

## Constitution Contents 2022

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## Appendix 1 – Responsibility for Functions / Scheme of Delegation

### Introduction

1. The Council has adopted the Leader and Executive (executive) (England) governance model. The Executive consists of the Leader of the Council (who is appointed by full Council and may be removed by it) and a minimum of 2 but no more than a maximum of 10 councillors appointed to the Executive from time to time by that Leader. The executive of City of York Council is described as 'the Executive'.
2. In accordance with the law, any function of the Council which is not otherwise specified in legislation is an 'executive function' and is the responsibility of the Leader and Executive. The Leader and Executive are responsible for all of the Council's functions (including local area functions), except those which are required by the law or this Council's Constitution, to be the responsibility of the Council itself, or any other non-Executive part of the Council. Executive functions are regarded as exercisable by the Executive (or officers or individual Executive Members) on behalf of the Council and may not be exercised by the Council.
3. Such Executive functions may be discharged in accordance with provisions made by, or under, this Constitution or the law, in particular the Local Government Act 2000, Public Involvement in Health Act 2007, Localism Act 2011 and associated Regulations.
4. Legislation specifies particular non-executive functions which cannot be the responsibility of the Executive, and also local choice functions which may be allocated to be the responsibility of the Executive, but do not need to be. All local choice functions which are not otherwise allocated under this Constitution are the responsibility of the Leader and Executive.
5. The Leader may personally discharge functions which are the responsibility of the Executive or arrange for their discharge by the

Executive, another member of the Executive, a committee of the Executive, a joint committee or by an officer. The Leader may change these arrangements from time to time. Unless the Leader otherwise directs, the Executive itself may also arrange for the discharge of any of its functions by a committee of itself, a joint committee, individual Executive Member or by an officer.

6. This scheme of delegation [hereafter referred to as “the scheme”] reflects the assignment of functions by either the Council (in respect of matters which are not executive functions) or by the Leader of the Council or Executive (in respect of matters which are the responsibility of the Executive as appropriate to the particular function. In relation to delegation to officers, the scheme does not distinguish between the two sources of delegation.
7. Responsibility for the functions of the Council and Executive is delegated or assigned as set out in the following provisions of this scheme as updated from time to time, and such delegation/assignment includes the power to do anything which is calculated to facilitate or is conducive to the discharge of those functions.
8. The provisions of this scheme take account of the requirements of the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007, Localism Act 2011 and relevant legislation including Regulations in the assignment of functions to the Council itself, to the Leader/Executive, to other Committees or Panels. They take account of any prohibitions, restrictions or local choice in the assignment of these functions.
9. The Council, the Leader of the Council, Executive, individual Members, Committees or Panels to which functions are assigned, shall act in accordance with the law and the provisions of the Council’s Constitution, including any Standing Orders, Procedure Rules, Financial Regulations and protocols approved from time to time (except those joint committees or any other member bodies regulated by separate constitutions).

10. Those functions reserved to the full Council itself are not to be delegated or assigned except as permitted under the law or this Constitution.
11. Each body or person having decision-making powers (a 'Delegate') shall implement and act within the policies of the Council, having regard to the advice of the Director of Governance who is the council's Chief Legal Officer, and Chief Finance Officer as necessary.
12. Each Delegate shall have the power to delegate further to an officer all or any of the functions delegated to it. Subject to a written scheme of delegation recording this and being shared with the Monitoring Officer.
13. A Delegate may decide not to exercise any function in relation to a particular matter and invite the Council, Leader of the Council or Executive depending upon whether the function is the responsibility of the Executive or any other appropriate body as the case may be to do so instead.
14. The functions, powers and duties are delegated to Officers in accordance with the scheme of delegation to Officers.
15. Meanings:
  - a) Executive (executive) functions shall mean those functions that by law must be the responsibility of the Executive.
  - b) Non-Executive functions shall mean those functions that by law must not be the responsibility of the Executive.
  - c) Local Choice functions shall mean those functions that the Council may decide to exercise itself or delegate to any part of the Council including the Executive.
  - d) Responsibility of the Executive shall include those matters which are Executive (executive) functions, or local choice functions which have been delegated to the Executive.

