor to clarify a point of fact.

19.1 Notice

Notice of a request to speak must be given to the Democratic Services Officer by no later than 4pm on the working day before the relevant meeting.

19.2 Time Limit

19.2.1 The total time limit allocated to members of the public for speaking on an item on the agenda is 12 minutes;

19.2.2 Within that 12 minute period, each speaker has a maximum of 3 minutes;

19.2.3 In addition to the 12 minutes allocated for members of the public, one representative from each Parish or Town Council will be allocated a maximum of 3 minutes each;

19.2.4 Where there are several speakers on an item, they will be asked whether they are able to nominate someone to represent their collective view.

20. RECORDING OF MEETINGS

20.1 Council meetings will be recorded for live and future transmission on the Council's website unless exempt or confidential information is being considered.

20.2 Any third party may also record or film meetings, unless exempt or confidential information is being considered, but are requested as a courtesy to others to give notice of this to the Committee Administrator before the meeting. The Council is not liable for any third party recordings.

20.3 If proceedings at the meeting are disrupted in any way the normal procedure rules relating to disturbance by the public apply.

21. EXCLUSION OF PUBLIC

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Part 4 of this Constitution or Rule 23 (Disturbance by Public).

22. MEMBERS' CONDUCT

22.1 Speaking at meetings

When a Member speaks at Full Council he/she must address the meeting through the Mayor. If more than one Member signifies their intention to speak, the Mayor will ask one to speak. Other Members must remain silent whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.

22.2 Mayor speaking

When the Mayor speaks during a debate, any Member speaking at the time must stop.

22.3 Member not to be heard further

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

22.4 Member to leave the meeting

If the Member continues to behave improperly after such a motion is carried, the Mayor may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

22.5 General disturbance

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as he/she thinks necessary.

23. DISTURBANCE BY PUBLIC

23.1 Removal of member of the public

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor will order their removal from the meeting room.

23.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared.

23.3 Conduct of members of the public

If a member of the public attending a meeting of the Council (including one registered to speak) is abusive, offensive, threatening towards or makes serious accusations (such as (but not limited to) lying, bias, predetermination) against Officer(s) and/or Member(s) attending the meeting, the Mayor at their discretion, may require that such person withdraws the comment(s)/accusation(s) made and apologises to the Officer(s) and/or Member(s) concerned. If the person refuses to

do so, the Mayor may pause the meeting and the person may be asked to leave the meeting room.

24. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

24.1 Suspension

All of these Council Rules of Procedure except Rule 11.5.3, 15.5 and 16.2 may be suspended by motion on notice or without notice if at least one half of the whole number of Members of the Council are present. Suspension can only be for the duration of the meeting. Rule 11.5.3 can only be suspended by motion on notice and the motion must have the support of at least two thirds of those Members present and voting.

24.2 Amendment

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

25. APPLICATION TO COMMITTEES, SUB-COMMITTEES AND BOARDS

All of the Council Rules of Procedure apply to meetings of Full Council. Only Rules 4 - 7, 15 - 24 (but not Rule 22.1) apply to meetings of committees, sub-committees and boards. Rule 7 does not apply to meetings of the Licensing Sub-Committee. The Cabinet, Overview and Scrutiny Committee and Planning Committee have their own procedure rules, in addition to the Council Procedure Rules, which are set out in separate sections to this Part

26. APPOINTMENT OF MEMBERS AND SUBSTITUTE MEMBERS ON COUNCIL BODIES

- 26.1 Any changes to the membership of committees, boards, sub-committees and working parties throughout the year are delegated to the Chief Executive, who has the power to appoint elected Members and elected substitute Members in accordance with the proportionality rules where applicable, and with nominations notified to him or her in writing by each Group Leader. Any proposed changes must be authorised in writing, the signed authority being deposited with the Chief Executive.
- 26.2 The substitution rules will not apply to meetings of the Cabinet, the Audit and Governance Committee, the Licensing Committee, the Overview and Scrutiny Committee, the Planning Committee or the Cabinet Advisory Boards.
- 26.3 Subject to any other restrictions elsewhere in the Constitution, any Member of the Council will be permitted to act as a substitute on a Council Body.
- 26.4 The Chief Executive may consider a request from a Member of a Council Body to appoint a substitute Member, providing that substitute Member is from the same political group.
- 26.5 In order to be eligible to sit as substitutes on regulatory or quasi-judicial committees or panels or staff appointments or disciplinary bodies established by the Council, Members must have received formal training in relevant procedures and the law.
- 26.6 Substitute Members will have all the powers and duties of any ordinary Member of the committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting.

26.7 Substitute Members may attend meetings in that capacity only:

- 26.7.1 to take the place of the ordinary Member for whom they are designated substitute;
- 26.7.2 where the ordinary Member will be absent for the whole of the meeting;
- 26.7.3 where the ordinary Member has notified the Chief Executive of the intended substitution at least one hour before the start of the relevant meeting; and
- 26.7.4 provided, in the case of area committees, that the substitution does not alter the balance on that committee between Members from the area and Members from the rest of the Borough.

CABINET PROCEDURE RULES

27. HOW DOES THE CABINET OPERATE?

27.1 Who may make executive decisions?

The arrangements for the discharge of executive functions are determined by the Leader. The Leader may provide for executive functions to be discharged by:

- 27.1.1 the Cabinet as a whole;
- 27.1.2 a committee of the Cabinet;
- 27.1.3 an individual member of the Cabinet;
- 27.1.4 an officer;
- 27.1.5 joint arrangements; or
- 27.1.6 another local authority.

27.2 Delegation by the Leader

Following the annual meeting of the Council, the Monitoring Officer, at the direction of the Leader, will draw up a written record of executive delegations made by the Leader for inclusion in the Council's scheme of delegation at Part 3 to this Constitution. This will contain the following information about executive functions in relation to the coming year:

- 27.2.1 the extent of any authority delegated to Cabinet members individually, including details of the limitation on their authority;
- 27.2.2 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet members appointed to them;
- 27.2.3 the nature and extent of any delegation of executive functions to any other authority or any joint arrangements; and
- 27.2.4 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.

27.3 Sub-delegation of executive functions

- 27.3.1 Where the Cabinet, a committee of the Cabinet or an individual member of the Cabinet is responsible for an executive function, they may delegate further to joint arrangements or an officer.
- 27.3.2 Unless the Leader directs otherwise, a committee of the Cabinet to whom functions have been delegated by the Leader may delegate further to an officer.
- 27.3.3 Where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

27.4 The Council's scheme of delegation and executive functions

- 27.4.1 The Leader may amend the scheme of delegation relating to executive functions at any time. In doing so the Leader will give written notice to the Monitoring Officer and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body or committee. The Monitoring Officer will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- 27.4.2 Where the Leader seeks to withdraw delegation from a committee of the Cabinet, notice will be deemed to be served on that committee when he has served it on its chair.

27.5 Conflicts of Interest

- 27.5.1 Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- 27.5.2 If any member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- 27.5.3 If the exercise of an executive function has been delegated to a committee of the Cabinet, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

27.6 Cabinet meetings – when and where?

The frequency and timing of meetings of the Cabinet will be determined by the Leader. The Cabinet will meet at the Council's main offices or another location to be agreed by the Leader. Special meetings may be called by the Leader, Deputy-Leader, or at the requisition of one-quarter of the ordinary members of the Cabinet, or at the request of the Chief Executive, Monitoring Officer or Chief Financial Officer. When setting a date for a special meeting of the Cabinet, every effort will be made to accommodate the needs of all members. However, the decision regarding the final date rests with the Chief Executive

27.7 Public or exempt/confidential meetings of the Cabinet?

The Cabinet will hold its meetings in public, except in the circumstances set out in paragraphs (a) to (c) of Regulation 4(2) of the Local Authorities (Executive Arrangements) (meetings and Access to Information) (England) Regulations 2012. Briefly, these circumstances cover:

- 26.7.1 confidential information (confidential information means information given to the Council by a Government Service or Agency on terms which forbid its public disclosure or information which cannot be publicly disclosed by any enactment or Court Order);

26.7.2 exempt information (exempt information means information falling within the categories as set out in Schedule 12A of the Local Government Act 1972 (subject to any qualification);

27.7.3 advice of a political adviser or assistant; and

27.7.4 disorderly conduct.

27.8 **Quorum**

27.8.1 The quorum for a meeting of the Cabinet shall be 3 including the Leader or Deputy Leader.

27.8.2 The quorum for a meeting of a committee of the Cabinet shall be 3.

27.9 **How are decisions to be taken by the Cabinet?**

27.9.1 Executive decisions made by the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Procedure Rules in Part 4 of the Constitution.

27.9.2 Where executive decisions are delegated to a committee of the Cabinet, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

28. **HOW ARE CABINET MEETINGS CONDUCTED?**

28.1 **Who presides?**

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

28.2 **Who may attend?**

These details are set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

28.3 **Members' Questions**

28.3.1 Subject to giving at least 3 clear working days' written notice to the Chief Executive, any member may ask the Leader a question on any matter for which the Cabinet has powers or duties, or which affects the Borough and which falls within the Cabinet's terms of reference.

28.3.2 With the Leader's permission, and wherever possible by written notice by 5pm on the working day prior to a meeting, any member may ask the Leader an urgent question on any matter for which the Cabinet has powers or duties, or which affects the Borough and falls within the Cabinet's terms of reference.

28.3.3 The reply may take the form of a direct oral answer, a reference to information in a Council publication or other publication, or a written reply which is included in the minutes.

28.3.4 One supplementary question arising out of the question or the reply may be put by the member who asked the original question.

28.4 **Members' Speaking**

Non-executive members may attend Cabinet meetings and, after due notice to the Leader, will have the right to speak but not to vote at Cabinet meetings. No speech may exceed three minutes without the consent of the Chairman.

28.5 **Public Questions**

28.5.1 Subject to giving at least 3 clear working days' written notice to the Chief Executive, any member of the public may ask the Leader a question on any matter for which the Cabinet has powers or duties, or which affects the Borough and which falls within the Cabinet's terms of reference.

28.5.2 A questioner who has asked a question in person, may ask one supplementary question arising directly out of the questions or reply. The Leader may reject any supplementary question which is outside the scope referred to in paragraph 28.5.1.

28.5.3 The reply may take the form of a direct oral answer, a reference to information in a Council publication or other publication, or a written reply which is included in the minutes

28.6 **Public Speaking**

Where the meeting is open to the public, a member of the public or a representative of an organisation may speak at the invitation of the Leader in respect of an item of the agenda. However notice of a request to speak must be given to the Committee Administrator by no later than 4pm on the working day before the relevant meeting. Public speaking is subject to the following time limits:

- 28.6.1. the total time for speaking on an item on the agenda is 12 minutes;
- 28.6.2. within that 12 minute period, each speaker has a maximum of 3 minutes;
- 28.6.3. in addition to the 12 minutes, a Parish or Town Council representative may be allocated a maximum of 3 minutes each;
- 28.6.4. where there are several speakers, they will be asked if it is possible to appoint spokesperson to represent all views;
- 28.6.5 when these times have expired, speakers will not be allowed to speak further unless asked by the Leader to clarify a point of fact.

28.7 **What business?**

At each meeting of the Cabinet the following business will be conducted:

- 28.7.1 consideration of the minutes of the last meeting;
- 28.7.2 declarations of interest, if any;
- 28.7.3 questions from members of the Council in accordance with rule 2.3 above;
- 28.7.4 questions from members of the public;
- 28.7.5 matters referred to the Cabinet (whether by the Overview and Scrutiny Committee, the Cabinet Advisory Boards or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in

the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;

28.7.6 consideration of reports from the Overview and Scrutiny Committee and the Cabinet Advisory Boards;

28.7.7 consideration of the Notice of Key Decisions; and

28.7.8 matters set out in the agenda for the meeting, and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

28.8 **Consultation**

All reports to the Cabinet from any member of the Cabinet or an officer on proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation undertaken with stakeholders and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

28.9 **Who can put items on the executive agenda?**

28.9.1 The Leader will decide upon the schedule for meetings of the Cabinet. He may put any matter on the agenda of any Cabinet meeting whether or not authority has been delegated to the Cabinet, a committee of it or any member or officer in respect of that matter.

28.9.2 The Chief Executive, the Monitoring Officer and/or the Director of Finance may include an item for consideration on the agenda of a Cabinet meeting and may require that such a meeting be convened in pursuance of their statutory duties.

28.9.3 In other circumstances, where any two of the Chief Executive, Director of Finance and the Monitoring Officer are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be considered at which the matter will be considered.

28.10 **Voting at Cabinet Meetings**

The Cabinet will decide all matters before it by simple majority. The Chairman will have a casting vote. If any member present at the meeting demands it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

29. **TYPES OF DECISION**

There are several types of decision and the following rules apply to each of them:

Key decisions will only be taken at a Cabinet meeting (i.e. not by the Leader or a Portfolio Holder or an officer). A Key Decision is defined in Article 7 of Part 2 of this Constitution.

Every matter which is to be the subject of a Key Decision must have been included in the Notice of Key Decisions (see paragraph 13 of the Access to Information Procedure Rules or fall within the General Exception (paragraph 15 of the Access to Information Procedure Rules) or comply with the Special Urgency conditions (paragraph 16 of the Access to Information Procedure Rules).

29.2 Portfolio Holder Decisions

The Leader and Portfolio Holders are authorised to take executive decisions on all non-key decisions within their respective portfolios. If the Leader or Portfolio Holder is considering taking a decision, which is contrary to its recommendation, the matter shall be referred the Cabinet for a decision.

29.3 Other Cabinet decisions

Within its terms of reference, the Cabinet is authorised to make:

- 29.3.1 decisions which are not key decisions and do not fall within the portfolios of the Leader or any Portfolio Holder or their respective delegations or the delegation to any officer;
- 29.3.2 decisions on matters which, whilst falling within a portfolio or delegation, the Chief Executive or other chief officers think it more appropriate to put on the Cabinet agenda for decision.

30. PORTFOLIO HOLDER DECISIONS – SUPPLEMENTARY RULES

The following additional rules apply to Portfolio Holder decisions:

- 30.1 If the Leader or a Portfolio Holder has a Disclosable Pecuniary Interest in any matter which he or she is requested to consider, he or she will immediately return the papers to the Local Democracy Officer and ask for them to be re-allocated.
- 30.2 If a Portfolio Holder is absent or unavailable for any reason, the Leader of the Council (or in his or her absence the Deputy Leader) may, by written notice to the Chief Executive, have power to temporarily re-allocate that portfolio to another Cabinet member until the next Cabinet meeting (when the Cabinet can decide the matter).
- 30.3 If a Portfolio Holder is unable to act for any reason (e.g he or she has a Discosable Pecuniary Interest), the Leader of the Council is authorised to make the decision or in his or her absence or at his or her request, the Deputy Leader is authorised to make the decision.
- 30.4. In respect of any ordinary business, the Leader or a Portfolio Holder may decline to decide the matter and instead ask the relevant chief officer to put it on the agenda for the next Cabinet meeting.
- 30.5. In respect of any urgent business, if the Portfolio Holder delays or declines to make a decision the Chief Executive will have power to seek a decision from the Leader or Deputy Leader.
- 30.6. Before making a decision, where necessary consideration shall be given to the need for further consultation or information.

30.7. Decisions will be published in accordance with Access to Information Procedure Rules Overview and Scrutiny Procedure Rules. They will then be subject to call-in for 5 clear working days (after the day of publication) unless the decision has been specified as urgent in accordance with Overview and Scrutiny Procedure Rules that its delay would seriously prejudice the Council's or the public's interests. For the avoidance of doubt, the obligation to publish under this paragraph applies only to executive decisions and not, for example, to recommendations to Council.

OVERVIEW AND SCRUTINY PROCEDURE RULES

1. INTRODUCTION

- 1.1. These rules set out the Council's arrangements for overview and scrutiny. The Overview and Scrutiny Committee will take a broad view of public services as they are delivered across the Borough of Tunbridge Wells. The Committee may appoint task and finish groups to examine particular topics. Such groups will be appointed for a fixed period.
- 1.2. The responsibilities of the Overview and Scrutiny Committee are set out in Part 3 of the Constitution.

2. MEMBERSHIP, QUORUM AND CHAIRING

- 2.1 All councillors, except members of the Cabinet and the Mayor of the Council, shall be eligible for appointment as members of the Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision in which he or she has been directly involved.
- 2.2 There shall be a Chairman and Vice-Chairman of the Overview and Scrutiny Committee who shall each be appointed by the Council.
- 2.3 In the absence of the Chairman, the Vice-Chairman can exercise the powers of the Chairman.
- 2.4 The Overview and Scrutiny Committee will be entitled to appoint non-voting persons who are not elected members as co-opted advisers. Substitutes for co-optees are not permitted.
- 2.5 The Chairman and Vice-Chairman of the Overview and Scrutiny Committee will be councillors appointed by the Council from the Overview and Scrutiny Committee members. If at any meeting neither the Chairman nor Vice-Chairman are present the first business is to elect a Chairman for the meeting from those present.
- 2.6 The quorum for meetings will be four of the ordinary members of the Committee.

3. MEETINGS

Special meetings may be called by the Chairman or at the requisition of a quarter of the ordinary members of the Committee or at the request of the Chief Executive, Monitoring Officer or Section 151 Officer. When setting a date for a special meeting every effort will be made to accommodate the needs of all members.

4. WORK PROGRAMME

The Overview and Scrutiny Committee will set its own work programme. In doing so, it will take account of the views of all members of the Committee. The Overview and Scrutiny Committee will seek to avoid duplication with other Council committees and actively seek to work together with partners across the Borough to deliver positive outcomes for local people. The work programme will include provision for scrutiny of the Council's policy framework.

5. AGENDA ITEMS

- 5.1 Any member of the Overview and Scrutiny Committee is entitled to give notice to the Chairman of an agenda item falling within the terms of reference of the Committee. The Chairman will then liaise with the Proper Officer to decide how best to take the agenda item forward, including considering it for inclusion on the next available agenda. All such items proposed will be recorded during the Committee discussion on its work programme. If the Committee decides not to take the proposed agenda item forward, it will notify the member that proposed it of a) its decision and b) the reasons for it. This will be captured in the minutes of the meeting.
- 5.2 Section 119 of the Local Government and Public Involvement in Health Act 2007 provides members with the opportunity to ask for discussions at the Overview and Scrutiny Committee on issues where local problems have arisen and where other methods of resolution have been exhausted. This exceptional process is "A Councillor Call for Action" and is described in detail in Appendix A.

6. POLICY DEVELOPMENT AND REVIEW

- 6.1 The Overview and Scrutiny Committee will undertake Policy Development and Review, seeking desired outcomes for local people by working in a constructive way with partner organisations. It can make reports to organisations specified in its terms of reference.
- 6.2 The role of the Overview and Scrutiny Committee in relation to the development of the Council's Policy Framework is set out in Part 5.
- 6.3 In relation to the development of the Council's approach to matters not forming part of its policy and budget framework, the Overview and Scrutiny Committee may make proposals to the Cabinet or the Council in so far as they relate to matters within their terms of reference. The Overview and Scrutiny Committee may hold inquiries and investigate options available for future policy development.
- 6.4 The Overview and Scrutiny Committee may ask advisers to assist them in their work. They may arrange site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may also ask witnesses to attend to address them on any matter under consideration.
- 6.5 The Overview and Scrutiny Committee may offer payment of a reasonable fee and expenses to advisers, assessors and/or witnesses for work undertaken and for attending meetings to provide evidence and/or advice, which will be funded either from a budget allocated to them or from specific funds allocated by the Cabinet.

7. REPORTS FROM THE OVERVIEW AND SCRUTINY COMMITTEE

- 7.1. Once the Overview and Scrutiny Committee has formed recommendations on the matters under consideration they are to prepare a formal report and submit it for consideration by the Cabinet (if the proposals are consistent with the existing budgetary and policy framework), or to the Council, as appropriate, (e.g if the recommendation would require a departure from, or a change to, the agreed budget and policy framework). If the report deals with matters within the delegations to the

Leader or a Portfolio Holder, it will also be submitted to the Leader or relevant Portfolio Holder for consideration.