## Principles of Delegation

16. The principles guide the allocation of responsibility for decision-making at Executive Member and Chief Officer Level.
17. In respect of matters delegated from Executive to individual Executive Member, the focus is on policy issues within the budget and policy frameworks agreed by Council/Executive:-
  - a) Policy matters, internal to the service, and required to provide guidance to officers to ensure significant policy decisions are implemented
  - b) Details of policy matters delegated by Executive once principles have been agreed
  - c) Expenditure items not specifically detailed within Service Plans but not sufficiently significant in scale to refer to Executive
  - d) Responses to consultation documents not referred to Executive.
18. In respect of matters delegated from Executive to Chief Officers in consultation with Executive Members, the focus is on service management issues with policy or political implications (“no surprises principle”).
  - a) Significant management decisions which could have an adverse or controversial impact on the delivery of services or achievement of agreed targets
  - b) Development of Service Plans and Policy Statements for consideration by Executive
19. In respect of matters delegated from Executive to the Chief Operating Officer or Chief Officer these will relate solely to the management of services and resources covering:-
  - a) Management of services within the framework of the Council Plan, Service Plans and Council policies and standards agreed by Members

- b) Management of resources within the framework of the corporate strategies (i.e. Financial, Information & Communications Technology, Procurement, Human Resources and Asset Management) agreed by Members.

## **Scheme of Delegation**

### Aims

- 20. Democratic accountability should be the key aim of the Scheme of Delegation together with:
  - a) Member authority for policy/strategic decisions
  - b) Effective scrutiny of policy/strategic issues
  - c) Officer responsibility for service delivery
  - d) Effective monitoring of service performance.

### Member Advantages

- 21. The Scheme of Delegation details below the decisions to be taken at the different levels. For Executive Members it will deliver the:-
  - a) Ability to control key/strategic decisions in Council and Executive
  - b) Opportunity to consider and shape policy within the Executive
  - c) Involvement in Council Plan/Budget formulation.
- 22. For individual Executive Members the advantages are:-
  - a) Enhanced authority and responsibility to implement policy within agreed frameworks
  - b) Increased ability to take speedier policy decisions
  - c) Greater involvement in shaping service delivery in line with policy
  - d) Improved information on service activities and executive decisions

- e) Protection of personal positions and interests through collective responsibility in Council/Executive and support from Chief Officers.

### **Member-Officer Relationships**

23. The Scheme of Delegation will only work effectively if there is mutual understanding and trust between Members and Officers. However, to support the Scheme of Delegation and particularly where matters are delegated from Executive to Executive Member and Chief Officers, it is suggested that:
- a) 'Service Plans' should be of sufficient detail to provide an effective framework for decisions
  - b) Information on service delivery should be enhanced to ensure that members know what is going on without having to ask
  - c) Protocols, or sets of criteria, for the detailed implementation of specific policy or service areas should be agreed between the Executive Member and Chief Officers
  - d) The principle is reinforced that Chief Officers err on the side of caution in informing members of decisions that might have political implications, including any advice given to Members. Decisions delegated to officers within departments are dealt with in a structured way with proper records and audit trails so it is clear who is responsible and what the reasons were for the decisions.

## Full Council

### Meanings

1. *Policy Framework*. The policy framework means the following plans and strategies having regard to the recommendations of the Executive :-

#### Partnership and Community Plans:

- a) 10 Year City Plan
- b) Health and Wellbeing Strategy
- c) Children and Young People's Plan
- d) Corporate Parenting Strategy
- e) Youth Justice Plan
- f) Community Safety Strategy
- g) Joint Waste Strategy
- h) Climate Change Strategy
- i) Annual Library Plan
- j) Food Law Enforcement Service Plan

#### Council:

- a) Council Plan or its equivalent
- b) Local Plan documents
- c) Local Transport Plan
- d) Statement of Licensing Policy under Licensing Act 2003
- e) Gambling Act Licensing policy
- f) Medium Term Financial Strategy
- g) Treasury Management Plan

And any other Strategy, Plan or Agreement that requires the approval of full Council.

2. *Budget.* The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and, if required, the setting of virement limits different to those in Financial Regulations.