- 7.2 Where any of the recommendations from the Overview and Scrutiny Committee relates to functions of a relevant partner authority so far as exercisable in relation to a) the authority's area or b) the inhabitants of that area, the Committee may by notice in writing require the relevant partner authority to have regard to the report or recommendation in question in exercising its functions. It is the duty of the relevant partner authority to which notice is given to comply with the requirement specified in the notice. The provisions set out here do not apply where the relevant partner authority is a health service body, for example, a i) the National Health Service trust, ii) an NHS foundation trust, iii) a Primary Care Trust, or a Commissioning Body.
- 7.3 The Overview and Scrutiny Committee should seek a consensual view on the matters which it considers. If the Overview and Scrutiny Committee cannot agree on a final report, then a separate minority report may also be prepared. This report must have the agreement of a quorum of the Committee to be valid. The quorum of the Committee is four elected members. The minority report should be submitted for consideration with the majority report in accordance with 7.1 above.
- 7.4 The Council or the Cabinet will consider reports from the Overview and Scrutiny Committee at the next available meeting, subject to compliance with the Access to Information Rules and current legislation.

8. CABINET CONSIDERATION OF OVERVIEW AND SCRUTINY COMMITTEE REPORTS

- 8.1 The agenda for Cabinet meetings may include an item entitled "References from the Overview and Scrutiny Committee" as required. The reports of the Overview and Scrutiny Committee which are referred to the Cabinet will be included at this point in the agenda. The views of the Overview and Scrutiny Committee must be presented by the Chairman of the Committee or a member representative nominated by the Chairman. Reports of the Overview and Scrutiny Committee should not be presented by officers.
- 8.2 Alternatively, references from Overview and Scrutiny can be considered in the context of the Cabinet's deliberations on a substantive item on the agenda. The references from the Overview and Scrutiny Committee will be considered at the next available Cabinet meeting, subject to compliance with the Access to Information Rules and legislation, unless otherwise agreed by the Chairman.
- 8.3 The Cabinet's responses to reports should normally be reported to the next available meeting of the relevant Overview and Scrutiny Committee.
- 8.4 Before an Overview and Scrutiny Committee report is presented to Full Council, the Proper Officer is to ensure it is also given to the Leader and any Portfolio Holder whose portfolio might be affected. The Proper Officer is also to consider whether the report should be considered by the Cabinet before it is taken to Full Council, e.g because it impacts on the budget and policy framework, and may put the report on the Cabinet agenda for that purpose. Subject to this and compliance with the Access to Information Rules and legislation, the item will be placed on the next available Council agenda.

8.5 Members of the Overview and Scrutiny Committee will have access to the Cabinet's 'Notice of Intent to make a Key Decision' and timetable for decisions and intentions for consultation. The Overview and Scrutiny Committee may also review any available Notice of intent or similar document of partner organisations as appropriate.

9. RIGHTS OF OVERVIEW AND SCRUTINY COMMITTEE MEMBERS TO REPORTS

9.1 In addition to their rights as councillors, members of the Overview and Scrutiny Committee have the additional right to information, and to notices of meetings, as set out in the Access to Information Rules. Nothing in this paragraph prevents more detailed liaison between the Cabinet and the Overview and Scrutiny Committee as appropriate.

10. MEMBERS AND OFFICERS GIVING ACCOUNT

10.1 The Overview and Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function.

10.2 In fulfilling the scrutiny role, the Overview and Scrutiny Committee may require the Leader of the Council, Portfolio Holders, the Chief Executive and other senior officers to attend meetings to explain matters in relation to their respective remits.

10.3 Where required under Rule 10.2 above, it is the duty of the relevant person to attend, subject to the Chairman of the Overview and Scrutiny Committee seeking to meet the relevant person's reasonable requirements as to the date and time of the attendance, and at least five clear working days' notice will be given. Where the relevant person is required to produce a report, reasonable time must be allowed for its preparation.

10.4 Where in exceptional circumstances, the member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall, in consultation with the member or officer, arrange an alternative date for attendance.

11. ATTENDANCE BY OTHERS

11.1 The Overview and Scrutiny Committee may invite other people to address it, discuss issues of local concern and answer questions. It may, for example, wish to hear from residents, local businesses, individuals in the private sector, other stakeholders, relevant experts and members and officers in other parts of the public sector or in grant-aided organisations or the voluntary sector. The Proper Officer will issue invitations.

11.2 Members of Council, Parish and Town Council members and members of the public can attend Overview and Scrutiny Committee meetings.

11.3 Members of Council who attend under this rule are entitled to speak but not to vote at meetings, provided they have given prior notice to the Chairman, and in accordance with the Council Procedure Rules.

11.4 Any member who wishes to exercise his or her right under paragraph 5(d) of the Code of Conduct is to:

- 11.4.1 Notify the Chairman of the meeting in advance that he or she wishes to do so, giving such advance notice (including notice of any question to be asked) in the same way that members of the public are required to give in respect of the meeting in question. The Chairman may waive this requirement at his or her discretion.
- 11.4.2 At the meeting, the member is to state publicly, when declaring an interest that he or she intends to exercise his or her right under paragraph 5(d) to make a statement or ask a question (as appropriate) before leaving in advance of discussion on the item beginning.
- 11.4.3. The member will be required by the Chairman to make his or her statement, or to ask a question, from the area of the room occupied by members of the public present at the meeting.
- 11.4.4 Questions and statements from members of the public will be taken before questions and statements from members exercising their rights under paragraph 5(d), but must be taken in the same part of the meeting as questions and statements as by members of the public. Enforcement or variation of this provision is at the discretion of the Chairman.
- 11.4.5. Members who have exercised their rights under paragraph 5(d) of the Code of Conduct will be required to leave the meeting room before any discussion of the item in which they have an interest takes place, but may be present in the room throughout the rest of the meeting.
- 11.4.6. Members have no right under paragraph 5(d) of the Code of Conduct to make statements, ask or answer questions or comment on items on which members of the public may not speak.

12. CALL-IN

- 12.1. Call-in is the procedure whereby a decision of the Cabinet, the Leader or a Portfolio Holder, or a member or officer with delegated executive authority, taken but not implemented may be examined by the Overview and Scrutiny Committee prior to implementation. This is a power which should only be used in exceptional circumstances and cannot be used in respect of day-to-day management and operational decisions.
- 12.2. In paragraphs 12, 13, and 14 of these rules, decisions referred to are called executive decisions. The Committee may recommend that the Cabinet, the Leader or Portfolio Holder, or a member or officer with delegated executive authority, reconsider the decision. A decision may only be subject to the call-in procedure once. The procedure will not apply to decisions, to which the urgency procedure in paragraph 14 of these rules is applied, to decisions taken by Council officers, or to recommendations to or decisions of Full Council.
- 12.3. As soon as possible after an executive decision as referred to in paragraph 12.1 above is made, and normally within two clear working days, the Chief Executive will notify the decision to all Council members and publish the decision on the Council's website. A note of the decision will be available at the Town Hall, Tunbridge Wells. The notice may be given by paper or e-mail.

12.4. The notice is to include the publication date and is to specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless it is called-in for scrutiny during this “call-in period” by the Overview and Scrutiny Committee.

12.5 During the call-in period:

- the Chairman of the Overview and Scrutiny Committee or
- **three** elected Council members not serving on the Cabinet

can, by notification to the Proper Officer, request call-in. The notification must be in writing bearing the signature(s) of the Council member(s) initiating the call-in, or by e-mail which, if from several members, will require a separate email from each of them.

12.6 A notice invoking the call-in procedure must meet at least one of the following grounds in support of the request for call-in of a decision:

12.6.1 inadequate consultation with stakeholders prior to decision;

12.6.2 the absence of adequate evidence on which to base a decision;

12.6.3 the decision would require a departure from or a change to, the agreed budget and policy framework;

12.6.4 the action decided upon would not be proportionate to the desired outcome;

12.6.5 the decision would be open to a human rights challenge;

12.6.6 insufficient consideration of legal and financial advice; or

12.6.7 the decision is not within the Cabinet’s powers or terms of reference or within the portfolio of the Leader or Portfolio Holder or member or Officer with delegated executive powers who took it.

12.7 The Chairman of the Overview and Scrutiny Committee, in consultation with the Vice-Chairman and the Chief Executive, having taken legal advice if necessary and, if appropriate, other professional advice, may reject a request for call-in if, in his or her opinion, it fails to meet any of the grounds listed in paragraph 12.6 above, or if she or he considers it is in any way vexatious, frivolous or otherwise inappropriate. Examples include, but are not limited to:

12.7.1 the cited grounds bear no relevance to the decision that is identified for call-in or the request cites grounds for which no evidence is produced in support;

12.7.2 those requesting the call-in signed the request before it was complete (e.g signed a blank form in advance);

12.7.3 the call-in includes material which could be defamatory;

12.7.4 the requisition is being used for an improper purpose (eg to admonish an officer).

13. REFERRAL TO THE OVERVIEW AND SCRUTINY COMMITTEE

13.1. Once an executive decision is called-in, it will not be implemented until the Overview and Scrutiny Committee has met. On receipt of the call-in request, it is the duty of the Proper Officer to notify the decision taker(s) and to arrange with the Overview and Scrutiny Committee Chairman a special meeting to consider the call-in request (unless a scheduled meeting is to take place in the near future where the call-in can be considered and determined). The meeting is to take place within five working days of the end of the call-in period; if this is not achieved it is in the discretion of the decision taker(s) whether to wait before implementation.

Whilst every effort will be made to accommodate the needs of all members, the decision regarding the final date rests with the Chief Executive.

13.2. The Overview and Scrutiny Committee will consider the executive decision and the reasons for call-in. The Committee may invite the Leader and/or relevant Portfolio Holders, and a representative of those calling in the executive decision to provide information at the meeting. Council officers are to provide the Committee with all the information held by them which was available to the decision taker(s) and, if requested, be available to answer questions from Committee members.

13.3 If a member of the Overview and Scrutiny Committee has signed a call in request, that member, **or** another signatory must present the call in to the Committee.

13.4 The Chairman will conduct the Call-in meeting as follows

- Introduction by the Chairman
- Presentation of the call-in by **one** signatory to the call in
- Response of the decision maker
- Committee discussion
- Summing up and vote

13.3 Without prejudice to any other resolutions which they may adopt (e.g as to future conduct) the Overview and Scrutiny Committee are to come to one of the following conclusions:

13.3.1 take no further action on the call-in; or

13.3.2 the decision is to be referred to the Cabinet, for a Cabinet decision, or to the Leader for further consideration, in which case the nature of the Committee's concern(s) and reasons are to be cited; or

13.3.3 the decision should be referred to Full Council, where the decision would require a departure from or a change to, the agreed budget and policy framework, in which case the nature of the Committee's concerns and reasons are to be cited.

13.4 Where the Overview and Scrutiny Committee decide to take no further action on a call-in the decision may be implemented at any time after the Committee's decision.

- 13.5 Where a called-in Cabinet decision is referred for further consideration, it shall be reconsidered by the Cabinet within five working days and the reason(s) cited by the Overview and Scrutiny Committee will be considered.
- 13.6 Where a called-in decision which was made by the Leader, or by a Portfolio Holder, is referred for further consideration by the Overview and Scrutiny Committee, the Leader, or in his/her absence (or where the Leader has a conflict of interest in the decision) the Deputy Leader, is to decide within five working days on one of the following actions:
- 13.6.1 to send the referral back to the Portfolio Holder who made the original decision;
- 13.6.2 to decide on the referral him or herself; or
- 13.6.3 to send the referral to Cabinet for decision.
- 13.7 Whichever of these options is adopted, the decision and the reasons cited by the Overview and Scrutiny Committee will be considered and a decision taken on the matter within five working days. If a cited reason includes non-compliance with the budget and policy framework, consideration will be given to the need to seek Full Council's agreement to amend the budget and policy framework. If it is decided not to seek agreement of Full Council in these circumstances, and the Cabinet is considering the matter, it will ensure that the minutes record why Cabinet is of that view and, if the view is not unanimous, any dissenting view(s) shall also be recorded. If the consideration is being undertaken by the Leader or a Portfolio Holder, and a cited reason includes non-compliance with the budget and policy framework, and the Leader or Portfolio Holder decides not to seek agreement of Full Council, that will be recorded and reported to Cabinet for inclusion in the Cabinet's minutes.
- 13.8 Once an executive decision has been considered by Full Council, Cabinet, the Leader or Portfolio Holder following referral from the Overview and Scrutiny Committee, it will be capable of immediate implementation if the person or body giving the consideration decides to confirm the original decision. If the original decision is not confirmed by them within the prescribed timescales it falls and will not be implemented.
- 13.9. If a decision is referred to Full Council the meeting is to be convened within five working days of the referral. If Council meets, whether at an ordinary or extraordinary meeting, to consider amending the budget and policy framework in pursuance of a recommendation by the Overview and Scrutiny Committee that an executive decision is not in compliance with them, Council can decide either that there is compliance, or to amend the framework to achieve compliance in which case the decision can be implemented (provided there are no other outstanding reasons from the Overview and Scrutiny Committee), or to decline to amend the framework, in which case the decision will not be implemented.

14. CALL- IN AND URGENCY

- 14.1 The call-in procedure will not apply where an executive decision is urgent. If an executive decision is to be urgent, the report on which it is based must include the statement that the provisions of this paragraph are to be applied as

well as the minute or other decision record. An executive decision will be urgent if any delay likely to be caused by a call-in or the process would seriously prejudice the Council's or the public's interests.

- 14.2 For these provisions to apply, the prior agreement of the Chairman of the Overview and Scrutiny Committee or the Mayor must be obtained in writing, or by fax or email, and the request for his or her signature must set out why the matter is so urgent as to nullify the call-in process. Prior agreement means prior to the taking of the decision. The Chief Executive will report to each ordinary Council meeting on the use of this provision.

15. THE PARTY WHIP

- 15.1 The Party Whip is defined as "any instruction given by or on behalf of a political group to any councillor who is a member of that group as to how that councillor should speak or vote on any matter before the Overview and Scrutiny Committee, or the application or threat to apply any sanction by the group in respect of that councillor should he/she speak or vote in any particular manner".
- 15.2 When considering any matter in respect of which a member of the Overview and Scrutiny Committee is subject to a party whip, the member must declare the existence of the whip, and the nature of it before the commencement of the deliberations at the meeting on the matter. The declaration, and the detail of the whipping arrangements, are to be recorded in the minutes of the meeting.

16. PROCEDURE AT OVERVIEW AND SCRUTINY COMMITTEE MEETINGS

16.1 The Overview and Scrutiny Committee will consider the following business:

- 16.1.1 minutes of the last meeting; subject to the Council Procedure Rules
- 16.1.2 declarations of interest;
- 16.1.3. call-in requests;
- 16.1.4. business of the meeting.

16.2 Where investigations are conducted the Overview and Scrutiny Committee may ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:

- 16.2.1 that the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- 16.2.2 that those assisting the Committee by giving evidence be treated with respect and courtesy; and
- 16.2.3 that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

16.3 Following any investigation or review, the Overview and Scrutiny Committee may, if necessary, prepare a report for submission to the Cabinet and/or Council, and/or partner organisation and/or the Leader/Portfolio Holder(s), as

appropriate, and will (subject to not breaching confidence, publishing exempt or confidential information or defamation) make its report and findings public.

17. PROCEDURE RULES FOR THE OVERVIEW AND SCRUTINY COMMITTEE WHEN ACTING AS THE CRIME AND DISORDER OVERVIEW AND SCRUTINY COMMITTEE

17.1 Co-option of Additional Members

The Overview and Scrutiny Committee may co-opt additional members from those persons and bodies who are responsible authorities within the meaning of section 5 of the Crime and Disorder Act 1988, and from those persons and bodies with whom the responsible authorities have a duty to co-operate under section 5(2) of that Act (the “co-operating persons and bodies”), subject to the provisions set out in that regulation. In accordance with their terms of membership, co-opted members may have the same entitlement to vote as any other member.

17.2 Frequency of Meetings

The Overview and Scrutiny Committee will meet to carry out the functions required as the crime and disorder committee to review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions, at least once in every twelve month period.

17.3 Requests for Information

Responsible authorities or co-operating persons or bodies are expected to provide such information requested of them by the Overview and Scrutiny (as the crime and disorder committee).

17.4 Attendance of Responsible Authorities

The Overview and Scrutiny Committee, when carrying out the functions of the crime and disorder committee, may require the attendance of a representative of a responsible authority or of a co-operating person or body in order to seek answers to questions, subject to the provisions in that regulation.

17.5 Reports and Recommendations to Responsible Authorities

17.5.1 When the Overview and Scrutiny Committee, carrying out the functions of the crime and disorder committee, makes a report or recommendations to a responsible authority and co-operating persons or bodies in accordance with section 19(8)(b) of the Police and Justice Act 2006, the responses to such reports or recommendations of each relevant authority, body or person are to be in writing and completed within 1 month from the date of the report or recommendations or, if this is not reasonably possible, as soon as possible thereafter.

17.5.2 The Overview and Scrutiny Committee are to review such responses and monitor the action (if any) taken by the relevant responsible authorities, co-operating persons or bodies in accordance with its powers under section 19(1) of the 2006 Act.

Appendix A

Councillor Call for Action Requirements

1. Introduction

- 1.1. Councillor Call for Action (CCfA) seeks to strengthen the role of the ward members, encouraging them to resolve local problems on behalf of residents. The Local Government and Public in Health Act 2007 allows ward members to place CCfAs on Overview and Scrutiny Committees' agendas for resolution and action. The Act also extends the power of Overview and Scrutiny in two ways as follows:
 - 1.1.1. so that any member of the Council can refer any matter, within its terms of reference to the Overview and Scrutiny Committee ; and
 - 1.1.2. that issues which can be referred include matters which the Council and its partners are delivering through the Local Area Agreement and local crime and disorder matters.
- 1.2. The CCfA best practice guidance released by the Centre for Public Scrutiny (CfPS) and the Improvement and Development Agency (IDeA) refers to the importance of concentrating on outcomes rather than process when dealing with CCfAs.
- 1.3. This appendix outlines what constitutes a CCfA, what should be excluded and the process for dealing with CCfAs and also applies to CCfAs related to crime and disorder as well as local government matters.

2. What is Councillor Call for Action?

- 2.1. CCfA is a process for a member to act on behalf of residents to resolve a local issue of concern, acting as a last resort for those who cannot get issues resolved through any other means, and this can include crime and disorder matters.

3. Matters which cannot be raised as a Councillor Call for Action

- 3.1. The following matters have been excluded under section 21A of the Local Government Act 2000, introduced under section 119 of the Local Government and Public Involvement in Health Act, 2007:
 - 3.1.1. any matter relating to a planning decision;
 - 3.1.2. any matter relating to a licensing decision;
 - 3.1.3. any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
 - 3.1.4. any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the Overview and Scrutiny Committee or one of its sub-committees.

4. CCfA Process

4.1. In accordance with the national best practice guidance, overview and scrutiny should be the final resort for a CCfA. The expectation will be on the ward member to have tried to resolve an issue using all available mechanisms (including partnership working when appropriate) prior to referring the matter to the Overview and Scrutiny Committee.

When a matter is referred to the Overview and Scrutiny Committee it will be up to the Chairman and the Proper Officer to decide whether the matter is progressed and taken forward by the Overview and Scrutiny Committee.

4.2. Referral for Overview and Scrutiny

4.2.1. The Chairman of the Overview and Scrutiny Committee will determine with the Proper Officer whether to take the CCfA forward and will, within 5 working days, inform the ward member whether they will accept the CCfA. If the CCfA is a crime and disorder related matter then responsible partners must be notified (These are the Crime and Disorder Reduction Partnership (CDRP) Members).

4.2.2. Reasons a Chairman may not take the CCfA forward to the Overview and Scrutiny Committee include:

(a) not enough information has been provided;

(b) more could be done to resolve the issue at a local level, e.g. key people have not been contacted;

(c) the CCfA is, or has stemmed from, a vexatious, discriminatory or unreasonable complaint;

(d) the matter has recently been examined by Overview and Scrutiny (though the ward members may argue that certain aspects were not sufficiently covered hence a need for a CCfA);

(e) the matter is the subject of an ombudsman complaint or other official complaints procedure; or

(f) the matter falls under excluded matters (see paragraph 3 above).