### Functions of Full Council

3. The functions reserved to Full Council are:

- a) To approve, adopt amend, monitor and /or review the plans, strategies and policies which together make up the Council's Policy Framework
- b) Determine and amend the Council's Revenue and Capital budgets, including the initial allocations of financial resources to different services and projects, proposed contingency funds, proposed precepts, setting the Council Tax and decisions relating to the Council's borrowing requirement and the control of its capital expenditure (subject to being referred back to Executive).
- c) Approve the Treasury Management Strategy.
- d) Approve expenditure that falls outside the Council's total annual budget.
- e) Take any decision, which is contrary to the approved Policy Framework and/or the approved Budget.
- f) Appoint and remove the Leader in accordance with Council Procedure Rule 11.
- g) Decide the composition of Committees and sub-committees of Full Council and make appointments including co-opted members to them and other non-Executive bodies except in the case of ad hoc scrutiny sub-committees which will be determined

by the Customer & Corporate Services Scrutiny Management Committee.

- h) Appoint representatives to outside bodies unless the appointment is one that must by law be made by the Executive in relation to its functions or has been delegated by the Council.
- i) Make and, subject to the provisions of Article 25 of this Constitution, amend Standing Orders, Financial Regulations and rules in relation to contracts.
- j) Change the name of the City or of a Parish.
- k) Elect a Lord Mayor, Deputy Lord Mayor and Sheriff and exercise related functions.
- l) Confer the title of the Honorary Alderman, Honorary Recorder and Honorary Freeman and grant the Freedom of the City.
- m) Promote or oppose local or personal bills.
- n) Where it is the function of the Council, divide Parliamentary Constituencies and local government electoral divisions into polling districts.
- o) Make, amend, revoke or re-enact Byelaws.
- p) Make orders for grouping parishes, dissolving groups and separating parishes from groups.
- q) Dissolve small parishes.
- r) Fill Council or Parish Council vacancies in the event of insufficient nominations.
- s) Submit proposals to the Secretary of State for an Order under Section 10 of the Representation of the People Act 2000 (pilot schemes for local elections).

- t) Appoint the Chief Operating Officer (or equivalent) (Head of Paid Service) and designate officers as the Monitoring Officer, the Chief Finance Officer and Proper Officers under the relevant legislation, except to the extent that the power to designate Proper Officers has been otherwise delegated in this Constitution.
- u) Make a scheme for the payment of allowances to Members and determine the amount of all allowances payable to Members of the Council, its Committees, sub Committees and other bodies.
- v) Take decisions and/or give advice on matters brought to the Council by the Executive and other bodies or persons.
- w) Carry out any other functions reserved by law or by this Constitution to Full Council, including those “local choice” functions reserved to Full Council under this part of the Constitution

## **Council Meetings**

4. There are four types of Council meeting:-

- the annual meeting;
- ordinary meetings;
- budget council;
- extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules in Appendix 3 of this Constitution.

## **Executive**

5. The Executive will be responsible for guiding the Council in the formulation of its corporate plan of objectives and key priorities. Within the policy framework, budgets and major plans approved by Full Council, the Executive will have executive responsibility for the implementation of the Council’s key goals and objectives.

6. It will operate within the Scheme of Delegation set out in this document.
7. The Leader of the Council chairs the Executive and appoints members as Executive Members and allocates cross-service Portfolio responsibilities to the Executive Members.
8. The Leader of the Council may exercise any Executive function and may determine whether such functions may be exercised by the Executive, a Committee of the Executive, an Executive Member, an Officer or a Joint Committee.