4.2.3. If a CCfA is rejected for consideration by Overview and Scrutiny the ward member will be notified in writing within 5 working days of lodging the CCfA. Where it is a Crime and Disorder CCfA all responsible partners (CDRP Members) must be notified. Ward members will have the opportunity to reply to the Chairman, if appropriate providing further information to substantiate the CCfA.

4.2.4. If the CCfA is accepted, the relevant Cabinet members, officers and partners will be notified by the Chairman.

4.3. Ward Member Process for Resolution of a CCfA

A ward member is to adhere to the following stages in order to define and agree resolution for a CCfA:

- 4.3.1. identify a public request or issue for action;
- 4.3.2. if the member is within a multi-member ward to discuss with other ward members, and agree action;
- 4.3.3. take steps to resolve the issue through existing mechanisms such as liaising with partners, county and town/parish members or raising the matter with officers; and
- 4.3.4. if unresolved and the matter can be taken no further by the ward member, it is to be referred it to the Chairman of the Overview and Scrutiny Committee by completing a CCfA application form and submitting it to the Proper Officer for action.
- 4.3.5. The Overview and Scrutiny Committee is then to either:
 - (a) accept the CCfA and arrange to consider it, notifying partners as appropriate; or
 - (b) reject the CCfA and notify the member.

Following which they will determine their response and relay this to the member and partners as appropriate.

5. Process for Dealing with a CCfA by the Overview and Scrutiny Committee

- 5.1. The CCfA will be dealt with at the next available meeting of the Committee unless the Chairman and Proper Officer determine that a special meeting of the Committee is required.
- 5.2. The Chairman, in consultation with the ward member and the Proper Officer, when considering the meeting requirements, is to give consideration to:
 - 5.2.1. witnesses;
 - 5.2.2. notifying and Inviting partners;
 - 5.2.3. what evidence is required;
 - 5.2.4. key questions to be asked;
 - 5.2.5. timescales; and
 - 5.2.6. the aims and objectives for the meeting.
- 5.3. In a similar fashion to the call-in process, at a meeting, the Committee are to come to one of the following conclusions:
 - 5.3.1. take no further action on the CCfA; or
 - 5.3.2. refer the CCfA to the appropriate Council body or Partner Organisations with recommendations; or

- 5.3.3. carry out an overview and scrutiny investigation.
- 5.4. Any report and recommendations arising from the Overview and Scrutiny Committee meeting will be made available and sent to all agencies involved with the CCfA within 5 working days of the meeting.
In the case of a crime and disorder matter, reports and recommendations are to be sent to the responsible authorities as listed in the Police and Justice Act 2006.

PLANNING COMMITTEE PROCEDURE RULES

1. INTRODUCTION

- 1.1. These rules set out the Council's arrangements for the Planning Committee where they differ from those set out in the rules applicable to Committees/Sub-Committee and Boards.

2. ATTENDANCE

- 2.1 Members are expected to be in attendance for the duration of the meeting unless there are exceptional circumstances which are agreed with the Chairman.

3. PROCEDURE AT MEETINGS

- 3.1. After the standing items, including declarations of interests and lobbying, the presentation of applications for the Committee's consideration will be carried out in accordance with the process laid out below:

- i) Chairman introduces item.
- ii) Officer presents the report on the application.
- iii) Speakers, who have previously registered to do so, are invited to address the Committee for a maximum of three minutes each in the following order:
 - Members of the public subject to a maximum of four objectors followed by a maximum of four supporters;
 - Parish/Town Council representatives;
 - Borough or ward members who are not also Committee members;
 - Any member (whether a Committee member or not) who has a prejudicial interest and has exercised their right to speak under Section 12(2) of the Code of Conduct and who will be obliged to leave the meeting immediately thereafter.

Additional speakers will only be allowed exceptionally at the discretion of the Chairman. Members may address questions of clarification to officers only (rather than speakers) at the conclusion of the representations.

- iv) Officers to make any points of clarification or correction arising from the presentations made by members of the public, parish/town representatives or borough/ward members.

- v) Questions from any Committee member to officers.

- vi) Discussion of the application by Committee members.

- vii) Voting.

4. DEFERRAL OF DECISIONS

4.1 If an application is deferred for any reason to a subsequent Planning Committee meeting, consideration of the item will recommence at the stage of the procedure at which it was deferred, unless there is a material change to the officer recommendation, in which case the full procedure detailed in clause 3 will be followed.

5. PROCEDURE IN REFERRING APPLICATIONS TO COMMITTEE (CALL IN)

5.1. The Constitution provides at Paragraph 11 in Table 3, of Annex C of Part 3 that any member may “call in” any planning application – i.e, require that an application be determined by the Planning Committee rather than by an officer under delegated authority. Members should exercise discretion in using this power and should only call in applications where there is a material planning issue which warrants consideration by the Planning Committee, or where there is evidence of local concern that warrants consideration by the Planning Committee. Any request to call in an application should be made in writing to the Head of Planning Services.

5.2. Where a member has a Disclosable Pecuniary Interest or an Other Significant Interest in a planning application which he or she wishes to call-in in accordance with 3.10.1 above he or she will first need to obtain a dispensation to do so. A dispensation can be obtained from the Monitoring Officer, in consultation with the Chairman (or in his/her absence the Vice Chairman) of the Audit and Governance Committee and the Head of Planning Services.

6. PLANNING APPEALS

6.1. Applicants whose applications are refused have a right of appeal. Defending such appeals can be a complex technical, professional process. Where hearings or public inquiries are involved planning officers will carry out a scoping exercise to identify the number and nature of the expert witnesses needed to defend the Council’s decision. Where particularly large scale or controversial cases are concerned the results of this will be reported to Management Board for a decision on allocation of corporate resources.

6.2. The rules governing public inquiries require the Council and the appellants to agree a “Statement of Common Ground”. This document is designed to assist the inquiry by setting out those matters not in dispute. Planning officers are responsible for discussions on the Statement of Common Ground, seeking advice from Legal Services as appropriate. The Chairman of the relevant Planning Committee should have sight of the draft document at an appropriate stage of its preparation, and should be briefed on any significant issues emerging.

6.3. Where members wish to support those appealing against the Council’s decision, they should have regard to the advice in the Council’s Protocol on Member/Officer Relations.

6.4. Members wishing to participate in a hearing or public inquiry, either in support of or against the Council’s position, should inform the Monitoring Officer. The Head of Planning Services, in consultation with the Monitoring Officer and/or Counsel, will determine whether the member should be called as a witness on behalf of the Council or, alternatively, should appear independently. It will not generally be appropriate to call members of the Council to appear as witnesses in a hearing or

inquiry as appeals are usually concerned principally with the interpretation of planning policy and law, and as such are primarily the provenance of qualified planners or other appropriately professionally qualified experts.

FINANCIAL PROCEDURE RULES

1. INTRODUCTION

1.1 What are Financial Procedure Rules?

1.1.1 Section 151 of the Local Government Act 1972 requires every local authority to make arrangements for the proper administration of their financial affairs and requires one officer to be nominated to take responsibility for the administration of those affairs. The Section 151 Officer is usually the local authority's treasurer and must be a qualified accountant belonging to one of the recognised chartered accountancy bodies. The Section 151 Officer has a number of statutory duties, including the duty to report any unlawful financial activity involving the authority (past, present or proposed) or failure to set or keep to a balanced budget. The Section 151 Officer also has a number of statutory powers in order to allow this role to be carried out, such as the right to insist that the local authority makes sufficient financial provision for the cost of internal audit.

1.1.2 Financial Procedures provide the framework for managing the Council's financial affairs. Financial Procedure Rules are supported by more detailed Financial Management Standards which set out how the procedures will be implemented.

1.1.3 The procedures identify the financial responsibilities of Full Council, the Cabinet and officers.

1.1.4 To avoid the need for regular amendment due to changes in post

(a) titles generic terms are included for officers as follows:

(b) The term, "Chief Finance Officer," refers to the Section 151 Officer who is currently the Director of Finance, Policy and Development.

(c) For external and taxation bodies the term "Finance Director" refers to the Director of Finance, Policy and Development.

(d) The term, "Chief Officers", refers to the Council's Chief Executive the Directors and the Chief Finance Officer.

(e) The term, "Monitoring Officer", is currently the Head of Legal Partnership. The term, "Chief Internal Auditor", refers to the Internal Audit Manager.

1.2 Why are they important?

1.2.1 To conduct its business effectively, the Council needs to ensure that sound financial management arrangements are in place and that they are strictly adhered to in practice. Part of this process is the establishment of Financial Procedures which set out the financial responsibilities of the Council.

These procedures have been devised as a control to help the Council manage its financial matters properly in compliance with all necessary requirements.

- 1.2.2 Good, sound financial management is a key element of Corporate Governance which helps to ensure that the Council is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner.
- 1.2.3 Good financial management secures value for money, controls spending, ensures due probity of transactions and allows decisions to be informed by accurate accounting information.
- 1.2.4 Good financial management requires secure and reliable records and systems to process transactions and information and substantiate the effective use of public money.
- 1.2.5 Financial Procedures should not be seen in isolation, but rather as part of the overall regulatory framework of the Council as set out in this Constitution.

1.3 Who do Financial Procedures apply to?

- 1.3.1 Financial Procedures apply to every member and officer of the Council and anyone acting on its behalf. Members and officers have a general responsibility for taking reasonable action to provide for the security and use of the resources and assets under their control, and for ensuring that the use of such resources and assets is legal, is consistent with Council policies and priorities, is properly authorised, provides value for money and achieves best value.
- 1.3.2 These Financial Procedures shall apply in relation to any partnership for which the Council is the accountable body, unless the Council expressly agrees otherwise.
- 1.3.3 Failure to observe Financial Procedures may result in action under the Council's disciplinary procedures.

1.4 Who is responsible for ensuring that they are applied?

- 1.4.1 Chief Officers and Heads of Service are ultimately responsible to the Council for ensuring that Financial Procedures are applied and observed by his/her staff and contractors providing services on the Council's behalf and for reporting to the Chief Finance Officer any known or suspected breaches of the procedures.
- 1.4.2 The Chief Finance Officer is responsible for maintaining a continuous review of the Financial Procedures and submitting any additions or changes necessary to the Council for approval. The Chief Finance Officer is also responsible for reporting, where appropriate, breaches of the Financial Procedures to the Council and/or to the Executive Members.
- 1.4.3 The Chief Finance Officer is responsible for issuing advice and guidance to underpin the Financial Procedures which members, Chief Officers and others acting on behalf of the Council are required to follow.
- 1.4.4 Any person charged with the use or care of the Council's resources and assets should inform him or herself of the Council's requirements under

these Financial Procedure Rules. If anyone is in any doubt as to their obligations, then they should seek advice.

- 1.4.5 Where any Chief Officer considers that complying with Financial Procedures in a particular situation might conflict with the achievement of value for money or the principles of Best Value or the best interests of the Council, he/she shall raise the issue with the Chief Finance Officer who will, if he/she considers necessary and appropriate, seek formal approval from the Council for a specific waiver of the procedures, or an amendment to the procedures themselves.

2. FINANCIAL MANAGEMENT – GENERAL ROLES AND RESPONSIBILITIES

2.1 The Role of Full Council

The Council is responsible for:

- 2.1.1 The adoption and revision of these Financial Procedure Rules;
- 2.1.2 The determination of the Budget and Policy Framework Procedure Rules within which the Cabinet works;
- 2.1.3 Providing the Chief Finance Officer with sufficient staff, accommodation and other resources to carry out his or her duties; and
- 2.1.4 Approving and monitoring compliance with the Council's overall framework of accountability and control.

2.2 The Role of the Cabinet

The Cabinet is responsible for:

- 2.2.1 controlling the Council's financial resources;
- 2.2.2 proposing the Budget and Policy Framework to Full Council; and
- 2.2.3 for discharging executive functions in accordance with the Budget and Policy Framework.

2.3 The Role of the Chief Finance Officer

- 2.3.1 The Chief Finance Officer is accountable to the Chief Executive and the Council and has statutory duties that provide overall responsibility for the financial administration and stewardship of the Council. This statutory responsibility cannot be overridden. These statutory duties arise from:

- (a) Section 151 of the Local Government Act 1972
- (b) The Local Government Finance Act 1988
- (c) The Local Government and Housing Act 1989
- (d) The Accounts and Audit Regulations 2011.

- 2.3.2 The Chief Finance Officer is the Council's professional adviser on financial matters and is responsible for:
- (a) The proper administration of the Council's financial affairs.
 - (b) Maintaining a continuous review of Financial Procedures and submitting any additions or changes as necessary to Full Council for approval.
 - (c) Annually reviewing and updating, and monitoring compliance with financial management standards.
 - (d) Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management.
 - (e) Providing training for members and officers on Financial Procedures and Financial Management Standards.
 - (f) Determining accounting policies and ensuring that they are applied consistently.
 - (g) Determining accounting procedures and records of the Council.
 - (h) Reporting, where appropriate, breaches of the Financial Procedures to the Council and/or Cabinet.
 - (i) Preparing and monitoring the revenue budget, capital programme and Medium Term Financial Plan.
 - (j) Ensuring the provision of an effective Internal Audit Function.
 - (k) Ensuring the provision of an effective Treasury Management Function.
 - (l) Advising on risk management.
 - (m) Ensuring the Council complies with the CIPFA Prudential Code for Capital Finance in Local Authorities.
 - (n) Ensuring that Council spending plans and council tax calculations, identified in the medium term financial plan, are based upon robust estimates.
 - (o) Ensuring that the level of Council reserves is adequate to meet the known financial risks facing the Council over the medium term.
 - (p) Ensuring that the annual Statement of Accounts is prepared in accordance with the Code of Practice on Local Authority Accounting in the UK (CIPFA/LASAAC).
 - (q) Ensuring that financial information is available to enable accurate and timely monitoring and reporting of comparisons of national and local financial performance indicators.
 - (r) Ensuring that proper professional practices, standards and ethics are adhered to.

- (s) Acting as head of profession in relation to the standards, performance and development of finance staff including the training and professional development of all staff employed in posts designated as requiring a qualified accountant, accounting technician, or auditor, wherever located.
- (t) The appointment of all finance staff and will be consulted on any proposal to create or delete a post requiring such a qualification for appointment.

2.3.3 Section 114 of the Local Government Finance Act 1988 requires the Chief Finance Officer to report to Full Council and to the External Auditors if the Council or one of its officers:

- (a) Has made, or is about to make, a decision which involves incurring expenditure which is unlawful.
- (b) Has taken or is about to take, unlawful action which has resulted or would result in a loss or deficiency to the Council.
- (c) Is about to make an unlawful entry in the Council's accounts.
- (d) If expenditure in the year (including forecasted expenditure) is likely to exceed resources (including borrowing).

2.3.4 Section 114 of the 1988 Act also requires:

- (a) The Chief Finance Officer to nominate a properly qualified member of staff to deputise should he or she be unable to perform the duties under section 114 personally.
- (b) The Council to provide the Chief Finance Officer with sufficient staff, accommodation and other resources, including legal advice where necessary, to carry out the duties under section 114, as determined by the Chief Finance Officer.

2.3.5 The Chief Finance Officer,

- (a) is required to approve all financial procedures, records, systems and accounts throughout the Council which are necessary to ensure that the tasks defined in these procedures are properly carried out. The Council will also ensure that the Chief Finance Officer is consulted and given the opportunity to advise upon all financial management arrangements and notes of detailed advice and guidance on financial systems and procedures necessary to ensure a satisfactory standard of accuracy, reliability, probity and regularity.
- (b) shall be given access to any information as is necessary to comply with his/her statutory duties and with the requirements and instructions of the Council.
- (c) shall be entitled to attend and report on financial matters directly to the Council, the Cabinet, and any committees or working groups the Council may establish.

- (d) shall be sent prior notice of all meetings of the Cabinet and all Council bodies together with full agendas and reports and shall have authority to attend all meetings and take part in the discussion if he/she so desires

2.4 The Role of Chief Officers

- 2.4.1 Chief Officers are each accountable to the Council for the financial management and administration of those services and activities allocated to them in accordance with Council policy.
- 2.4.2 Chief Officers are responsible for:
 - (a) Ensuring that adequate and effective systems of internal control are operated to ensure the accuracy, legitimacy and proper processing of transactions and the management of activities, having regard to advice and guidance from the Chief Finance Officer.
 - (b) Ensuring that Cabinet members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Chief Finance Officer.
 - (c) Consulting with the Chief Finance Officer in seeking approval regarding any matters which may affect the Council's finances materially, before any commitments are incurred.
 - (d) Consulting with each other on any issue with corporate financial implications before submitting policy options or recommendations to Members.
 - (e) Inform immediately the Chief Finance Officer of failures of financial control resulting in additional expenditure or liability, or loss of income or assets.

3. FINANCIAL PLANNING

3.1 Strategic Planning

- 3.1.1 Full Council is responsible for agreeing the Council's Budget and Policy Framework which will be proposed by Cabinet.
- 3.1.2 The preparation of the medium term financial plan is part of the strategic policy framework of the Council and aims to ensure that the Council's spending plans are prudent, affordable, and sustainable and reflect Council priorities.
- 3.1.3 Full Council is responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework and for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework. Under the Constitution, the Monitoring Officer has a duty to advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.
- 3.1.4 Chief Officers are responsible for the preparation and monitoring of service improvement plans within their service areas. Service improvement plans

should align with Council values and priorities and be consistent with and based upon the budget allocated by the Council to the service.

3.2 Budget Preparation

- 3.2.1 The Cabinet, in consultation with the Chief Finance Officer is responsible for determining the general Budget strategy and issuing annual guidelines to members and Chief Officers on:
- (a) Preparing a detailed revenue Budget for the following year
 - (b) Preparing the medium term financial plan (5 yrs)
 - (c) Preparing the capital programme
 - (d) The timetable for preparing and agreeing the Council's revenue and capital Budget.
- 3.2.2 The guidelines will take account of:
- (a) Council priorities as reflected in the Council plan
 - (b) Spending pressures
 - (c) What future funding is available
 - (d) What level of reserves are available
 - (e) The affordability, sustainability and prudence of capital investment plans
 - (f) Legal requirements
 - (g) Value for money and other relevant government guidelines
 - (h) Other internal policy documents
 - (i) Cross-cutting issues (where relevant).
- 3.2.3 The Chief Finance Officer is responsible for developing and maintaining a resource allocation process that ensures the consideration of Full Council's policy framework.
- 3.2.4 The Chief Finance Officer is responsible for ensuring that a detailed revenue budget is prepared on an annual basis and a general revenue plan on a five yearly basis (medium term financial plan) for consideration by Cabinet before submission to Full Council.
- 3.2.5 The Chief Finance Officer is responsible for ensuring a capital programme is prepared on an annual basis for consideration by Cabinet before submission to Full Council.
- 3.2.6 It is the responsibility of the Chief Finance Officer to advise the Cabinet and/or Full Council on prudent levels of reserves for the Council.

- 3.2.7 Chief Officers are responsible for ensuring that budget estimates are prepared in accordance with guidance issued by Cabinet and reflect agreed service performance plans.

3.3 **Budget Approval**

- 3.3.1 Full Council is responsible for agreeing the Council's Budget (including Prudential Indicators) and Policy Framework. The policy framework comprises of a number of statutory plans and strategies.
- 3.3.2 The Council's revenue and capital budget will be proposed by the Cabinet, (on the advice of the Chief Finance Officer), and will be approved by Full Council.
- 3.3.3 Full Council may amend the proposed budget or ask the Cabinet to reconsider it before approving it.

3.4 **Budget Transfers**

- 3.4.1 During the year the Cabinet and Chief Officers may need to transfer budgets from one service area to another to reflect changed service needs or priorities in order to deliver the budget policy framework within the financial limits set by the Council.
- 3.4.2 Full Council is responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework and for determining the circumstances in which a decision will be deemed to be contrary to the Budget or Policy Framework. Decisions should be referred to Full council by the Monitoring Officer.
- 3.4.3 Full Council is responsible for setting the level at which the Cabinet may reallocate budget funds from service to another.
- 3.4.4 Full Council is also responsible for agreeing procedures for carrying forward under and overspendings on budget headings at each financial year end.
- 3.4.5 The following limits have been approved for the authorisation of budget transfers:

Heads of Service

- (a) Up to £250,000 between any one budget to another for which they are responsible, during the financial year after notification to the Head of Finance.

Chief Financial Officer

- (b) Up to £1 million between any budget to another, during the financial year with written approval of the Chief Finance Officer.

Cabinet

- (c) Individual transfers between any budget to another in excess of £1 million or more, during the financial year following approval of the Chief Finance

Officer and reported to Cabinet in the next scheduled quarterly financial report.

- 3.4.6 The Chief Finance Officer will use his delegated authority to authorise the release of funds from usable reserves.
- 3.4.7 It is the responsibility of the Head of Service to:
- (a) Notify the Chief Finance Officer of any budget transfer agreed under delegated powers as set out above;
 - (b) Give prior notice to budget holders of any budget transfer affecting their service area and provide an explanation of the reason for the budget transfer.
- 3.4.8 Council approval is required for any budget transfer, of whatever amount, where the proposed transfer will result in a change of policy, the introduction of a new Service or the termination of an existing Service.
- 3.4.9 A Capital budget cannot be transferred to a revenue budget head.

3.5 Budget Monitoring and the Control of Income and Expenditure

- 3.5.1 The Chief Finance Officer is responsible for:
- (a) Developing an effective framework of budgetary management and control.
 - (b) Providing appropriate financial information to enable budgets to be monitored effectively.
 - (c) Reporting to the Cabinet and the Overview and Scrutiny Committee (when requested) on the overall Council budget monitoring position on a quarterly basis.
 - (d) All payments to employees, members and creditors.
 - (e) Maintaining the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.
 - (f) Advising Chief Officers on all taxation issues that affect the Council.
 - (g) Ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts.
 - (h) Agreeing arrangements for the collection of income due to the Council.
 - (i) Agreeing banking, borrowing and other credit requirements e.g. leasing.
 - (j) Agreeing the write-off of bad debts in accordance with the Council's Debt Recovery Policy.
- 3.5.2 The Cabinet is responsible for approving contractual arrangements for any work for third parties or external bodies unless the responsible Chief Officer

is authorised in this respect under the Scheme of Delegations in this Constitution.

3.5.3 It is the responsibility of Chief Officers to:

- (a) Control income and expenditure within their service area.
- (b) Monitor performance in conjunction with the budget taking account of financial information provided by the Chief Finance Officer.
- (c) Report on spending variances within their own areas.
- (d) Take any corrective action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer to any problems

3.6 **Reporting Council Spending at Year End**

3.6.1 The Audit and Governance Committee is responsible for approving the annual un-audited Statement of Accounts.

3.6.2 The Chief Finance Office is responsible for:

- (a) Publishing a timetable for the closure of the accounts annually
- (b) Ensuring that the Council's annual Statement of Accounts is prepared in accordance with CIPFA/LASAAC, the Accounts and Audit Regulations 2011 and any other relevant guidelines.

3.6.3 It is the responsibility of Chief Officers to ensure that arrangements are put in place each year to deliver the Council's closure timetable.

3.7 **Use of Council Reserves**

3.7.1 The Chief Finance Officer is responsible for advising the Cabinet and/or the Full Council on levels of reserves for the Council. The advice will be based upon an annual risk assessment of the prudent levels of reserves the Council should maintain.

3.7.2 The Chief Finance Officer will manage the Council reserves in accordance with decisions taken by the Cabinet and Full Council.

4. **RISK MANAGEMENT AND CONTROL OF RESOURCES**

4.1 **Risk Management**

4.1.1 It is essential that robust, integrated systems are developed and maintained for identifying, evaluating and managing all significant Strategic and Operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services.

4.1.2 The Cabinet is responsible for approving the Council's risk management policy statement and strategy and for reviewing the effectiveness of risk management.

- 4.1.3 The Chief Finance Officer is responsible for preparing the Council's risk management policy statement and for promoting it throughout the Council and for advising the Cabinet on proper insurance cover for material risks where appropriate.
- 4.1.4 The Chief Officers are responsible for reviewing strategic risks and reporting progress on the management of strategic risk to the Cabinet.
- 4.1.5 It is the responsibility of Chief Officers to ensure there are regular reviews of risk within their areas of responsibility having regard to advice from the Council's Corporate Risk Manager and other specialist officers (e.g. crime prevention, fire prevention, Health & Safety).

4.2 **Internal Control**

- 4.2.1 Internal control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economic, efficient and effective use of resources and that the Council's assets and interests are safeguarded.
- 4.2.2 The Chief Internal Auditor is responsible for advising on effective systems of internal control. Effective systems of internal control should ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should also ensure that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use.
- 4.2.3 It is the responsibility of Chief Officers to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, value for money, effective use of resources and achieving their financial performance targets.
- 4.2.4 The Council is required to provide an Annual Governance Statement in accordance with the Accounts and Audit Regulations 2011. As part of this statement, the Chief Executive and the Leader of the Council are required to comment on the effectiveness of the entire internal control environment within the Council as this is a key indicator of good governance.

4.3 **Insurance**

- 4.3.1 Insurance provision is a way of managing risk.
- 4.3.2 The Chief Finance Officer is responsible for:
 - (a) Effecting insurances falling with the framework approved by the Cabinet and dealing with all claims in consultation with other Chief Officers where necessary.
 - (b) Reviewing, at least annually, all insurances in consultation with Chief Officers where necessary.
- 4.3.3 It is the responsibility of Chief Officers to:

- (a) Advise the Chief Finance Officer of all new risks, properties, vehicles or potential liabilities for which insurance may be required; and of any changes affecting existing risks or insurance cover required.
- (b) Notify the Chief Finance Officer in writing without delay of any loss, liability or damage or any event likely to lead to a claim, and shall provide such information and explanations required by the Chief Finance Officer or the Council's insurers
- (c) Consult with the Monitoring Officer on the terms of any indemnity which they are requested to give on behalf of the Council.
- (d) Ensure that employees, or anyone covered by the Council's insurances, do not admit liability or make any offer to pay compensation that may prejudice the assessment of liability in respect of any insurance claim.

4.4 Audit Requirements

- 4.4.1 The requirement for an internal audit function for local authorities is implied by section 151 of the Local Government Act 1972, and section 112 of the Local Government Finance Act 1988, which require that authorities "make arrangements for the proper administration of their financial affairs". The Accounts and Audit Regulations 2011 require that a, "relevant body must undertake an adequate and effective internal audit of its accounting records and of its systems of internal control" and must "at least once in each year conduct a review of the effectiveness of its internal audit."
- 4.4.2 The Chief Finance Officer, as determined by the Council, will ensure that the Council has appropriate arrangements in place to maintain an adequate and effective internal audit.
- 4.4.3 The strategy and terms of reference for Internal Audit are detailed in the Council's Internal Audit Charter which is approved and reviewed by the Audit and Governance Committee.
- 4.4.4 An external auditor is appointed to each local authority. The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998. They are also required to follow the current Audit Code of Practice. The duties include reviewing the work of the internal auditors.
- 4.4.5 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.
- 4.4.6 The Chief Finance Officer is responsible for reporting to Audit and Governance Committee and/or Cabinet, where appropriate, the findings of these inspections and taking relevant action to implement recommendations and action required.

4.5 Preventing Fraud and Corruption

- 4.5.1 The Council will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Council.

- 4.5.2 The Chief Finance Officer is responsible for the development maintenance and review of an anti-fraud and anti-corruption policy.
- 4.5.3 It is the responsibility of Chief Officers to promote the Anti-fraud and Anti corruption policy within their Service areas and ensure that all suspected irregularities are reported to the Chief Internal Auditor.
- 4.5.4 The Chief Internal Auditor will take whatever steps are considered necessary, on behalf of the Chief Finance Officer, to investigate and report upon the matter. Chief Officers are responsible for taking any appropriate action to prevent further loss and to secure records and documentation against removal or alteration.

4.6 Use of and Disposal of Assets

- 4.6.1 The Chief Finance Officer is responsible for issuing procedures to safeguard the use and disposal of Council assets.
- 4.6.2 Authority from the s151 Officer is required prior to commencing discussions with third parties concerning potential use (other than lettings), works, disposal or acquisition of Council assets.
- 4.6.3 Chief Officers are responsible for ensuring that adequate and effective arrangements are in place for the care and custody all assets within their Service area and ensuring that assets are disposed of in accordance with procedures approved by the Chief Finance Officer.
- 4.6.4 All contracts for the disposal or acquisition of land and buildings are to be approved by the Section 151 Officer in consultation with the Monitoring Officer and the Portfolio Holder for Finance and Governance.
- 4.6.5 All contracts for the disposal of assets other than land and buildings, including intangible assets, where the consideration is more than £50,000, are to be approved by the Section 151 Officer and the Portfolio Holder for Finance and Governance.

4.7 Treasury Management

- 4.7.1 The Council has adopted the key recommendations of CIPFA's Treasury Management in the Public Service Code of Practice.
- 4.7.2 Accordingly, Full Council is responsible for approving a Treasury Management Policy Statement, on an annual basis, stating the policies and objectives of its treasury management activities.
- 4.7.3 Full Council is also responsible for approving Treasury Management Practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- 4.7.4 The Council will receive reports on its Treasury Management policies practices and activities, including as a minimum, an annual strategy and plan for the coming financial year at or before the start of each financial year and an annual report after its close, in the form prescribed in the TMPs.

- 4.7.5 The Council has delegated its responsibility for the implementation and monitoring of its Treasury Management policies and practices to the Cabinet.
- 4.7.6 Responsibility for the execution and administration of its Treasury Management decisions, including decisions on borrowing, investment and financing, have been delegated to the Chief Finance Officer, who will act in accordance with the Council's policy statements and TMPs.

4.8 **Banking**

- 4.8.1 All arrangements concerning banking services, including the opening, closing and operation of the Council's bank accounts shall be made solely upon direction of the Chief Finance Officer.
- 4.8.2 The Chief Finance Officer is responsible for the reconciliation of the Council's bank accounts with the Council's financial accounts.
- 4.8.3 Chief Officers are responsible for ensuring that all banking arrangements determined by the Chief Finance Office are observed and to advise him or her of any changes in their Services that may require a change in these arrangements.

4.9 **Income Collection**

- 4.9.1 The Chief Finance Officer is responsible for approving all methods of income collection, records and systems.
- 4.9.2 The Council has a statutory responsibility to conform to the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 (as amended).
- 4.9.3 Accordingly, the Cabinet is responsible for the approving the Council's Money Laundering Policy.
- 4.9.4 Responsibility for the implementation and administration of the Council's Money Laundering Policy has been delegated to the Chief Finance Officer who is responsible for nominating an officer (and deputy) to act as the Council's Money Laundering Reporting Officer.
- 4.9.5 Chief Officers are responsible for:
- (a) Ensuring all income is held securely
 - (b) Ensuring for compliance with income and banking arrangements specified by the Chief Finance Officer
 - (c) In consultation with the Chief Finance Officer reviewing fees and charges, at least annually.

4.10 **External Funding**

- 4.10.1 Chief Officers are responsible for ensuring that any bids for external funding are made in consultation with the Chief Finance Officer.

- 4.10.2 Chief Officers must ensure that any project to be funded by external funding does not commence until proper approval has been obtained and the source of external funding confirmed.
- 4.10.3 The Chief Finance Officer is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts. Chief Officers are responsible for providing all necessary information to enable this to be achieved.

4.11 **Debt Collection**

- 4.11.1 The Cabinet is responsible for approving the Council's debt recovery policy.
- 4.11.2 The Chief Finance Officer is responsible for maintaining records of debts and the implementation of the Council's debt recovery policy.
- 4.11.3 Chief Officers are responsible for:
- (a) Ensuring effective systems are in place to allow sums due to the Council to be easily identified
 - (b) Ensuring debtor accounts are raised accurately and promptly and that adequate records are maintained to support the raising of the debt and any recovery action taken.
 - (c) Assisting in the collection of debt by providing any further information necessary to pursue the debt or monitoring debts on the Council's behalf as requested by the Chief Finance Officer.
 - (d) Ensuring that the appropriate approval, as specified in the debt recovery policy, is obtained to write off debts.

5. **ADVANCE ACCOUNTS (IMPRESTS) AND CASH FLOATS (PETTY CASH)**

- 5.1 Advance Accounts/Cash Floats are necessary for the purposes of defraying petty cash and other expenses.
- 5.2 The Section 151 Officer is to provide such advance accounts as he considers appropriate for such officers of the Council as may need them for the purposes of defraying petty cash and other expenses. Such accounts are to be maintained in the imprest delegated authorities system.
- 5.3 Where he considers it appropriate, the Section 151 Officer is to open an (advance) account with the Council's bankers for use by the imprest holder who is not to cause such account to be overdrawn. There is to be a standing instruction to the Council's bankers that there is no authority for such an account to be overdrawn.
- 5.4 No income received on behalf of the Council is to be paid into an advance account but must be banked or paid to the authority as provided elsewhere in these Finance Procedure Rules.
- 5.5 Payments are to be limited to items of expenditure as defined from time to time

by the Section 151 Officer and be supported by a receipted voucher to the extent that the Section 151 Officer may require.

- 5.6 An officer responsible for an advance account is, if so requested, to provide the Section 151 Officer with a certificate as to the state of his imprest advance.
- 5.7 The Section 151 Officer is to provide such Cash Floats as he considers appropriate for such officers of the Council as may need them.
- 5.8 The Section 151 Officer may, as he considers it appropriate, inspect the accounts for, and money being held, in cash floats or petty cash.
- 5.9 Prior to leaving the employment of the Council or otherwise ceasing to be entitled to hold an imprest advance or cash float an officer is to account to the Section 151 Officer for the amount advanced.

6. WRITE OFF/EXCUSAL OF DEBTS

- 6.1 The administration of debts takes time and money, which it is sometimes advisable to avoid.
- 6.2 Excusal of debts due to the Council are not to be granted other than by the Cabinet upon the recommendation of the Section 151 Officer.
- 6.3 General income debts not exceeding £10,000 may be written off by the Head of Finance, Procurement and Parking. In the case of benefit overpayments, council tax and business rate debts not exceeding £10,000 may be written off by the Head of Revenues and Benefits Shared Services. All types of debt and credits not exceeding £25,000 may be written off by the Section 151 Officer. All types of debts and credits from £25,000 to, but not exceeding, £250,000, may be written off by the Portfolio Holder on the recommendation of the Section 151 Officer.
- 6.4 Debts may be sold pursuant to such terms as the Section 151 Officer deems reasonable.
- 6.5 A summary of debts written off by the Section 151 Officer are to be reported to Cabinet on a regular basis.

7. PLANNING OBLIGATION AGREEMENT AND PLANNING CONDITIONS' INCOME

- 7.1 The Council are required to ensure that monies due to it pursuant to planning obligation agreements are paid and that such monies are used for the purpose specified.
- 7.2 The Director of Finance, Planning and Development is to maintain a record of the amounts which may be due under the planning obligation agreements and planning conditions, and details of how such sums have been spent and is to report:
 - 7.1.1 at least twice yearly, to the Planning Committee on the current position; and
 - 7.1.2 to Kent County Council in respect of sums due to Kent County Council, at such intervals as may be agreed with them from time to time.

8. ORDERS FOR WORKS, GOODS AND SERVICES

An Order for work or goods is a contract and must comply with the Council's Contract Procedure Rules therefore:

- 8.1 All orders for work, goods and services are to be in a form approved by the Section 151 Officer and the Monitoring Officer;
- 8.2 The Head of Service is responsible for all official orders issued from his or her department; the names of all persons authorised to raise orders on his or her behalf, together with specimen signatures, are to be notified to the Section 151 Officer;
- 8.3 An official order is to be issued for all work, goods and services unless a formal contract is to be prepared, or an official order would be inappropriate, e.g. periodical payments, petty cash purchases or such other exceptions as may be approved by the Section 151 Officer.
- 8.4 Copies of all orders issued are to be retained by the Department concerned.

9. PAYMENTS UNDER CONTRACTS (FOR BUILDING, ENGINEERING OR OTHER CONSTRUCTIONAL WORK)

- 9.1 Interim and final payments should not be made for goods or services which have not been authorised.
- 9.2 Payments should not be made for goods or services which have not been received, examined or approved or which have not met the required standard.
- 9.3 Care must be taken to comply with the Council's Contract Procedure Rules in dealing with variations to a contract.
- 9.4 Payments on account of the contract sum will be made, within the time specified in the contract, by the Section 151 Officer upon authorised certification by the Head of Service responsible for supervising the contract.
- 9.5 The final certificate under any contract, except for contracts where the contract value is less than £100,000, is to be issued only after an audit examination of the final account has been completed by the Section 151 Officer.
- 9.6 Contracts where the contract value is less than £100,000 are to be audited on a random basis unless such contracts are linked with other similar contracts which, taken together would exceed £100,000.
- 9.7 Any contract matter giving or anticipated to give rise to a claim for liquidated damages is to be reported to the relevant Portfolio Holder and the Section 151 Officer by the appropriate Head of Service and, if the Head of Service thinks it necessary a report is also to be submitted to the Cabinet.

10. PAYMENT OF ACCOUNTS

Payments should not be made for goods or services which have not been authorised properly.

- 10.1 Apart from petty cash and payments from advance (imprest) accounts, all are to be paid by cheque or by transfer or other instrument drawn on a Council's bank account(s) by the Section 151 Officer.
- 10.2 All accounts for payment are to be examined, verified and certified by the Head

of Service issuing the order. Such certification is to be in manuscript by, or on behalf of, the Head of Service who is to notify the Section 151 Officer of the names, with specimen signatures, of the officers authorised to sign. The arrangements are to be approved by the Section 151 Officer.

10.3 Before certifying an account, the certifying officer is to, unless the Section 151 Officer determines otherwise, satisfy him or herself that:

10.3.1 the work, goods or services to which the account relates have been received, carried out, examined and approved;

10.3.2 the prices, extensions, calculations, discounts, other allowances and credits are correct;

10.3.3 the relevant expenditure has been properly incurred and is within, and charged to, the appropriate estimate provision;

10.3.4 appropriate entries have been made in inventories, stores, or other records as required; and

10.3.5 the account has not previously been passed for payment.

10.4 All accounts duly certified for payment are to be passed to the Section 151 Officer without delay and paid promptly by him or her after he or she has examined such accounts and received such information or explanation as he or she may require. As soon as practicable after 31 March each year, Heads of Service are to submit details of all unrecorded creditors as at 31 March to the Section 151 Officer in a form approved by him or her.

11. PAYMENT OF SALARIES, WAGES AND EXPENSES

Staff costs are the largest item of revenue expenditure for Council's services. It is therefore important that payments are accurate, timely, made only where they are due for services to the Council and accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for.

11.1 The payment of all salaries and wages will be made by the Section 151 Officer, or under arrangements approved and controlled by him or her.

11.2 For this purpose the responsible Head of Service or Monitoring Officer is to notify the Section 151 Officer of all matters affecting such payments, such as:

11.2.1 appointments, resignations or other such circumstances;

11.2.2 absence from duty for sickness or other reasons, apart from approved paid leave;

11.2.3 overtime, vehicle claims and other allowances; and

11.2.4 information necessary for tax, national insurance or superannuation purposes.

11.3 All time sheets and other pay documents are to be in a form approved by the

Section 151 Officer and be certified as to accuracy and chargeability by, or on behalf of, the Head of Service. The names of officers authorised to sign such records are to be passed to the Section 151 Officer together with specimen signatures.

12. PENSIONS, REDUNDANCY AND SEVERANCE PAYMENTS

It is important that payments are accurate, timely, made only where they are due for services to the Council and accord with individuals' conditions of employment.

It is also important that all payments are accurately and completely recorded and accounted for.

- 12.1 All payments in respect of early retirement, redundancy and other severance payments are to be calculated in accordance with the Council's approved policy and subject to review by Internal Audit.
- 12.2 All cases of efficiency retirement and early retirement due to redundancy at Principal Officer level and above will be approved by the Cabinet.
- 12.3 Early retirement due to redundancy at Senior Officer level and below will be certified by the Head of Service, Monitoring Officer and Section 151 Officer.
- 12.4 All ill-health retirements will be certified by the Monitoring Officer and relevant Head of Service.
- 12.5 The Section 151 Officer is to report to the Cabinet every 6 months on the payments made, including the costs of early retirement met by the pension fund, and relating to the employer's contribution rate to the fund.