### **Matters for the Executive**

9. The Local Government Act 2000 delegates most functions to the Executive, for example:
  - a) Policy formulation within and across services
  - b) Performance indicator and target setting
  - c) Recommending Corporate Plans to Council
  - d) Recommending Service Plans to Council
  - e) Agreeing variations to Service Plans
  - f) Monitoring Council Plan and Best Value targets
  - g) Monitoring Service Plan delivery
  - h) Preparing budget estimates
  - i) Monitoring revenue/capital budget spend
  - j) Reviewing progress on major capital schemes and other service developments
  - k) Agreeing major organisational changes
  - l) Agreeing virement between service areas
  - m) Agreeing externally funded initiatives not included in Service Plans
  - n) Agreeing detailed policy implementation criteria
  - o) Agreeing Best Value Review reports
  - p) Agreeing policy representations to Government

10. Plans, strategies and policies falling within the Policy Framework as defined above shall be considered by the Executive who shall make recommendations thereon to Full Council. It should be noted that in respect of plans, strategies and policies falling within the Policy Framework it is for Full Council to:
- a) Instruct the Executive to reconsider any draft plan, strategy or policy;
  - b) Amend any draft plan, strategy or policy submitted by the Executive;
  - c) Approve for formal public consultation proposals for alterations to, or the replacement of, the Local Plan following submission to government;
  - d) Approve any plan, strategy or policy for submission to government (where required);
  - e) Adopt any plan, strategy or policy with or without modifications.
11. The function of amending, modifying, varying or revoking any plan, strategy or policy falling within the Policy Framework shall be performed by the Executive only if it is:
- a) required for giving effect to governmental requirement;  
or
  - b) was authorised by Full Council when approving or adopting the plan, strategy or policy.
12. The Executive is responsible for proposing the Revenue and Capital Budgets to Council including the initial allocation of financial resources to different services and projects, proposed contingency funds, proposed precepts, the amount of Council Tax and decisions relating the Council's borrowing requirement and the control of capital expenditure.

## Executive Members

### Executive Members' Roles and Responsibilities

13. The Executive Leader (hereafter referred to as Leader of the Council) and the other Executive Members are responsible to Full Council and to the citizens of York, for the performance of the Executive. The Council demands that this duty is discharged to the highest standards of probity and integrity consistent with retaining public confidence in the Executive. In so doing the Leader of the Council will ensure that the Executive decision making arrangements are as clear and unambiguous as practicable and that the other Executive Members undertake their Executive responsibilities for the benefit of the City as a whole and do not give improper weight to their ward and its interests.
14. Executive Members have a collective responsibility to:-
- a) represent and promote the Council and the interest of its community to the outside world;
  - b) lead the community planning process to translate the wishes of the local community into action;
  - c) propose to Council the annual budget of the Council and the major strategic goals which underpin it;
  - d) lead the preparation of the Policy Framework and other strategies, plans and policies to achieve those goals;
  - e) ensure effective delivery of the budget and the Policy Framework;
  - f) take in-year decisions on priorities and the use of resources associated with those programmes and promote value for money;
  - g) work in partnership with all sectors of the community and beyond it for the local public good;
  - h) manage the Council's Executive business, ensuring the effective use of resources across the organisation;
  - i) take action collectively as specified in this Constitution or as otherwise required by law.

15. Each Executive Member also has a duty to advise the Executive on strategic or other significant decisions relating to their Executive portfolio which would help the Executive to:-
- a) develop proposals for the Council's Budget and Policy Framework and other strategies, plans and policies;
  - b) decide what the Executive will, and will not, do in implementing the Council's Budget and Policy Framework, and other strategies, plans and policies;
  - c) decide the level of resources that will be devoted to services and projects within the budgetary framework and decide which issues have priority over others;
  - d) decide what guidelines should govern the way the Council operates;
  - e) decide what indicators and measures will be used to set and assess performance standards;
  - f) review what is achieved in practice, to see if there is a need for change.
16. Individual Executive Members may make any decision relating to the functions within their portfolios with the exception of:
- a) Key decisions as defined in the Council's Constitution;
  - b) Decisions which in the opinion of the Executive Member significantly cut across more than one portfolio, in which case the Leader of the Council determines how the decision is to be taken;
  - c) Other decisions which the Leader of the Council determines should be made collectively by the Executive.
17. The Leader of the Council may exercise any function delegated to another Executive Member if that Executive Member is unable or unwilling to act, for example due to a [potential] conflict of interest. The Leader of the Council may also exercise any function of the Executive where a decision cannot reasonably await the next meeting. This is subject to compliance with the urgency procedures laid out in the Constitution for key decisions, see appendix 7.