13. PROPERTIES AND ESTATES

Proper systems ensure better management of the Council's property portfolio in the interests of the fulfilment of Corporate priorities so:

- 13.1 The Monitoring Officer will maintain a terrier of all properties owned by the Council (except dwellings provided under the Housing Acts), recording the purpose for which they are held, their location, extent and plan reference, purchase details and particulars of the nature of interest.
- 13.2 The Monitoring Officer will have custody of all title deeds and maintain them under secure arrangements.
- 13.3 The section 151 Officer will maintain an Asset register including a record of, inter alia, rent payable, particulars of tenancies granted, valuations and insurances for all properties owned, leased and rented by the Council.
- 13.4 No interest in land or part thereof shall be acquired, sold, leased or otherwise disposed of without the authority of the Council and subject to compliance with the procedure set out in the Contract Procedure Rules.

14. PROTECTION OF PRIVATE PROPERTY

To prevent or mitigate loss or damage to moveable property:

- 14.1 Heads of Service are to notify the Section 151 Officer, in such form as he or

she may require, of any case known to him or her where steps need to be taken to prevent or mitigate loss or damage to moveable property, and shall forward to the Section 151 Officer an itemised inventory in each case prepared in the presence of two officers; and

- 14.2 All valuables such as jewellery, watches and other small articles of a similar nature are, unless in any case otherwise decided by the Section 151 Officer, be deposited with him or her for safe keeping.

15. SECURITY

The Council holds assets in the form of property, computers, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register is a prerequisite for proper fixed asset accounting and sound asset management.

- 15.1 Each Head of Service is responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash etc under his or her control. He or she is to consult the Section 151 Officer in any case where security is considered to be defective or where it is considered that special security arrangements may be needed.
- 15.2 Maximum limits for cash holding will be agreed with the Section 151 Officer and are not to be exceeded without his or her express permission.
- 15.3 The Head of Service responsible for custody of keys to safes and similar receptacles is to make appropriate arrangements for their security.
- 15.4 Each Head of Service is responsible for maintaining proper security and privacy with respects to information held in the computer installation or for its use and compliance with the requirements of Data Protection legislation.
- 15.5 Each Head of Service is responsible for ensuring compliance with the Council's IT Security Policy including procedures for virus checking and use of the Internet.

16. MEMBERS' AND OFFICERS' ALLOWANCES

It is important that all payments are accurately and completely recorded and accounted for and that members' allowances are authorised in accordance with the scheme adopted by the Council.

- 16.1 All certified claims for payment of car allowances, subsistence allowances, travelling and incidental expenses is to be in a form approved by the Section 151 Officer. They are to be made up to a specified day of each month and submitted within seven days thereof.
- 16.2 Payments to members, including independent and co-opted members of the Council or its Boards and Committees who are entitled to claim allowances will be made by the Section 151 Officer in accordance with the Council's approved scheme and the payment instructions of the Chief Executive. All claims for a financial year are to be submitted within one month of 31 March.

- 16.3 The certification by or on behalf of the Head of Service is to be taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.

17. FINANCIAL LIMITS

- 17.1 Financial Limits enable the Section 151 Officer to manage the Council's budgets more effectively in the interests of furthering Corporate priorities.
- 17.2 The Section 151 Officer must review the financial limits, as set out in these Financial Procedure Rules, annually in the light of changes in the value of money and must report any recommended alterations to the next available meeting of the Audit and Governance Committee for their consideration and submitting recommendations to the Council.

18. PARTNERSHIPS

- 18.1 The Cabinet is the focus for forming partnerships with other local, public, private, voluntary and community sector organisations. The Cabinet is responsible for approving any delegations of its powers, to address local needs.
- 18.2 The Council or the Cabinet can delegate its functions, including those relating to partnerships to officers. Details are set out in the Scheme of Delegation that forms part of this Constitution. Where its functions are delegated, the Cabinet remains accountable for them to the full Council.
- 18.3 The Chief Executive or the appropriate chief officer or senior officer nominated by the chief officer may represent the Council on partnership and external bodies, in accordance with the respective decisions of the Council and the Cabinet.
- 18.4 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct in partnerships that apply throughout the Council.
- 18.5 The Chief Finance Officer is responsible for ensuring that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. He or she must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. He or she must also ensure that the risks have been fully appraised before agreements are entered into with external bodies.
- 18.6 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies

19. AMENDMENT

The Cabinet may from time to time recommend that these Financial Procedure Rules should be added to, varied or revoked. Any motion to change them, when proposed and seconded, stand referred without further discussion to the next meeting of the Audit and Governance Committee for consideration before they make an appropriate recommendation to Council.

20. FINANCIAL PROCEDURE RULES TO BE GIVEN TO MEMBERS, DIRECTORS AND HEADS OF SERVICE

- 20.1 A copy of these Financial Procedure Rules must be made available electronically to each member of the Council by the Chief Executive upon delivery to him/her of the member's Declaration of Acceptance of Office on the member first being elected/appointed to the Council and be notified electronically to all members each time these Financial Procedure Rules are added to or varied.
- 20.2 A copy of these Financial Procedure Rules must be made available electronically to each Director and Head of Service upon appointment and each time these Financial Procedure Rules are added to or varied an electronic copy must be available on the Council's intranet and website.

STANDING ORDERS ON PROCUREMENT AND CONTRACTS

Section 1: Authority to Contract and Responsibilities of Key Officers

1. Scope of Standing Orders

- 1.1 These Standing Orders apply to all spend with external suppliers regardless of the source of funding (for example, revenue, capital, grants, ring-fenced government money and/or any third party funding). They apply to contracts let by the Council on its own behalf and when it is acting as a purchasing authority on behalf of others.
- 1.2 The purpose of these Standing Orders and the supporting Guide to Standing Orders is to set out and explain the Council's minimum requirements when contracting for goods, services and works. They are designed to:
- (a) make sure we spend public money **legally** and avoid undue criticism or allegation of wrongdoing;
 - (b) secure Best Value;
 - (c) generate market competition through transparent, fair and consistent ways of working; and
 - (d) support supplier diversity, sustainability objectives, and equality of treatment.
- 1.3 These Standing Orders do not apply to the following instances, which are managed by separate policies and guidelines:
- (a) contracts for the acquisition or lease of land and/or real estate;
 - (b) contracts for permanent or fixed term employment (but note rules on consultants contracts);
 - (c) works or orders placed with utility companies (for example, re-routing gas pipe work);
 - (d) services to be delivered by a local authority's in-house service;
 - (e) direct payments to customers following care assessment, for example, payments provided under Self Directed Support or individual budgets; and
 - (f) non-trade payments to third parties, such as insurance claims, pension payments, statutory payments to public bodies.
- 1.4 Where the proposed contract falls within the Public Contracts Regulations 2015 (PCR 2015), those regulations apply in addition to these Standing Orders. In the event of a conflict, Legal Services shall determine which takes precedence. More detailed information on how officers can comply with Standing Orders in relation to contracts whose value exceeds the relevant PCR 2015 thresholds and therefore fall within the PCR 2015, and those whose value is below the relevant PCR thresholds is contained in the Guide to Standing Orders.

2. Principles of contracting

2.1 The Council and its officers must adhere to the following principles in carrying out all procurement activity:

- (a) procurement procedures shall be fair, transparent, and properly planned;
- (b) all bidders and prospective bidders shall be treated equally;
- (c) the objective of all procurement shall be to achieve Best Value;
- (d) officers shall seek and comply with any advice from Legal Services and Procurement Services; and
- (e) officers shall keep appropriate records of all decisions taken and communications between the Council and bidders or prospective bidders.

2.2 It is a disciplinary offence to fail to adhere to these Standing Orders.

3. Authority to contract

3.1 All Chief Officers are responsible for ensuring these Standing Orders are applied and understood across their directorates.

3.2 Chief Officers must not commence or permit the commencement of a procurement process without specific delegated authority to act under the scheme of delegation. Where a tender process is likely to exceed the FTS thresholds, the relevant Cabinet Member must be informed and approve the tender prior to publication through a published decision or other authorised decision in accordance with the Council's Constitution.

4. Key responsibilities

4.1 Chief Officers shall:

- (a) be responsible and provide strategic direction for all procurement undertaken in their directorate;
- (b) ensure all procurement and delegated decision-making adheres to the Scheme of Delegation;
- (c) obtain Cabinet Member approval where required to do so by the Council's scheme of delegation before undertaking any procurement activity;
- (d) comply with the Financial Procedure rules, especially with regard to the adoption of vendors and creation of a valid purchase order;
- (e) notify and engage with Procurement, and where appropriate Legal Services, for all proposed contracts with an estimated total value of £25,000 or more (annual value x number of years including extensions) by completing the necessary approvals processes prior to tender;

- (f) nominate appropriately skilled and qualified Officers to undertake procurement activity;
- (g) ensure all sourcing decisions represent Best Value and are within approved budgetary limits;
- (h) provide for appropriate and effective contract and supplier relationship management for all contracts under their responsibility; and
- (i) ensure sufficient funds are available/approved for relevant procurement and contracting activity and allocate appropriate funds in their budget.

4.2 **Officers** shall:

- (a) manage the procurement process in compliance with these Standing Orders, the PCR 2015 and the Council's internal systems and processes for commissioning and procurement;
- (b) ensure they have adequate information to support and justify all commissioning and procurement activity;
- (c) seek appropriate advice and support from their Chief Officer, Procurement and Legal Services and Financial Services;
- (d) Conduct all tendering activity in a fair, transparent and non-discriminatory manner;
- (e) devise a procurement plan that is efficient and suitable for the purchase and the market concerned, taking into account any other relevant sourcing options, such as the use of existing contracts and frameworks; and
- (f) maintain a full record and audit trail of all procurement activity (the 'Procurement File'), including decisions made and communication with suppliers.

4.3 The **Officer** shall take advice from **Procurement and Legal Services** on the following aspects of public procurement:

Strategic sourcing

- (a) help in shaping commissioning outcomes and decisions, whether or not these result in procurement activities;
- (b) Departmental management principles and strategic sourcing;

Supplier relationship management

- (a) spend and supplier intelligence;
- (b) contract assurance and performance quality assurance services of

strategic contracts (but not operational contract management); and

- (c) development and management of opportunities for innovation in supply chain;

Procurement operations

- (a) transactional, operational and administrative procurement activity; and
- (b) the use and operation of an electronic tendering system.

4.4 **The Officer** shall take advice from Legal Services:

- (a) on all legal, regulatory and constitutional aspects of the procurement process; and
- (b) concerning the content and form of any contract before it is made available to bidders and/or to be entered into on behalf of the Council.

Section 2: Pre-procurement Activity

5. Options appraisal

- 5.1 The Officer shall ensure that the appropriate sourcing approach is adopted in each case taking into account the budget allocation, the needs of the Council and its services users and residents, the nature of the market and other commercial considerations.
- 5.2 In considering a sourcing approach for services contracts, the Officer shall consider and record on the Procurement File how this might improve the economic, social and environmental well-being of the Borough of Tunbridge Wells.
- 5.3 The Officer shall ensure a report on the sourcing decision is included in the Procurement File and clearly referenced in any decision to approve commencement of the procurement.

6. Market testing and engagement

- 6.1 The Officer shall determine the sourcing approach based on:
 - (a) any available views from service users and other stakeholders;
 - (b) consultation or testing with the relevant market;
 - (c) current performance and future objectives for the product or service; (d) budgetary limits; and
 - (e) the existence of other public contracts and Framework Agreements which might be suitable for the Council to use.

- 6.2 The Council's Procurement and Legal Services Teams shall provide professional support in carrying out all market engagement exercises and the Officer shall comply at all times with such guidance.
- 6.3 Where the nature of the services could equate to a Concession arrangement, please consult Procurement or Legal Services for additional advice on the most appropriate process to follow.

Section 3: Procurement Procedures, Advertising, Publication of Award Notices

7. Summary of requirements as to advertising, use of procedures and award notices

7.1 The procedures which must be used to award specific types of contract are set out below.

Definitions

FTS Find a Tender Service

KBP Kent Business Portal

	Goods, services contracts and works contracts valued at or above the FTS	Goods, services contracts and works contracts between £100,000 and the FTS Threshold* (Section 5, Rule	Goods, services and works contracts valued between £25,000 and £99,999	Goods, services and works contracts valued between £10,000 and £24,999	Goods, services and works contracts valued between £5,000 and £9,999	Contracts valued below £5,000 (Rule 15)	Schedule 3 (Light Touch) contracts at or above the FTS Threshold* (Section 4, Rule 10)
Advertising	Mandatory - on FTS, Contracts Finder and the KBP	Publish on Contracts Finder and the KBP .	If the Council has advertised the contract on the KBP , it must also be advertised on Contracts Finder	n/a unless the KBP used	n/a unless the KBP used	n/a unless the KBP used	Mandatory – on FTS, Contracts Finder and the KBP
Award notice	Mandatory - on FTS and Contracts Finder	Mandatory – on Contracts Finder	Mandatory - on Contracts Finder	n/a unless the KBP used	n/a unless the KBP used	n/a unless the KBP used	Mandatory - on FTS and Contracts Finder

Procedures	One of the procedures mandated by PCR 2015; or use a framework agreement Mandatory consultation with Procurement to agree sourcing plan.	FTS; or Contracts Finder; or use a framework agreement Mandatory consultation with Procurement to agree sourcing plan.	Three quotations required, one of which should be from a suitable local company, where feasible; or use a framework agreement, if suitable. If a suitable number of quotations have been sought but the number of quotations received falls below the requirement, officers may proceed with evaluation, and award a contract if appropriate. Mandatory consultation with Procurement to agree sourcing plan.	Three quotations required, one of which should be from a suitable local company, where feasible; or use a framework agreement, if suitable. If a suitable number of quotations have been sought but the number of quotations received falls below the requirement, officers may proceed with evaluation, and award a contract if appropriate.	Two quotations required, one of which should be from a suitable local company, where feasible; or use a framework agreement, if suitable. If a suitable number of quotations have been sought but the number of quotations received falls below the requirement, officers may proceed with evaluation, and award a contract if appropriate.	One quotation required, which MUST be from a suitable local company. If a local company is not used, evidence must be provided as to the lack of availability of suppliers in the local area, or why best value could not be achieved using a local source; or use a framework agreement, if suitable	Procedure devised by the Legal department and the Procurement department in compliance with regulation 76, PCR 2015 and detailed in the Guide to Standing Orders
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*Thresholds are amended every two years. Current thresholds are available from Procurement, Legal Services or found in the Guide to Standing Orders

7.2 If during the course of a procurement an issue arises upon which these Standing Orders are silent or incomplete, the Officer shall refer the matter to Legal and Procurement Services.

Section 4: Procurements at or above the FTS Thresholds*

8. Requirement to advertise

8.1 Contracts which exceed the FTS Thresholds set out in the PCR 2015 must be advertised on the FTS by publishing a Contract Notice or, where advised, a Prior Information Notice (PIN) as a call for competition.

8.2 The Officer must take advice from Procurement and Legal Services before publishing any document on FTS.

8.3 All contracts which are advertised on FTS must also be advertised on Contracts Finder

8.4 All Procurement Documents must be available from the time the Contract Notice is published on FTS. Therefore, no advertisement should be placed until the Procurement Documents is complete. The Officer must ensure the Contract Notice includes a specified location where interested parties can electronically access all Procurement Documents .

8.5 The Council may use a Prior Information Notice (PIN) as a call for competition when using the restricted or competitive procedure with negotiation (see Guide to Standing Orders).

8.6 The Officer is responsible for ensuring all Contract Notices and publications on Contracts Finder are published in accordance with these rules.

9. Procurement procedures

9.1 For public contracts equal to or greater than the FTS threshold, the Council shall:

- (a) advertise the contract on FTS using one of the procurement routes mandated by the PCR 2015; or
- (b) where appropriate and lawful, use an existing contract or Framework Agreement which was procured in compliance with the PCR 2015.

10. Contracts subject to the 'light touch regime'

Social care, education services and other services which are listed in Schedule 3 to the PCR 2015 are subject to the general rules of the PCR 2015. However, the Council is not obliged to use one of the procedures listed in the PCR 2015 to award these contracts. Instead, the procurement procedure must comply with the principles of regulation 76 of the PCR 2015 (commonly referred to as the 'light touch regime' – see Guide to Standing Orders). The Officer shall take advice from Procurement and Legal Services on the most appropriate approach.

11. Contracts reserved for VCSEs, SMEs or by Geographic Location (Local Companies)

- 11.1 The Officer may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations classified as VCSE or SME (under 250 employees). There is also provision under PPN 11/20 for contracts to be reserved by Geographic Location – which can either be national (UK) or by County (metropolitan or non-metropolitan).
- 11.2 The Officer must obtain written approval from Legal Services before commencing a procurement in reliance on this Standing Order.

12. Use of negotiated procedure without prior publication of an FTS notice for above FTS threshold contracts

In the limited circumstances listed in regulation 32 of the PCR 2015 (see Guide to Standing Orders), the Council may dispense with a Contract Notice and engage in negotiations with a single supplier under the negotiated procedure. The Officer must receive written authorisation from the Legal Services before using this procedure.

*Thresholds are amended approximately every two years. Current thresholds are available from Procurement, Legal Services or can be found in the Guide to Standing Order.

Section 5: Contracts below the FTS Thresholds

13. Contracts valued between £100,000 and FTS thresholds

- 13.1 The Responsible Officer shall use one of the following procurement routes to award a contract valued between £100,000 and the appropriate FTS threshold:
- (a) competitive procurement process advertised on FTS and Contracts Finder, and the Kent Business Portal;
 - (b) competitive procurement process advertised on Contracts Finder and the Kent Business Portal; or
 - (c) use of contract or Framework Agreement procured by another contracting authority.
- 13.2 The Responsible Officer must devise a fair and transparent sourcing route based on sound commercial principles and designed to achieve Best Value, and must engage with both Procurement and, where appropriate, Legal Services when developing their procurement plan. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File (see Guide to Standing Orders).
- 13.3 The Responsible Officer must consult Procurement to agree the sourcing plan, as outlined in 7.1 of Section 3 of this document.

14. Contracts with a value between £25,000 and £99,999

- 14.1 When awarding a contract valued between £25,000 and £99,999 the Officer must:
- (a) use one of the procurement routes set out in Standing Order 13; or
 - (b) with the prior written approval to tender of the relevant Chief Officer, request 3 written tenders or quotes and receive at least one from reputable suppliers where the Officer can demonstrate sufficient knowledge of the market to be reasonably certain that such an approach would elicit submissions representing Best Value. At least one of these submissions should be from a local supplier where feasible.
- 14.2 The Officer must devise fair and transparent sourcing route based on sound commercial principles and designed to achieve Best Value, and must engage with both Procurement and, where appropriate, Legal Services when developing their procurement plan. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File (see Guide to Standing Orders).
- 14.3 The Responsible Officer must consult Procurement to agree the sourcing plan, as outlined in 7.1 of Section 3 of this document.

Section 6: Contracts with a value of less than £15,000

15. Contracts with a value between £10,000 and £24,999

- 15.1 When awarding a contract valued between £10,000 and £24,999 the Officer must:
- (a) use one of the procurement routes set out in Standing Order 13; or
 - (b) with the prior written approval to tender of the relevant Chief Officer, request 3 written tenders or quotes and receive at least one from reputable suppliers where the Officer can demonstrate sufficient knowledge of the market to be reasonably certain that such an approach would elicit submissions representing Best Value. At least one of these submissions should be from a local supplier where feasible.
- 15.2 The Officer must devise fair and transparent sourcing route based on sound commercial principles and designed to achieve Best Value, taking advice from Procurement and Legal Services where appropriate. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File (see Guide to Standing Orders).
- 15.3 A copy of the contract must be provided to Procurement in order for the details to be added to the Council's contracts register.