18. The Deputy Leader may exercise any function of the Leader if the Leader is unable to act.

#### Executive Portfolios

19. The current Executive Portfolios are:
- a) Leader including Policy, Strategy and Partnerships
  - b) Deputy Leader and Transport
  - c) Housing and Safer Neighbourhoods
  - d) Economy and Strategic Planning
  - e) Finance and Performance
  - f) Culture, Leisure and Communities
  - g) Children, Young People and Education
  - h) Health and Adult Social Care
  - i) Environment and Climate Change

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#### **Local Choice Functions**

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Appendix 1: Responsibility for Functions / Scheme of Delegation

1. The responsibility for local choice functions is as detailed in the table below.

No	Function	Decision Making Body	Extent of Responsibility
1	Any function under a local act other than a function of the Executive	Licensing and Regulatory Committee  The Executive	Functions which involve either determining an application for a licence, approval, consent, permission or registration; direct regulation of a person or any related enforcement actions. All other functions.
2	The determination of an appeal against decisions made by or on behalf of the Council	Appeals Committees  The Executive	To all the extent set out in the terms of reference of the Appeals Committees.  Any appeal, which by law, must be considered by the Executive
3	The making of arrangements for reviews against the exclusion of pupils from schools.	Independent Review Panels	NB. The reviews themselves are heard by lay and non-lay independent panel

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			members appointed by the Director of Governance.
4	The making of arrangements in relation to school admission appeals pursuant to the School Standards and Framework Act 1998	School Admission Appeals Panels	NB. The appeals themselves are heard by lay and non-lay independent panel members appointed by the Director of Governance
5	The making of arrangements in relation to appeals by Governing Bodies pursuant to Section 95(2) of the School Standards and Framework Act 1998	Education Appeals Panels	NB. The appeals themselves are heard by independent lay and non-lay Members appointed by the Director of Governance
6	The discharge of any function relating to the control of pollution or the management of air quality	Licensing and Regulatory Committee	Functions which involve the determination of an application for a licence, approval, consent, permission or registration or direct regulation of a person, together with any related enforcement action. All other functions

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		The Executive	
7	The discharge of any function relating to contaminated land	Licensing and Regulatory Committee & The Executive	Division of responsibility as for 6 above
8	The service of an abatement notice in respect of a statutory nuisance The inspection of the authority's area to detect any statutory nuisance The investigation of any complaint as to the existence of a statutory nuisance	Licensing and Regulatory Committee & the Executive	Division of responsibility as for 6 above
9	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	The Executive	
10	The obtaining of information under the section 330 of the Town and Country Planning Act 1990 as to interests in land	The Executive	To the extent that it is necessary to exercise these powers in respect of actions which are preliminary to the exercise of powers to make compulsory purchase orders.  Exercise of the powers for all other

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		Planning Major Committee and Planning Minor Committee	purposes falling within their respective responsibilities.
11	The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Director of Governance	
12	The making of agreements under Section 278 of the Highways Act 1980 for the execution of highway works	The Executive	
13	The appointment (and revocation of any such appointment) of any individual (a) to any office other than employment by the authority (b) to any body (or Committee or sub – Committee of such a body) other than the authority itself or a Joint Committee	Full Council	

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	of two or more authorities		
14	Making agreements with other local authorities for the placing for staff at the disposal of those other authorities	The Executive  Full Council	In connection with functions which are the responsibility of the Executive  In all other cases.
15	The arrangements for school transport appeals	Corporate Director of People in conjunction with Director of Governance	<b>Commented [SM1]:</b> May be subject of potential change – SMU decision required
16	Functions relating to health and safety at work	Chief Operating Officer, Corporate Directors and Head of HR	See scheme details
17	All functions relating to the planning and delivery of Elections	Chief Operating Officer in the capacity of Returning Officer	Delegated to the Deputy Returning Officer (with full powers) in the absence of the Returning Officer
18	Functions relating to the name and status of areas and individuals	Full Council	
19	Power to make, amend, revoke or re-enact bye-laws pursuant to any provision of any enactment (including a local Act) whenever	Full Council	