16. Contracts with a value between £5,000 and £9,999

16.1 When awarding a contract valued between £5,000 and £9,999 the Officer must:

- (a) use one of the procurement routes set out in Standing Order 13; or
- (b) with the prior written approval to tender of the relevant Chief Officer, request 2 written tenders or quotes and receive at least one from reputable suppliers where the Officer can demonstrate sufficient knowledge of the market to be reasonably certain that such an approach would elicit submissions representing Best Value. At least one of these submissions should be from a local supplier where feasible.

16.2 The Officer must devise fair and transparent sourcing route based on sound commercial principles and designed to achieve Best Value, taking advice from Procurement and Legal Services where appropriate. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File (see Guide to Standing Orders).

16.3 A copy of the contract must be provided to Procurement in order for the details to be added to the Council's contracts register.

Section 6: Contracts with a value of less than £5,000

17. Contracts with a value of less than £5,000

When awarding a contract with a value of less than £5,000 the Officer must:

- (a) use one of the procurement routes set out in Standing Order 13; or
- (b) with the prior written approval to tender of the relevant Chief Officer, obtain 1 written tender or quotation from a reputable Local Supplier where the Officer can demonstrate sufficient knowledge of the market to be reasonably certain that such an approach would elicit submissions representing Best Value. The quotation **MUST** be from a local supplier unless there are mitigating circumstances. If a local supplier is not used, the officer must provide evidence as to the lack of availability of a suitable supplier locally to carry out the requirements of the contract, or demonstrate how use of the local supplier would not offer Best Value to the Council.

Section 7: Consultancy Contracts, Framework Agreements and Assessing Value

18. Consultancy contracts

- 18.1 Before engaging a Consultant or for other specialist professional, the Officer must refer to, and ensure compliance with, the Council's Procurement Policy on Buying Consultancy Services and the related documents: Guide to Buying Consultancy and the HR Policy on the Use of Self-Employed Consultants.
- 18.2 All such engagements of an aggregate value of £100,000 or more must be competitively tendered. Where any corporate contract or arrangement is approved and established for the buying of consultancy or specialist professional services, these must be used for sourcing all such contracts whatever the aggregate value of the contract.
- 18.3 Contracts for all other interim staff covering existing staff positions and all temporary or agency staff must be sourced through the Council's corporate temporary staffing contract, unless permitted otherwise in writing by the Head of Human Resources.

19. Framework agreements

- 19.1 All Framework Agreements for contracts with a value above relevant thresholds set out in the PCR 2015 shall be awarded in accordance with the PCR 2015.
- 19.2 Framework agreements valued at below the relevant FTS Threshold shall be awarded in accordance with these Standing Orders.
- 19.3 Officers shall consult Procurement and Legal Services before using a framework agreement set up by another contracting authority and the validity of the framework and its contractual terms must be approved by Legal Services.

20. Assessing value for the purpose of these rules

- 20.1 The value or estimated value of all contracts to be procured must be properly assessed to determine whether or not they meet particular thresholds set out in these Standing Orders and under the PCR 2015.
- 20.2 The value of all contracts which may have a value which meets or exceeds the relevant FTS Threshold shall be assessed in accordance with the PCR 2015 (see Guide to Standing Orders for details).
- 20.3 The value of all other contracts shall be the value:
 - 20.3.1 inclusive of VAT at the prevailing rate;
 - 20.3.2 including the maximum possible extensions and renewals;
 - 20.3.3 in the case of a framework agreement, the maximum estimated value of all the contracts to be awarded during

the term; and

20.3.4 inclusive of any potential spend through the contract concerned by other contracting authorities.

21. Lots

21.1 For every procurement relating to a contract which exceeds the FTS Threshold, the Responsible Officer must:

21.1.1 consider whether the contract should be sub-divided into and procured in lots;

21.1.2 provide reasons for any decision not to subdivide into lots, which shall be included in the Procurement Report; and

21.1.3 comply with the PCR 2015 in the manner in which it requires tenderers to bid for lots (see Guide to Standing Orders for full details).

Section 8: Standing to Contract and Award Criteria

22. Use of Selection Questionnaires (SQ)

22.1 The Officer shall apply minimum standards of experience, reputation and economic standing to suppliers to test their suitability to bid for a Council contract. For contracts above FTS thresholds suitability is usually tested by means of a SQ.

22.2 All the methods and criteria used for assessing the suitability of suppliers shall be transparent, objective and non-discriminatory.

22.3 The Officer must use the SQ provided by the Government and adhere to its statutory guidance for all procurements of contracts above the relevant FTS Threshold.

22.4 The Officer shall not use the SQ provided by the Government for contracts with a value less than the FTS threshold.

22.5 The following table provides a summary of the rules on the use of SQs:

Contract type and value	Rules on use of SQs
Contracts valued between £25,000 and the FTS Goods and Services Threshold whether for goods, services or works	Use of SQ provided by the Government is prohibited. The Council may only ask Candidates suitability assessment questions which are relevant to the subject- matter of the procurement and proportionate having regard to any guidance issued by the Cabinet Office

Contracts at or above the FTS goods and services Threshold for goods and services, or the FTS Threshold for works	The Council must adhere to the guidance issued by the Cabinet Office on qualitative selection (see Guide to Standing Orders). The Council shall adopt the standard SQ without deviation
Contracts above the FTS Threshold for goods and services but: For works contracts, below the FTS Threshold for works contracts	Officers shall either use the Standard SQ or an alternative means of assessing tenderers' suitability which has been agreed by Procurement & Legal Services

23. Eligibility to bid

- 23.1 Suppliers who fail to meet all of the Council's minimum standards of reputation, technical ability, experience or economic and financial standing as specified in the SQ and accompanying documents shall be excluded from the procurement process.
- 23.2 Where the supplier is being excluded because one of the exclusion grounds in regulation 57 of the PCR 2015 applies (see Guide to Standing Orders), but provides evidence in support of its reliability despite the existence of a relevant ground of exclusion, the Officer must consider that evidence and determine whether to exclude that supplier.
- 23.3 The Officer shall consult with Legal Services before reaching any decision under Standing Order 21.2.

24. Assessing past experience and financial standing

- 24.1 The Officer shall ensure suppliers' past experience and technical ability are assessed, for all contracts.
- 24.2 When assessing the suppliers' financial standing, the Officer shall not require prospective tenderers to have an annual turnover of more than twice the estimated contract value, unless otherwise agreed with Legal Services.
- 24.3 Only those suppliers who meet the Council's minimum requirements of economic and financial standing and technical and professional ability shall be invited to participate in a tender process or awarded the contract.
- 24.4 All assessment of supplier's financial standing must be conducted by the Council's Finance team (or such other service unit designated from time to time to undertake this activity).

25. Award criteria

- 25.1 The Officer shall adopt award criteria which are fair, transparent, proportionate

and appropriate to the subject matter of the contract (see Guide to Standing Orders).

- 25.2 The Officer shall award the contract to the most economically advantageous tender, being the tender that represents Best Value applying the award criteria.
- 25.3 The Officer shall adopt evaluation methodologies that are robust, have been tested to ensure they are appropriate for the procurement in question, and transparent (see Guide to Standing Orders).

Section 9: Tendering Procedure

26. Opening tenders

- 26.1 All tenders undertaken must be conducted through the Council's mandated e-tendering portal except as permitted in these Standing Orders or with the prior written approval of the Head of Finance & Procurement and Legal Services.
- 26.2 Officers must not permit the receipt of tenders outside the Council's mandated e-tendering portal unless agreed by Procurement and Legal Services. Tenders must still be received by electronic means (e.g. email), and the Officer must ensure that all the tenders received are opened after the deadline for submission has passed.
- 26.3 For tenders above the FTS threshold, a Legal Services representative must be present at the opening of the tenders alongside a senior member of Procurement. For below threshold tenders, a senior member of Procurement is permitted to open the tenders received.

27. Contract award

- 27.1 All contracts shall be awarded in accordance with the criteria set out in the Procurement Documents.
- 27.2 For contracts with a value at or above the FTS Thresholds, the Officer shall adhere to the contract award procedures set out in the PCR 2015 and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the Council sends notice to the tenderers, electronically, that it has made an award decision (see Guide to Standing Orders).

28. Correction of errors and late tenders

- 28.1 All tenders must comply with the conditions set out in the Procurement Documents. Tenderers should be advised that any failure to adhere to the specific rules applicable to the tender in question could result in their tender being rejected.
- 28.2 The Officer may reserve the right in the Procurement Documents to accept late submissions or documents forming part of the tender at the Council's discretion, for example, where:

- 28.2.1 the delay was caused by a mistake or failure of the Council; or
 - 28.2.2 the submission in question is affected by external factors which could not have been foreseen or avoided.
- 28.3 The Council's Tender Response Policy should be adhered to for the avoidance of doubt in these circumstances.
- 28.4 In all cases, the Officer shall adhere to the rules established in the Procurement Documents and document any decision to permit a late or corrected tender. Officers should seek advice from Procurement and Legal Services in respect of this Clause 28.

29. Clarifications raised by suppliers

- 29.1 The Officer shall maintain a Clarification Log containing a list of questions raised by suppliers during the course of a procurement process, with the Council's responses, to which all Candidates or Tenderers shall have unrestricted access. Where Procurement and Legal Services are involved with the conduct of a particular procurement process, they may maintain the Clarification Log and will notify the Officer of that approach.
- 29.2 Where a clarification raises an issue which leads to the amendment of one of the Procurement Documents, the Council shall consider whether the deadline for submission of responses should be extended, or the procurement process otherwise revised to ensure equal treatment of suppliers, and take action accordingly.

30. Evaluation

- 30.1 The Chief Officer shall appoint evaluators who have the necessary skills and experience to undertake the role.
- 30.2 Procurement and Legal Services shall provide appropriate guidance, advice and support on all aspects of tender evaluation and the Officer shall have regard to all such guidance.

31. Conflicts of interest

- 31.1 All Chief Officers shall ensure that officers involved in procurement processes in their directorates are familiar with the Guidance on Propriety and Official Conduct for Officers
- 31.2 Any officer involved in a procurement shall:
- 31.1.2 comply with all relevant policies and codes of conduct provided by the Council for Officers; and
 - 31.2.2 disclose in writing to their Chief Officer or Legal Services any direct or indirect, financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a procurement procedure.

- 31.3 Where an officer discloses such a conflict of interest the Chief Officer shall, in consultation with Legal Services make arrangements to allocate the role to another person and shall consider whether any changes to the procurement process should be made to address any issues arising from the conflict.
- 31.4 Any officer involved in a procurement shall take appropriate measures to ensure competition is not distorted where a Candidate or Tenderer, or an undertaking related to that Candidate or Tenderer, has advised the Council on the procurement in question or been involved in the preparation of the procurement.

Section 10: Form of Contract, Mandatory Clauses and Formalities

32. Form of contract

- 32.1 For contracts valued at £5,000 or less, the relevant Chief Officer can choose to accept the supplier's standard terms, provided that such terms are fair and reasonable in the circumstances and provide Best Value. The form of contract must be recorded in its final agreed form and shall contain, as a minimum the items required by Standing Order 31.1.
- 32.2 Legal Services are responsible for providing or approving all forms of contract with a value exceeding £5,000, unless agreed in writing by the relevant Chief Officer.
- 32.3 All contracts with a value exceeding £5,000 must be written or in an electronic form capable of providing a permanent record of the intentions of the parties to the contract.
- 32.4 Where contract terms are to be published by the Council in connection with any competitive tender or single tender process, the Officer must ensure that the proposed form of contract has been approved by Legal Services before it is made accessible to Tenderers or any other external interested party.
- 32.5 The Officer shall ensure that an electronic copy of every concluded contract shall be provided to Procurement and Legal Services for entry onto the Council's Contract Register. Hard copy original contract documents should be sent to Legal Services for safe storage.
- 32.6 The Council may require the completion of a performance bond or parent company guarantee for any contracts as may be specified by Legal Services in relation to a particular procurement.

33. Specifications

- 33.1 The Officer shall ensure the specification for the contract:
- 33.1.1 clearly and effectively sets out the obligations on the supplier to deliver to the Council's requirements;

33.1.2 complies with the requirements of the PCR 2015 in respect of technical specifications; and

33.1.3 is legally enforceable, taking advice from Legal Services where necessary.

34. Mandatory clauses

The Officer or Legal Services, as the case may be, shall be responsible for ensuring that every contract awarded by the Council with a value over £5,000 includes the mandatory requirements set out in this section 10.

35. General clauses

35.1 Every contract must clearly specify:

35.1.1 the services, goods or works to be provided together with applicable standards and performance level;

35.1.2 the price to be paid, with a statement of discounts and other deductions, including any Value Added Tax payable and any provisions for price variations, whether by indexation or other means;

35.1.3 the duration of the contract including any specific dates by which any aspects are to be performed, together with any possible extensions of the contract term. Contracts should not normally exceed five years, or seven years with extensions, but contracts may be set for longer periods where the relevant industry practice, or partnership arrangements to be entered into, make it in the interests of the Council to do so. The Head of Procurement and Legal Services must be consulted on any business case for proposing a contract term longer than 7 years and the reasons for doing so must be recorded in the Procurement Documents; and

35.1.4 in the case of all building and engineering contracts exceeding £100,000 in value, liquidated damages to be paid by the contractor if the contract is not completed on a specified date must be considered. A provision for liquidated damages may be included in contracts valued at £100,000 or less.

36. Insurance levels

36.1 Every contract must clearly specify that the supplier shall hold and maintain for the duration of the term of the contract where the relevant type of cover is applicable the following levels of insurance cover for each single incident:

Type of insurance cover	Minimum insured for each
Public liability	£10 million

Employer's liability	£5 million
Product liability	£2 million
Professional indemnity	£2 million

36.2 The Head of Finance may specify higher levels of insurance cover as they deem fit for particular contracts or types of contracts and may also agree to lower levels of insurance cover provided the Officer provides an account of the reasons for the lower level of cover and includes an assessment of risks associated with the contract.

37. Prevention of bribery and exclusion grounds arising during the term of the contract

37.1 Every contract shall include provision for termination if the supplier, their employees or anyone acting on the supplier's behalf:

37.1.1 corruptly offers, gives or agrees to give anyone an inducement or reward in respect of any contract with the Council;

37.1.2 commits an offence under the Bribery Act 2010; or

37.1.3 commits any of the offences listed in regulation 57(1) of the PCR 2015.

38. Termination for breach of regulation 73

38.1 For contracts above the FTS Threshold, the contract shall provide that the Council shall have the right to terminate the contract if any of the provisions of regulation 73(1) of the PCR 2015 apply. These are where:

38.1.1 the contract has been subject to a substantial modification which required a new procurement procedure to be started;

38.1.2 at the time of contract award, one of the mandatory exclusion criteria in regulation 57 applied and the supplier should therefore have been excluded from the procurement procedure; or

38.1.3 the Supreme Court or any competent court has held that the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the PCR 2015.

39. Prevent

The contract shall make appropriate provision for information sharing between the supplier and the Council, and/or such other measures as are appropriate, such as staff training, to support the Council in meeting its duty under section 26 of the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into

terrorism (see the Council's applicable policy, where relevant).

40. Payment terms

- 40.1 Every contract shall provide that the Council shall pay its supplier 30 days from receipt of an undisputed invoice.
- 40.2 The contract shall also provide that the Council's suppliers shall pay their sub-contractors within a maximum of 30 days of receipt of an undisputed invoice.
- 40.3 The Officer must obtain the agreement of the Head of Finance for any deviation from the 30 day standard payment terms set out in this paragraph 38, such agreement to be recorded in writing as a Payment Exception.

41. Execution of the contract

- 41.1 All contracts shall be signed but not sealed unless they must be signed under seal in accordance with this Standing Order 41.
- 41.2 The following contracts shall be signed under seal:
 - 39.2.1 certain contracts involving land transactions; and
 - 39.2.2 construction contracts with a value of £75,000 or more. and
 - 39.2.3 any contract exceeding the PCR 2015 thresholds; and
 - 39.2.4 any grant agreement; and
 - 39.2.5 any contract that, in the opinion of the Monitoring Officer, requires sealing in exceptional circumstances
- 41.3 The relevant Chief Officer shall be permitted to sign all contracts not required to be sealed. There is a presumption that Officers with the proper authority shall sign contracts, rather than Legal Services.
- 41.4 Legal Services shall execute all contracts which are required to be executed by the Council as a deed under seal and may execute all simple contracts not required to be sealed in line with Clause 41.3 above.

42. Electronic Signing and Document Sealing

- 42.1 Electronic signatures may be used by both the Council and the Supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Head of Legal Partnership. The Council shall use suitable, free software, such as Adobe, to create electronic signatures.
- 42.2 Electronic signatures will, in accordance with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter into a contract by

and with the Council, insofar as the e-signature is a true representation of the authorised person's written signature and (a) and (b) below apply (to the supplier) in which case an e-signature and a signature will be referred to as the same.

- (a) the Contract will be entered into in relation to being either under seal or under hand; and
- (b) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.

43. Certification of the contract

Legal Services shall be responsible for determining whether any contract should be certified under the Local Government (Contracts) Act 1997. This Act empowers local authorities to agree terms that will survive the main contract being set aside in the event of a finding that the Council has exceeded its statutory powers in entering into the contract. In these circumstances, the certification process ensures that the private sector party is compensated. All such certificates shall be in a form approved by and executed by Legal Services.

44. Contract and supplier relationship management

44.1 The Chief Officer shall ensure that there are in place arrangements that will monitor and actively address any concerns with:

- 44.1.1 the performance of the contract against the specification and any key performance indicators or other performance monitoring regime;
- 44.1.2 costs and Best Value;
and
- 44.1.3 service user or end user satisfaction.

44.2 Where a contract is to be extended or re-tendered, the Chief Officer shall ensure that a report on the performance of the contract is prepared to inform any decision regarding the extension or lessons learnt for re-tendering.

44.3 The Chief Officer shall ensure Officers comply with guidance updated by the Council from time to time on effective contract and supplier relationship management.

Section 11: Varying and Extending Contracts

45. Variations to contracts

Legal Services shall advise any Officer as to whether a particular variation is subject to the PCR 2015 and can be entered into.

46. Authority to vary a contract

Subject to Standing Order 44, all contract variations must be approved in accordance with Standing Order 3 (Authority to Contract).

47. Extensions and renewals

- 47.1 Contracts subject to the PCR 2015 can only be extended where expressly provided for in their terms, or as otherwise permitted by the PCR 2015.
- 47.2 Contracts with a value below the FTS Threshold can be extended only where expressly provided for in their terms.
- 47.3 All contract extensions or renewals must be approved as follows:
- 47.3.1 if the value of the extension is less than £100,000, by the Executive Director; or
- 47.3.2 if the value of the extension is £100,000 or more, by Legal Services and the Director of Finance.
- 47.4 In determining how a contract extension or renewal shall be approved in accordance with paragraph 47.3, the Officer shall not disaggregate or otherwise sub-divide any known spend during the period of any such extension or renewal with a view to avoiding obtaining the approvals referred to in paragraph 47.3.2.
- 47.5 The Council's Extension of Contracts Policy should be adhered to for the avoidance of doubt in these circumstances.

Section 12: Disclosure, Transparency and Record Keeping

48. Electronic availability of documents

The Officer shall ensure that all Procurement Documents for contracts that are at or above the FTS Thresholds are available online free of charge without restriction from the time the FTS Notice is published (or an ITCI is sent when a PIN is used as a call for competition).

49. Duty of confidentiality owed to suppliers

The Officer shall not disclose information which has been forwarded by a supplier and designated by that supplier as confidential or commercially sensitive, including technical or trade secrets and the confidential aspects of tenders, without express authorisation from Legal Services who shall balance the duty of confidentiality owed to suppliers against the Council's obligations under FOIA and any other disclosure obligations. The Procurement Documents should inform interested parties of the Council's duties of disclosure and invite tenderers to designate information as confidential or commercially sensitive. However, the Council cannot guarantee that all information so designated will be withheld.

50. Publication of contract award notices in on Find a Tender Service

The Officer shall ensure that a Contract Award Notice is published on FTS for all procurements subject to the PCR 2015 in accordance with those regulations.

51. Publication of contract award notices on Contracts Finder

The Officer shall ensure that a Contract Award Notice is published on Contracts Finder for all contracts with a value of £25,000 or more. This Standing Order 48 applies to all contracts including contracts let under Framework Agreements, whether or not that Framework Agreement was itself advertised on Contracts Finder or anywhere else.