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	passed, and s14 Interpretation Act 1978		
20	Power to promote or oppose local or personal bills pursuant to s239 Local Government Act 1972	Full Council	
21	Powers to make, amend and or revoke standing orders	Full Council	
22	Dealing with findings of maladministration by either Local Government and Social Care Ombudsman,(LGSCO) Housing Ombudsman Service, (HOS) Parliamentary and Health Ombudsman (P&HO)	Audit & Governance Committee Full Council	In consultation with the Director of Governance/ Monitoring Officer
23	Dealing with Information Commissioner's Office (ICO) decision notices, enforcement action and monetary fine or criminal proceedings	Audit & Governance Committee Full Council	In consultation with the Director of Governance/ Monitoring Officer
24	Dealing with findings of fault or inspection by the Surveillance Camera Commissioner's (SCC)	Audit & Governance Committee Full Council	In consultation with the Director of Governance/ Monitoring Officer
25	Dealing with findings of fault or inspection by	Audit & Governance Committee	In consultation with the Director of

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	the Investigatory Powers Commissioner's Office (IPCO)	Full Council	Governance/ Monitoring Officer
26	Duty to make arrangements for the proper administration of financial affairs	Chief Finance Officer	
27	Preparation of the Council's Statement of Accounts, Income and Expenditure and Balance Sheet including the preparation of the Annual Governance Statement	Audit & Governance Committee  Full Council	In consultation with the Chief Finance Officer  In consultation with the Chief Finance Officer, the Director of Governance, the Head of Paid Service, Corporate Directors and the Head of Internal Audit
28	Appointments to outside bodies	Full Council	

## **Officer Scheme of Delegation**

### General Principles of Officer Delegations

1. The delegations set out below apply to both Executive functions and non-Executive functions.
2. Functions delegated to officers are to be exercised in compliance with other parts of the Constitution (including the restrictions on use of delegated powers set out in this Appendix of the Constitution) and in accordance with the budget and policy framework.
3. Functions delegated to officers shall also be exercised having full regard to:
  - a) Any advice given by the Chief Operating Officer & Head of Paid Service;
  - b) Any financial advice given by the Chief Finance Officer appointed under section 151 of the Local Government Act 1972;
  - c) Any legal advice given by the Director of Governance & Monitoring Officer; and
  - d) Any statutory codes or guidance, and any policies or protocols as may be approved by the Council and Executive.
4. "Function" is to be construed broadly and includes the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions. Where functions are delegated, these should be taken to include all powers and duties necessary to carry out those functions under all present and future legislation and all incidental powers including power to serve statutory notices (after consultation with the Director of Governance & Monitoring Officer) where specified, and carry out works in default.
5. The Chief Operating Officer and Chief Officers are not required to exercise all delegations personally and may authorise officers of suitable experience and seniority to exercise delegated powers on their behalf. The Chief Operating Officer and Chief Officers must maintain an up to date list of all such authorisations, as part of a comprehensive

Directorate Scheme of Delegation and a copy of which must be shared with the Director Governance & Monitoring Officer.

6. The fact that a function is delegated to the Chief Operating Officer and Chief Officers under this scheme does not preclude the Executive or an Executive Member (for Executive functions) or the Council or a Committee (for non- executive functions) from exercising the function in question.
7. The Chief Operating Officer and Chief Officers may refer any matter to Full Council, the Executive, an appropriate Committee of the Council or an Executive Member for decision at their discretion. The Chief Operating Officer and Chief Officers should exercise this discretion if in their opinion:
  - a) the matter is of significant political impact where Members might be expected to be accountable to the electorate for the decision;
  - b) it is a matter of substance relating to a key or significant project;
  - c) where significant risks have been identified in proceeding with the issue;
  - d) where there is a significant deviation from the original intention of a proposal previously reported to Members; or
  - e) the decision could have significant consequences for another directorate.
8. The Chief Operating Officer and Chief Officers have responsibility to report to Council, Executive, the appropriate Committee or Committee Chair or appropriate Ward Members, matters that are of particular significance where that body or person is not required to make a decision but where it is proper for them to be aware of the position.
9. In the absence or the unavailability of an officer, any function delegated to that officer may be exercised by an Officer acting as their deputy either generally or in relation to a particular service area.