52. Debriefing tenderers

For contracts valued at or above the FTS Threshold, the Officer shall ensure that all Tenderers are offered debrief information during the procurement process, in accordance with regulation 55 of the PCR 2015, and at contract award, in accordance with regulation 86 of those regulations.

53. Procurement Report

53.1 The Officer shall keep a copy of all Procurement Documents in accordance with the Council's records retention policy.

53.2 The Officer shall prepare a written report in relation to each procurement with a value at or above the relevant FTS Threshold containing the following information (unless such information is contained in the Contract Award Notice):

53.2.1 the subject-matter and value of the contract, Framework Agreement or dynamic purchasing system;

53.2.2 where applicable, the results of the qualitative selection and reduction of numbers under regulations 65 and 66, namely:

- (a) the names of the selected Tenderers and the reasons for their selection;
- (b) the names of the rejected Tenderers and the reasons for their rejection;
- (c) the reasons for the rejection of tenders found to be abnormally low;
- (d) the name of the successful tenderer and the reasons why its tender was selected and, where known the share (if any) of the contract or Framework Agreement which the successful tenderer intends to subcontract to third parties, and the names of the main contractor's subcontractors (if any);
- (e) for competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 which justify the use of those procedures;
- (f) for negotiated procedures without prior publication, the circumstances referred to in regulation 32 which justify the use of this procedure;

- (g) where applicable, the reasons why the contracting authority has decided not to award a contract or Framework Agreement or to establish a dynamic purchasing system;
- (h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders; and
- (i) where applicable, conflicts of interests detected and subsequent measures taken.

53.3 The Officer shall maintain an electronic Procurement File containing sufficient information to justify decisions taken at all stages of the procurement such as documentation on:

- 53.3.1 communications with suppliers and internal deliberations;
- 53.3.2 preparation of the Procurement Documents;
- 53.3.3 dialogue or negotiations, if any; and
- 53.3.4 selection and award of the contract.

53.4 The Procurement File shall be kept for a period of at least six years from the expiry date of the contract (12 years if the contract is sealed).

53.5 The Officer shall prepare a report containing such information as the Cabinet Office may request in respect of procurements at or above the relevant FTS Threshold.

Section 13: Waiver of Standing Orders

54. Authority to waive Standing Orders

- 54.1 Procurement and Legal Services shall, jointly, be informed of, and invited to comment upon, any request to waive these Standing Orders. The Section 151 Officer (or Deputy Section 151 Officer during periods of absence) shall be responsible for determining and approving the validity of any such request, with oversight from the Monitoring Officer where necessary.
- 54.2 Any request to waive Standing Orders shall be set out in writing with clear reasons why the waiver is necessary and proportionate.
- 54.3 No waiver of Standing Orders can be made if it would contravene the PCR 2015 or any other applicable legislation.
- 54.4 No waiver can be granted retrospectively.
- 54.5 All waivers to these Standing Orders must be reported in writing to Procurement and Legal Services for logging in the register maintained for this purpose. This register will be reported upon quarterly as Non-Conformance Events, owing to the fact that no procurement process has been undertaken.

54.6 For contracts valued at less than the relevant FTS Threshold, the procuring officer may obtain a tender from a single contractor:

54.6.1 where the reasons provided to the Section 151 Officer, Procurement and Legal Services explain why the services, goods or works can only, or most satisfactorily be provided by that contractor; or

54.6.2 where a statutory undertaker has an exclusive statutory right to provide the relevant goods, services or works.

54.7 The procuring Officer must ensure that any contractors invited to submit a tender meet the Council's minimum requirements under Standing Order 24.

54.8 Officers may apply for a waiver but internal acceptance of a waiver does not guarantee the Council protection from successful challenge. Evidence of market testing should always form part of the written request.

Annex A: Glossary

Chief Officer	Defined in Article 6 of the Constitution of Tunbridge Wells Borough Council. Please refer to paragraph 6.1.2 of Article 6.
Consultant	An individual or company commissioned to do a short term, and clearly defined piece of specialised work, with clear outcomes where the work is project based, outside business as usual and there is a defined end point for the Consultant's involvement.
Contract Award Notice	A notice containing the information set out in regulation 86 of the PCR 2015, for above FTS Threshold contracts, and regulation 112 for below FTS Threshold contracts.
Contract Notice	A notice advertising a public contract on FTS.
Contracts Finder	A Government website on which all public contracts over a minimum threshold must be advertised.
ERDF	Means the European Regional Development Fund.

Framework Agreement	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded in a given period, in particular with regard to price and, where appropriate, the quality envisaged (regulation 33(2), PCR 2015).
FOIA	The Freedom of Information Act 2000.
ITCI	Invitation to confirm interest.
Key Decision	An executive decision, which is likely: <ul style="list-style-type: none"> <input type="checkbox"/> to result in the Council incurring expenditure which is greater than £250,000 or which is otherwise significant having regard to the Council's budget for the service or function to which the decision relates; or <input type="checkbox"/> 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 Tunbridge Wells Borough.
FTS	Find a Tender Service, where all public contracts which exceed the UK Thresholds must be advertised.
PCR 2015	Means the Public Contract Regulations 2015 as amended and in force from time to time.
PQQ	Means a pre-qualification questionnaire.
Procurement Documents	Any document produced or referred to by the Council to describe or determine elements of the procurement or the procedure, including the: <ul style="list-style-type: none"> <input type="checkbox"/> Contract Notice (or PIN where it has been used as a call for competition) <input type="checkbox"/> Technical specifications <input type="checkbox"/> Descriptive document <input type="checkbox"/> Proposed conditions of contract <input type="checkbox"/> Formats for the presentation of documents by candidates and tenderers <input type="checkbox"/> Information on generally applicable obligations <input type="checkbox"/> Any additional documents.
Procurement File	The record of each procurement that the Council must maintain in accordance with regulation 84(7)-(9) of the PCR 2015.
Procurement Report	The report that the Council is obliged to maintain in respect of each procurement of a contract valued at or above the relevant FTS Threshold under regulation 84(1) of the PCR 2015 (see Standing Order 13.5).

Officer	The person or persons charged by the Chief Officer to conduct a procurement process, or to participate in or lead a team of officers assembled for that purpose or dealing with a variation to a contract as the context requires.
Scheme of Delegation	The Council's formal written scheme of delegation in force and as amended from time to time.
Best Value	<p>The optimal use of resources to achieve the intended outcomes taking into account:</p> <ul style="list-style-type: none"> (a) Economy: minimising the cost of resources used or required (inputs), i.e. spending less; (b) Efficiency: the relationship between the output from goods or services and the resources to produce them, i.e. spending well; and (c) Effectiveness: the relationship between the intended and actual results of public spending (outcomes), i.e. spending wisely.

BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

1. THE FRAMEWORK FOR CABINET DECISIONS

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

2. PROCESS FOR DEVELOPING THE FRAMEWORK

- 2.1 References in these Rules to the Policy Framework are to the plans and strategies required by law to be adopted by the Council and set out in Article 4.
- 2.2 The Council will be responsible for adopting its Policy Framework and its Budget prepared in accordance with the Financial Procedure Rules in Part 4 of the Constitution.
- 2.3 The Cabinet will be responsible for adopting all other policies, including those listed in Part 3 of the Constitution.
- 2.4 The process by which the Policy Framework shall be developed is:
- 2.4.1 The Cabinet will publicise a timetable for making proposals to the Council for the adoption of any plan or strategy that forms part of the Policy Framework, and its arrangements for consultation after publication of the initial proposals. The Chairman of the Overview and Scrutiny Committee will also be notified.
- 2.4.2 At the end of the consultation period, the Cabinet will draw up firm proposals having regard to the responses to the consultation. If the Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. As the Overview and Scrutiny Committee has responsibility for fixing its own work programme, it is open to the Overview and Scrutiny Committee to investigate, research or report in detail with policy recommendations before the end of the consultation period, having particular regard not to duplicate any consultation carried out by the Cabinet. The Overview and Scrutiny Committee shall report to the Cabinet on the outcome of its deliberations.
- 2.4.3 The Cabinet will take any response from the Overview and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- 2.4.4 Once the Cabinet has approved the firm proposals, it will refer them at the earliest opportunity to the Council.
- 2.4.5 Where the Cabinet has submitted a draft plan or strategy to the Council for its consideration and, following consideration of that draft plan or strategy, the Council has any objections to it, the Council must take the action set out in paragraph 2.4.6 below.
- 2.4.6 Before the Council:

(a) approves, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted; or

(b) adopts (with or without modification) the plan or strategy,

it must inform the Leader of any objections which it has to the draft plan or strategy and must give to him/her instructions requiring the Cabinet to reconsider, in the light of those objections, the draft plan or strategy submitted to it.

2.5 Where the Council gives instructions in accordance with paragraph 2.4.6 above it must specify a period of at least five working days beginning on the day after the date on which the Leader receives the instructions on behalf of the Cabinet within which the Leader may -

2.5.1 submit a revision of the draft plan or strategy as amended by the Cabinet (the "revised draft plan or strategy"), with the Cabinet's reasons for any amendments made to the draft plan or strategy, to the Council for the Council's consideration; or

2.5.2 inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.

2.6 When the period specified by the Council, referred to in paragraph 2.5 above has expired, the Council must, when -

2.6.1 amending the draft plan or strategy or, if there is one, the revised draft plan or strategy;

2.6.2 approving, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, any plan or strategy (whether or not in the form of a draft or revised draft) of which any part is required to be so submitted; or

2.6.3 adopting (with or without modification) the plan or strategy,

take into account any amendments made to the draft plan or strategy that are included in any revised draft plan or strategy, the Cabinet's reasons for those amendments, any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for that disagreement, which the Leader submitted to the Council, or informed the Council of, within the period specified.

2.7 Subject to paragraph 2.11 below where, before 8 February in any financial year, the Cabinet submits to the Council for its consideration in relation to the following financial year -

2.7.1 estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49, of the Local Government Finance Act 1992;

2.7.2 estimates of other amounts to be used for the purposes of such a calculation;

- 2.7.3 estimates of such a calculation; or
- 2.7.4 amounts required to be stated in a precept under Chapter IV of Part I of the Local Government Finance Act 1992,

and following consideration of those estimates or amounts the Council has any objections to them, it must take the action set out in paragraph 2.8 below.

- 2.8 Before the Council makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph (i)(i) above, or issues a precept under Chapter IV of Part I of the Local Government Finance Act 1992, it must inform the Leader of any objections which it has to the Cabinet estimates or amounts and must give instructions requiring the Cabinet to reconsider, in the light of those objections, those estimates and amounts in accordance with the Council's requirements.
- 2.9 Where the Council gives instructions in accordance with paragraph 2.8 above it must specify a period of at least five working days beginning on the day after the date on which the Leader receives the instructions on behalf of the Cabinet within which the Leader may -
 - 2.9.1 submit a revision of the estimates or amounts as amended by the Cabinet ("revised estimates or amounts"), which have been reconsidered in accordance with the Council's requirements, with the Cabinet's reasons for any amendments made to the estimates or amounts, to the Council for the Council's consideration; or
 - 2.9.2 inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.
- 2.10 When the period specified by the Council referred to in paragraph 2.9 above has expired, the Council must, when making calculations (whether originally or by way of substitute) in accordance with the sections referred to in paragraph 2.7.1 above, or issuing a precept under Chapter IV of Part I of the Local Government Finance Act 1992, take into account -
 - 2.10.1 any amendments to the estimates or amounts that are included in any revised estimates or amounts;
 - 2.10.2 the Cabinet's reasons for those amendments;
 - 2.10.3 any disagreement that the Cabinet has with any of the Council's objections; and
 - 2.10.4 the Cabinet's reasons for that disagreement,

which the Leader submitted to the Council, or informed the Council of, within the period specified.
- 2.11 Paragraphs 2.7 to 2.10 above shall not apply in relation to -
 - 2.11.1 calculations or substitute calculations which the Council is required to make in accordance with section 52I, 52J, 52T or 52U of the Local Government Finance Act 1992; and

- 2.11.2 amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with section 52J or 52U of that Act.
- 2.12 In approving the Budget and Policy Framework, the Council will also specify the extent of budget transfers within the budget and degree of in-year changes to the policy framework which may be undertaken by the Cabinet, in accordance with paragraphs 5 and 6 of these Rules (budget transfer and in-year adjustments). Any other changes to the policy and budgetary framework are reserved to the Council.

3. PROCESS FOR DEVELOPING THE BUDGET

The Cabinet will follow the process set out in the Financial Procedure Rules in Part 4 of the Constitution. In addition the following process shall apply to the development of the budget:

- 3.1 The Cabinet will publicise a timetable for making proposals to the Council for the adoption of the Budget, and its arrangements for consultation after publication of the initial proposals. The Chair of the Overview and Scrutiny Committee will also be notified.
- 3.2 At the end of the consultation period, the Cabinet will draw up firm proposals having regard to the responses to the consultation. If the Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. The Overview and Scrutiny Committee shall report to the Cabinet on the outcome of its deliberations.
- 3.3 The Cabinet will take any response from the Overview and Scrutiny into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- 3.4 Once the Cabinet has approved the firm proposals, it will refer them at the earliest opportunity to the Council.

4. DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

- 4.1 Subject to the provisions of paragraph **Error! Reference source not found.** the Cabinet, committees of the Cabinet, individual members of the Cabinet or any officers or joint arrangements discharging Cabinet functions may only take decisions which are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget approved by Full Council, then that decision may only be taken by the Council, subject to paragraph 5 below.
- 4.2 If the Cabinet, committees of the Cabinet, individual members of the Cabinet or any officers or joint arrangements discharging Cabinet functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Section 151 Officer as to whether the decision they want to make would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget.
- 4.3 If the advice of either of those officers is that the decision would not be in line with the existing Budget and/or Policy Framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 5 shall apply.

5. URGENT DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

- 5.1 The Cabinet, a Portfolio Holder or officers or joint arrangements discharging Cabinet functions may take a decision which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by Full Council if the decision is a matter of urgency. However, the decision may only be taken:

- 5.1.1 if it is not practical to convene a quorate meeting of Full Council; and
- 5.1.2 if the Chair of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

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

- 5.2 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

6. BUDGET TRANSFERS AND SUPPLEMENTARY ESTIMATES

- 6.1 Subject to the Budget Transfer Rules set out in the Financial Procedure Rules, the steps taken by the Cabinet or officers to implement Council policy are not to exceed those budgets allocated to each budget head. The Cabinet may approve budget transfers from any contingency or allocated reserve budget head approved by the Council as part of the Council's approved budget. Portfolio Holders may also approve budget transfers for budgets within their portfolio, provided they are not key decisions.
- 6.2 In exceptional circumstances the Cabinet may approve Individual Supplementary Estimates in accordance with the approved thresholds which are detailed in the Financial Procedure Rules.

7. IN-YEAR CHANGES TO POLICY FRAMEWORK

The responsibility for agreeing the Budget and Policy Framework lies with the Council and decisions by the Cabinet, a Portfolio Holder or officers or joint arrangements discharging Cabinet functions must be in line with it. No changes to any policy or strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- 7.1 which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- 7.2 necessary to ensure compliance with the law, ministerial direction or government guidance;
- 7.3 in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration; or
- 7.4 for which provision is made within the relevant budget or policy.

8. CALL-IN OF DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

- 8.1 Where the Overview and Scrutiny Committee is of the opinion that an Cabinet decision is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Council's Budget, then it shall seek advice from the Monitoring Officer and/or the Section 151 Officer.
- 8.2 In respect of functions which are the responsibility of the Cabinet, the Monitoring Officer's report and/or the Section 151 Officer's report shall be to the Cabinet with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take in respect of the Monitoring Officer's or the Section 151 Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Section 151 Officer conclude that the decision was a departure, and to the Overview and Scrutiny Committee if the Monitoring Officer or the Section 151 Officer conclude that the decision was not a departure.
- 8.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Section 151 Officer is that the decision is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget, the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 20 working days of the request by the Overview and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Section 151 Officer. The Council may either:
- 8.3.1 Endorse a decision or proposal of the Cabinet decision taker as falling within the existing Budget and Policy Framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
 - 8.3.2 Amend the Council's Financial Procedure Rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that Cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
 - 8.3.3 Where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer or the Section 151 Officer.

OFFICER EMPLOYMENT PROCEDURE RULES

This Part deals with the appointment and dismissal of staff. The General Purposes Committee is responsible for employment matters.

1. PRESCRIBED STANDING ORDERS

These Rules incorporate the prescribed standing orders in relation to:

- Appointments of Chief Officers
- Disciplinary Action in respect of Statutory Officers
- Staffing

2. RECRUITMENT AND APPOINTMENT

2.1 Declarations

- 2.1.1 The Council has drawn up procedures which include a requirement that any candidate for an appointment as an officer must state in writing whether they have any relationship with any councillor or officer of the Council;
- 2.1.2 No candidate so related to a councillor or a senior officer will be appointed without the authority of the relevant Chief Officer or an officer nominated by him.

2.2 Seeking support for appointment

- 2.2.1 The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- 2.2.2 No councillor or employee of the Council will seek support for any person for any appointment with the Council.

3. RECRUITMENT OF CHIEF EXECUTIVE/HEAD OF PAID SERVICE AND CHIEF OFFICERS

Where the Council proposes to appoint a Chief Executive/Head of Paid Service or a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- 3.1 draw up a statement including the following:
- 3.1.1 the duties of the officer concerned; and
- 3.1.2 any qualifications or qualities to be sought in the person to be appointed;
- 3.2 make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- 3.3 make arrangements for a copy of the procedures mentioned in paragraph 2 to be sent to any person on request.

4. APPOINTMENT OF HEAD OF PAID SERVICE

- 4.1 Full Council will approve the appointment of the Head of Paid Service, following the recommendation of such appointment by a committee or sub-committee of the Council. That committee or sub-committee must include at least one member of the Cabinet.
- 4.2 Full Council may only make or approve the appointment of the Head of Paid Service where no well-founded objection has been made by any member of the Cabinet.

5. APPOINTMENTS AND DISMISSALS OF CHIEF OFFICERS

In this paragraph –

“the Authority” means Tunbridge Wells Borough Council.

“the Committee” means the General Purposes Committee.

“the Panel” means a committee appointed by the Authority under section 102(4) of the Local Government Act 1972 for the purpose of advising the Authority on matters relating to the dismissal of relevant officers of the Authority.

“the proper officer” means the Monitoring Officer, save where the post concerned is the Monitoring Officer, when it shall be the Chief Executive.

“relevant independent person” means a person appointed under section 28(7) of the Localism Act 2011.

“relevant officer” means the Head of Paid Service, the Chief Financial Officer and the Monitoring Officer.

“relevant meeting” means a meeting of the Authority to consider whether or not to approve a proposal to dismiss a relevant officer.

- 5.1 The appointment of the Chief Executive/Head of Paid Service, Chief Officers, and Deputy Chief Officers and any assistant for political groups (appointed in pursuance of Section 9 of the Local Government Housing Act 1989) is the responsibility of the Committee.
- 5.2 Where the Committee is proposing to appoint the Chief Executive/Head of Paid Service, the Council must approve that appointment before the offer of appointment is made.
- 5.3 The Committee shall not make an offer of appointment in relation to any of the officers named in 5.1 above (apart from an assistant for political groups) until;
- 5.3.1 The Committee has notified the proper officer of the name of the person to whom the Committee wishes to make the offer and any other particulars which the Committee considers are relevant to the appointment;
- 5.3.2 The proper officer has notified every member of the Cabinet of:
- (a) The name of the person to whom the Committee wishes to make the offer (or, in the case of the Chief Executive/Head of Paid Service, subject to approval of the Council);

- (b) Any other particulars relevant to the appointment which the Committee has notified to the proper officer; and
- (c) The period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the proper officer; and

5.3.3 Either:

- (a) The Leader has, within the period specified, notified the Committee that neither he nor any other member of the Cabinet has any objection to the making of the offer;
- (b) The proper officer has notified the Committee that no objection was received by him within that period from the Leader; or
- (c) The Committee (or, in the case of the appointment of the Chief Executive/Head of Paid Service, the Full Council) is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

5.3.4 A relevant officer may not be dismissed by the Authority unless the procedure set out in the following paragraphs is complied with.