10. For the purposes of this Constitution, the reference to Chief Officer shall include the Chief Operating Officer, a Corporate Director, Director and Assistant Director only.

### **Restrictions on the use of Delegated Powers**

11. All delegated decisions must be taken in compliance with the Constitution, the budget and policy framework, Financial Procedure Rules and Contract Procedure Rules. All decisions are recorded and published by Democratic Services.
12. The Chief Operating Officer and Chief Officers may, within the approved budget, therefore, exercise all matters of day-to-day administration and operational management of the services and functions for which they are responsible to the Council, the Executive or a committee which delegation shall include taking and implementing decisions including in particular any decision which is not a key decision and which is concerned with maintaining the operation or effectiveness of those services or with a matter incidental to the discharge of the Council's functions or which falls within the scope of a policy decision taken by the Council.
13. The scheme does not delegate to Chief Officers or any Officer any key decisions or delegate matters to individual Members of the Council's Executive. Key decisions are defined in Article 7 of this constitution.
14. All powers and duties that the Chief Operating Officer or any Officer is authorised to exercise or perform must be exercised or performed on behalf of and in the name of the Council and in accordance with the Constitution.
15. Where any matter involves professional or technical considerations not within the sphere of competence of the Chief Operating Officer and Chief Officers or other Officers they must consult the appropriate professional or technical Officer of the Council before authorising action.
16. Appointments to act as Authorised or Proper Officers must be made by the Director of Governance & Monitoring Officer unless specified later in

this Scheme.

17. The Director of Governance & Monitoring Officer is appointed to act as Authorised or Proper Officer for the purposes of any Act of Parliament or statutory instrument where qualified to do so and another Officer has not been appointed.
18. The Director of Governance & Monitoring Officer may appoint other Officers to act as Authorised or Proper Officers for the purposes of any Act of Parliament or statutory instrument and to appear on behalf of the Council in proceedings before the Magistrates or County Court.
19. The Leader of the Council, the relevant Executive Member and the Chief Operating Officer must be consulted about responses to consultation papers issued by Government Departments or National or Regional Bodies.
20. The appropriate Executive Member must be consulted about responses to long term or strategic plans of neighbouring planning authorities.

### **Financial thresholds**

21. An Officer may not make a key decision unless specifically authorised to do so under this Constitution or by the Executive.
22. An Officer may not award a contract with a value exceeding £250,000 except where the contract is treated as a routine procurement in accordance with the Contract Procedure Rules contained within this Constitution.

### **Planning Powers**

23. An Officer may not exercise a power in respect of a planning matter where the power to take the particular decision is specifically delegated under this Constitution to the Planning Committee or Planning Area Sub Committee.

24. Unless where circumstances are urgent or require immediate action, an Officer may not authorise the issuing of a planning enforcement or stop notice without consultation with the Chair and Vice Chair of the Planning Minor Committee.
25. The request to bring an application to the Planning Minor Committee must be made:-
- a) by a Ward Councillor for the site of the application, and
  - b) in writing to the Corporate Director of Place and or the Director of Environment, Transport and Planning, and
  - c) within the consultation or re-consultation period, and
  - d) include the planning reason(s) for the request. (For the avoidance of doubt matters such as the loss of a private view, loss in value of a property or 'to allow the matter to be heard in a public arena' would not constitute valid planning reasons.
26. An Officer may only exercise powers in relation to the designation of a neighbourhood area under the Localism Act 2011 where the Council is statutorily obliged to designate the area specified in the application.

### **Licensing functions**

27. An Officer may not exercise a Council function in respect of a licensing matter where the function has been specifically reserved under this Constitution to Council, a Committee or a Sub Committee.

### **Executive functions**

28. An Officer may not exercise an executive function where the relevant Executive Member or the Leader of the Council has reserved the power to themselves by giving written notice to the officer holding the delegated power or to the Chief Operating Officer.

### Legal Action

29. An Officer may only commence legal proceedings in accordance with an approved enforcement policy and / or with the approval of the Director of Governance.