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

5.3.6 In paragraph 5.3.5 “relevant independent person” means any independent person who has been appointed by the Authority or, where there are fewer than two such persons, such independent person as have been appointed by another authority or authorities as the Authority considers appropriate.

5.3.7 Subject to paragraph 5.3.8 the Authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 5.3.5, in accordance with the following priority order –

(a) a relevant independent person who has been appointed by the Authority and who is a local government elector;

(b) any other relevant independent person who has been appointed by the authority;

(c) a relevant independent person who has been appointed by another authority or authorities.

5.3.8 An Authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5.3.6 but may do so

5.3.9 The Authority must appoint any Panel at least 20 working days before the relevant meeting.

5.3.10 Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the Authority must take into account, in particular:

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

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

6. OTHER OFFICERS

- 6.1 Appointment and dismissal of officers below Chief Officer is the responsibility of the Chief Executive/Head of Paid Service or his nominee, and may not be undertaken by councillors.
- 6.2 Councillors will not be involved in disciplinary action against any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct or where the Council's disciplinary, capability and related procedures, as adopted from time to time, allow a right of appeal to Members.

7. DISCIPLINARY ACTION AGAINST THE HEAD OF PAID SERVICE, CHIEF FINANCE OFFICER AND MONITORING OFFICER

- 7.1 The Head of Paid Service, Chief Finance Officer and Monitoring Officer may be suspended for the purpose of investigating alleged misconduct and any such suspension must be on full pay and terminate no later than the expiry of two months beginning with the date the suspension took effect.
- 7.2 No disciplinary action in respect of the Head of Paid Service, Chief Finance Officer and Monitoring Officer may be taken (other than mentioned in 7.1 above) by the Council, committee, sub-committee, joint committee on which the Council is represented, or any other person acting on behalf of the Council, other than in accordance with the relevant statutory Procedures and in accordance with the report of the Investigating and Disciplinary Committee.
- 7.3 Details of the Investigating and Disciplinary Committee and Appeals Committee are found in Part 3 of this Constitution.

8. SUSPENSION

An officer named in 5.1 above and the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. The suspension will be on full pay.

ACCESS TO INFORMATION PROCEDURE RULES

1. SCOPE

- 1.1 Subject to paragraph 1.2 below, these rules apply to all meetings of the Council, the Cabinet, the Overview and Scrutiny Committee, and all other Council Committees and Boards (together called meetings).
- 1.2 Where the Audit and Governance Committee is convened to consider or review, as the case may be, an allegation that a member has contravened the Council's Code of Conduct for Members, the provisions set out in the Audit and Governance Committee's Procedure for Local Assessment of Complaints shall apply and the meeting and papers will not be open to the public.

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998.

3. RIGHTS TO ATTEND MEETINGS

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules.
- 3.2 If a member of the public or press interrupts the proceedings at any meeting the Mayor may warn him. If he continues the interruption and a warning has been given, the Mayor may order his removal from the meeting place.
- 3.3 In the event of a general disturbance in any part of the meeting place open to the public, the Mayor may order that part to be cleared.
- 3.4 If the Mayor considers the orderly dispatch of business impossible, he may without question adjourn the meeting.
- 3.5 The above powers of the Mayor are in addition to any other power vested in him.

4. NOTICES OF MEETING

The Council will give at least five clear working days notice of any meeting by posting details of the meeting at the Town Hall Tunbridge Wells Kent TN1 1RS and on its website at www.tunbridgewells.gov.uk.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

- 5.1 The Members of the Overview and Scrutiny Committee shall be provided with full copies of the agenda and reports presented to the Cabinet including those containing exempt and/or confidential information.
- 5.2 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and available on the website (if any) at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the

Chief Executive shall make each such report available to the public as soon as the report is completed and sent to Members).

6. SUPPLY OF COPIES

6.1 Supply of Copies at the Meeting

The Council will make available to the public present at a meeting a reasonable number of copies of the agenda and of the reports for the meeting (save during any part of the meeting to which the public are excluded)

6.2 The Council will supply copies of:

- 6.2.1 any agenda and reports which are open to public inspection;
- 6.2.2 any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 6.2.3 if the Monitoring Officer thinks fit, copies of any other documents supplied to Members in connection with an item

to any person on payment of a charge for postage and any other costs.

7. ACCESS TO MINUTES ETC. AFTER THE MEETING

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

- 7.1 the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of Full Council, Cabinet, Committees, Boards and Sub-Committees excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- 7.2 a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- 7.3 the agenda for the meeting; and
- 7.4 reports relating to items when the meeting was open to the public.

8. BACKGROUND PAPERS

List of background papers

- 8.1 The officer preparing a report will set out in such report a list of those documents (called background papers) relating to the subject matter of the report which in his opinion:
 - 8.1.1 disclose any facts or matters on which the report or an important part of the report is based; and
 - 8.1.2 which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10), and in respect of executive reports, the advice of a political assistant .

Public inspection of background papers

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

9. SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at and made available to the public at the Council offices.

10. EXCLUSION OF ACCESS OF THE PUBLIC TO MEETINGS

10.1 Extent of Exclusion

The public may only be excluded under 0 or 0 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

10.2 Confidential information – requirement to exclude public

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

10.3 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Such a decision to exclude the public is to be made by resolution of the relevant decision making body.

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

10.4 Meaning of confidential information

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

10.5 Meaning of exempt information

Exempt information means information falling within the following categories (subject to any qualification).

10.6 Extent of Exclusion

The public may only be excluded under 0 or 0 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

[NOTE Information falling within any of paragraphs 1 – 7 below is not exempt information if it relates to proposed development for which the local planning authority may grant itself

planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.]

Category	Qualification	Interpretation
Paragraph 1 - Information relating to any individual	The exemption applies only if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (see note on public interest at the end of the table).	
Paragraph 2 - Information which is likely to reveal the identity of an individual	The Public Interest Test Qualification applies, as in 1 above.	
Paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).	<p>The Public Interest Test Qualification applies, as in 1 above.</p> <p>"Financial or business affairs" includes contemplated, as well as past or current, activities. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under -</p> <p>the Companies Act 2006;</p> <p>the Friendly Societies Act 1974;</p> <p>the Friendly Societies Act 1992;</p> <p>the Industrial and Provident Societies Acts 1965 to 1978;</p> <p>the Building Societies Act 1986 ["registered" in relation to information required to be registered</p>	<p>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</p> <p>"person" includes any public authority, company, or other legally constituted organisations and the partners in a partnership or firm.</p>

Category	Qualification	Interpretation
	<p>under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).]; or</p> <p>the Charities Act 2011.</p>	
<p>Paragraph 4 - Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connect with any labour relating matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	<p>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or document the question whether information is exempt or not falls to be determined. "labour relations matter" means-</p> <p>any of the matters specified in paragraphs (a) to (g) of section 218 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</p> <p>any dispute about a matter falling within paragraph (a) above; and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to</p>

Category	Qualification	Interpretation
		<p>employees of the authority;</p> <p>"employee" means a person employed under a contract of service;</p> <p>"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority;</p>
<p>Paragraph 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	
<p>Paragraph 6 - Information which reveals that the authority proposes-</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	<p>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</p> <p>"person" includes any public authority, company, or other legally constituted organizations and the partners in a partnership or firm.</p>
<p>Paragraph 7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	

NOTE -The Public Interest Test

The Public Interest Test in the Freedom of Information (FOI) Act 2000 is specifically defined:

The Authority must release the information unless “*in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information*”.

The starting point is that there is a general public interest in release and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.

There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations.

- There is a distinction between the public interest and what merely interests the public.
- Does it further the understanding of and participation in the public debate of issues of the day?
- Does it promote accountability and transparency by public authorities for decisions taken by them or in the spending of public money?
- Does it allow individuals and companies to understand decisions made by public authorities affecting their lives?
- Does it bring to light information affecting public health and public safety?

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

- 11.1 If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed. If the information is exempt information, the category of the exempt information must also be marked on the report.
- 11.2 The relevant body is requested in the agenda to confirm the action set out in 11.1 by resolution. Arrangements will be made to recall the press and public immediately should the motion not be passed.
- 11.3 If the matter is considered in public, any related report will also become available to the public.

12. APPLICATION OF RULES TO THE CABINET

Rules 13 – 27 apply to the Cabinet and its Committees (if any). If the Cabinet or its Committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply.

13. PROCEDURE BEFORE TAKING KEY DECISIONS

Notice of Key Decision

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- 13.1.1 a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;
- 13.1.2 at least 28 clear days have elapsed since the publication of the "Notice of Key Decision"; and
- 13.1.3 where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

Contents of Notice of Key Decision

The Notice of Key Decision will state that a key decision is to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, , area committees or under joint arrangements in the course of the discharge of an executive function. It will describe the following particulars:

- 13.1.4 the matter in respect of which the decision is to be made;
- 13.1.5 where the decision maker is an individual, his/her name and title, if any and where the decision maker is a body, its name and a list of its membership;
- 13.1.6 the date on which, or the period within which, the decision is to be made;
- 13.1.7 a list of the documents submitted to the decision maker for consideration in relation to the matter;
- 13.1.8 the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- 13.1.9 that other documents relevant to those matters may be submitted to the decision maker; and
- 13.1.10 the procedure for requesting details of those documents (if any) as they become available.

Publication of the Notice of Key Decision

The Notice of Key Decision must be made available for inspection by the public at the offices of the Council and on www.tunbridgewells.gov.uk.

14. THE FORWARD PLAN

The Council is not required by law to publish a Forward Plan. However, the a Notice of Key Decision and a Notice of Private Meeting of Cabinet published by the Council set out not just details of specific key decisions, but also details of key decisions over a four month period (including decisions to be made by Cabinet, or individual Cabinet members, which are not key decisions). In this constitution, such notices are together referred to as the

“Forward Plan”. The Forward Plan does not have to include exempt information and should not include confidential information.

15. GENERAL EXCEPTION

- 15.1 If a Notice of Key Decision has not been published, then subject to Rule 16 (special urgency), the decision may still be taken if:
- 15.1.1 the decision must be taken by such a date that it is impracticable to publish a Notice of Key Decision;
 - 15.1.2 the Monitoring Officer has informed the Chairman of the Overview and Scrutiny Committee, or in his absence the Vice-Chairman, in writing, or if there is no such person, each member of that committee in writing, by notice, of the matter about which the decision is to be made;
 - 15.1.3 the Monitoring Officer has made copies of that notice available to the public at the offices of the Council and on the Council’s website; and
 - 15.1.4 at least 5 clear working days have elapsed since the Monitoring Officer complied with 15.1.2 and 15.1.3.
- 15.2 As soon as reasonably practicable after the Monitoring Officer has complied with Rule 15.1, he must make available at the offices of the Council and publish on the Council’s website (if any) the reasons why compliance with Rule 14 is impractical.

16. SPECIAL URGENCY

- 16.1 If by virtue of the date by which a key decision must be taken Rule 15 (general exception) cannot be followed, then the key decision can only be taken if the decision maker obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Overview and Scrutiny Committee, or if the Chairman of the Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor of the Council, or in his/her absence the Deputy Mayor of the Council will suffice.
- 16.2 As soon as reasonably practicable after the decision maker has obtained agreement under Rule 16.1 he must make available at the offices of the Council and publish on the Council’s website (if any) a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

17. REPORT TO COUNCIL

- 17.1 The Overview and Scrutiny Committee can require a report if it thinks that a key decision has been taken which was not:
- 17.1.1 the subject of a Notice of Key Decision; or
 - 17.1.2 the subject of the general exception procedure; or
 - 17.1.3 the subject of an agreement with the Chairman of the Overview and Scrutiny Committee, or the Mayor or Deputy Mayor of the Council under Rule 16;

It may require the Cabinet to submit a report to the Council within such reasonable time as the Overview and Scrutiny Committee specifies.

The report must include details of the decision and the reasons for the decision, the decision maker, and the reasons, if any, for the Cabinet believing that the decision was a key decision. The power to require a report rests with the Overview and Scrutiny Committee, but is also delegated to the Monitoring Officer, who shall require such a report on behalf of the Committee when so requested by the Chairman of the Overview and Scrutiny Committee or any 5 members of the Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

17.2 Cabinet's report to Council

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

17.3 Quarterly reports on special urgency decisions

In any event the Leader of the Council will submit quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

18. RECORD OF DECISIONS

After any meeting of the Cabinet or any of its Committees, whether held in public or in private, the Monitoring Officer or, where no officer was present, the person presiding at the meeting, will produce a written record of every decision taken at that meeting as soon as practicable. The record will include:

- 18.1 a record of the decision including the date it was made;
- 18.2 a record of the reason for the decision;
- 18.3 details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
- 18.4 a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and
- 18.5 in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

19. MEETINGS OF THE CABINET TO BE HELD IN PUBLIC

Meetings of the Cabinet and its committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or

prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information would be disclosed.

20. NOTICE OF EXEMPT MEETINGS OF THE CABINET

- 20.1 Members of the Cabinet or its committees will be entitled to receive five clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.
- 20.2 At least 28 clear days before a meeting at which exempt items will be discussed, the decision-making body must:-
- 20.2.1 make available at the offices of the Council a notice of its intention to hold part of the meeting in exempt session (a "Notice of Exempt Meeting"); and
 - 20.2.2 publish that notice on the Council's website.
- 20.3 At least five clear days before a meeting at which exempt items will be discussed, the decision-making body must:-
- 20.3.1 make available at the offices of the Council a further notice of its intention to hold part of the meeting in exempt session; and
 - 20.3.2 publish that notice on the Council's website.
- 20.4 A notice under paragraph 20.3 must include:-
- 20.4.1 a statement of the reasons for the meeting to be exempt
 - 20.4.2 details of any representations received by the decision-making body about why the meeting should be open to the public; and
 - 20.4.3 a statement of its response to any such representations.
- 20.5 Where the date by which a meeting must be held makes compliance with this Rule impractical, the meeting may only be held in exempt where the decision-making body has obtained agreement from:-
- 20.5.1 the Chairman of the Overview and Scrutiny Committee; or
 - 20.5.2 if there is no such person, or if the Chairman of the Overview and Scrutiny Committee is unable to act, the Mayor of the Council; or
 - 20.5.3 where there is no Chairman of the Overview and Scrutiny Committee or of the Council, the Deputy Mayor of the Council,
- that the meeting is urgent and cannot reasonably be deferred
- 20.6 As soon as reasonably practicable after the decision-making body has obtained agreement under paragraph 20.5 to hold a private meeting, it must
- 20.6.1 make available at the office of the Council a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and

20.6.2 publish that notice on the Council's website.

21. ATTENDANCE AT EXEMPT MEETINGS OF THE CABINET

Notice and Attendance

- 21.1.1 All members of the Cabinet will be served notice of all exempt meetings of the committees of the Cabinet, whether or not they are members of that committee.
- 21.1.2 All members of the Cabinet are entitled to attend exempt sessions of meetings of the Cabinet, and its committees.

Officer Involvement

- 21.1.3 The Chief Executive, the Director of Finance and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Chief Executive has been given reasonable notice that a meeting is to take place.
- 21.1.4 The Chief Executive shall arrange for an officer to attend exempt sessions of Cabinet meetings to record and publish the decisions. In the absence of such officer this will be the responsibility of the Chairman of the meeting.

22. KEY DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

22.1 Reports intended to be taken into account

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

22.2 Provision of copies of reports to Overview and Scrutiny Committee

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

22.3 Record of individual decision

- 22.3.1 As soon as reasonably practicable after a Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he will prepare, or instruct the Monitoring Officer to prepare, a report containing:
- a record of the decision including the date it was made;
 - a record of the reasons for the decision;
 - details of any alternative options considered and rejected by the member when making the decision;
 - a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and

- in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

22.3.2 The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political or mayor's assistant.

22.4 **Inspection of documents following executive decisions**

22.4.1 Subject to Rule 28, after a meeting of a decision-making body at which an executive decision has been made, or after an individual member or an officer has made an executive decision the Monitoring Officer must ensure that a copy of-

any records prepared in accordance with Rules 18 or 22; and

- (a) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with Rules 18 or 22 or, where only part of the report is relevant to such a decision, that part,

must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the Council, and on the Council's website.

22.4.2 Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule 0, those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper to the Council of postage, copying or other necessary charge for transmission.

22.5 **Inspection of background papers**

22.5.1 Subject to Rule 28, when a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with Rule 5 or 0, at the same time-

- (a) a copy of a list compiled by the proper officer of the background paper to the report or part of the report, must be included in the report or, as the case may be, part of the report; and
- (b) at least one copy of each of the documents included in that list,

must be available for inspection by the public at the offices of the Council and on the Council's website.

23. **JOINT COMMITTEES**

These Rules apply to the Council's Joint Committees as follows:

23.1 If all the members of a joint committee are members of the Cabinet in each of the participating authorities, then its access to information regime is the same as that applied to the Cabinet.

- 23.2 If the joint committee contains members who are not on the Cabinet of any participating authorities then the access to information rules in Part VA of the Local Government Act 1972, as applicable to meetings of Full Council and its committees will apply.

24. OVERVIEW AND SCRUTINY COMMITTEE- ACCESS TO DOCUMENTS

Rights to copies

Subject to Rule 0 below, the Overview and Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet or any of its Committees and which contains material relating to:

- 24.1.1 any business transacted at a meeting of the Cabinet or its Committees;
- 24.1.2 any decision taken by an individual member of the Cabinet; or
- 24.1.3 any decision taken by an officer of the Council in accordance with executive arrangements.

Limit on rights

The Overview and Scrutiny Committee will not be entitled to:

- 24.1.4 any document that is in draft form;
- 24.1.5 any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision the Committee are reviewing or scrutinising or intend to scrutinise; or
- 24.1.6 the advice of a political or mayoral assistant.

25. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

25.1 Material relating to business to be transacted at a Public Meeting

- 25.1.1 All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its Committees which contain material relating to any business to be transacted at a public meeting unless 0, 0 or 0 applies:

it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information; or

it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; or

it contains the advice of a mayoral/political assistant.

- 25.1.2 Any document which is required by Rule 25.1.1 to be available for inspection by any member of the Council must be available for such inspection for at least five (5) clear days before the meeting except that-

where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and

where an item is added to the agenda at shorter notice, a document that would be required to be available under Rule 25.1.1 in relation to that time, must be available for inspection when the item is added to the agenda.

Material relating to previous business

- 25.1.3 All members will be entitled to inspect any document (except those available only in draft form) which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting or to any decision made by a Member or Officer in accordance with executive arrangements unless 0, 0 or 0 applies.
- 25.1.4 Any document required to be made available for inspection under 0 must be made available when the relevant meeting concludes or, where an executive decision is made by an individual member or officer, immediately after the decision has been made, and in any event, within twenty four (24) hours of the conclusion of the meeting or the decision having been made as the case may be.

26. NATURE OF RIGHTS

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

27. MEMBERS OTHER RIGHTS TO INFORMATION

- 27.1 A Member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a committee or the Council including background papers. Applications should be made to the Monitoring Officer and, if available, copies will be supplied upon request.
- 27.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which he:
- 27.2.1 is professionally interested; or
- 27.2.2 has a registerable or non-registerable personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.
- 27.3 This shall not preclude the Monitoring Officer from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either the Freedom of Information Act or the Data Protection Act.
- 27.4 All reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the mater to which such reports or minutes relate.

28. CONFIDENTIAL INFORMATION, EXEMPT INFORMATION AND ADVICE OF A POLITICAL ADVISER OR ASSISTANT

- 28.1 Nothing in these Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.
- 28.2 Nothing in these Rules:
- 28.2.1 authorises or requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Monitoring Officer, that document or part of a document contains or may contain confidential information; or
 - 28.2.2 requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the proper officer, that document or part of a document contains or is likely to contain exempt information or the advice of a political advisers or assistant.
- 28.3 Where a member of the Cabinet or an officer makes an executive decision in accordance with executive arrangements, nothing in these Rules:
- 28.3.1 authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where, the documents contain confidential information; or
 - 28.3.2 requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure of the documents would, in the opinion of the member or officer making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.
- 28.4 Nothing in these Rules requires a decision making body to permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.