### Delegated Powers in respect of Academy Conversions

30. The Corporate Director of People and the Director of Governance, in consultation with the Executive Member for Children, Young People and Education, have delegated powers to negotiate and conclude the Commercial Transfer Agreements and Land Leases in future academy conversions where there are no proposals to change the designation of land currently used for educational purposes.
31. The Executive has agreed to delegate the Private Finance Initiative (PFI) academy conversion process to officers, in consultation with the Executive Member for Children, Young People and Education.

Commented [SM2]: May be subject of potential change – SMU decision required

### Powers of the Corporate Directors and Directors

32. All Corporate Directors and Directors have the power to take decisions in relation to the discharge of the Council's and the Executive's functions within their area of responsibility and which have not been reserved to Council, the Executive and Executive Member or a Committee.

*Note that this delegation is subject to the general provisions and limitations set out in this Constitution.*

33. Each Corporate Director and Director shall have all the powers and duties delegated to other staff within their portfolio so far as is legally permissible and in accordance with the specified provisions contained within this constitution.

### **Powers of Officers**

34. All Officers will have delegated authority required to:-
- a) Effectively manage and promote the services for which they are responsible;
  - b) Exercise the functions delegated to Officers under the Financial Procedural Rules and the Contract Procedure Rules;
  - c) Exercise all functions delegated under the Officer Employment Procedure Rules and to manage all staff in accordance with any of the Council's Policy and Procedures.

DRAFT

**SPECIFIC POWERS DELEGATED TO THE CHIEF OPERATING OFFICER, CORPORATE DIRECTORS, DIRECTORS AND ASSISTANT DIRECTORS IN THE DISCHARGE OF THE FUNCTIONS OF THE COUNCIL**

**Chief Operating Officer**

Statutory Responsibilities

1. The Chief Operating Officer is the Head of Paid Service and has authority over all Chief Officers. This means that the Chief Operating Officer can exercise all of the powers delegated to any Corporate Director, Director or Assistant Director or other officer so far as the law allows. However, the Head of Paid Service cannot substitute for the Monitoring Officer, and can only substitute for the Chief Finance Officer if they are a fully qualified member of one of the six accountancy bodies that constitute the Consultative Council of Accountancy Bodies (CCAB).
2. As the designated Head of Paid Service, and where they consider it appropriate to do so, they will prepare a report to the council for approval by Elected Members, detailing any proposals relating to the tasks below in so far as they relate to the discharge of the council's functions and the staff required to undertake those functions
  - a) The manner in which the authority discharges its functions and how the different functions are co-ordinated;
  - b) The structure, number and grades of staff required by the authority for the discharge of their functions at a chief officer level to safely discharge the council's different functions.
3. As the designated Head of Paid Services, they will:
  - a) Approve the Officer structure of the council below Chief Officer level; and
  - b) Take responsibility for the appointment (excluding chief officers) and effective management of the authority's Officers.

4. To act as the Council's (Local) Returning Officer, (Acting) Returning Officer and Counting Officer for the purposes of elections and referendum.
5. To act as the Council's Electoral Registration Officer.
6. The Chief Operating Officer will have responsibility for all management, operational and decision making functions (other than in respect of those functions expressly delegated within this constitution).
7. To invoke powers under the Public Order Act 1986 to ensure the protection of the local authority's land and assets

### **Areas of Responsibility**

- a) Acting as Head of the Paid Service, including providing clear, strong and motivational leadership for all officers, and being responsible for all related operational staffing matters;
- b) Develop and lead the Council's Corporate Management Team that operates corporately, strategically and operationally;
- c) Developing corporate strategies, policies and briefs for all service areas;
- d) Take a lead strategic role in the development and implementation of the Council Plan
- e) Having overall responsibility for promoting the Council's values, delivering its strategic aims and priorities and for promoting a positive culture across the organisation;
- f) Giving directions and/or advice to other officers in the exercise of their powers and duties under this scheme;
- g) Promoting high standards of governance (including ethical governance) and ensure that robust systems are in place for decision-making, budgeting, planning, performance management and risk management and that the organisation complies with all of its statutory responsibilities;
- h) Delivering high quality, impartial policy advice and support to the Leader and all Elected Members and to promote high

- standards of governance and strong and transparent, member/officer relationships and to develop and maintain effective working relationships with the Leader of the Council, the Executive and all Elected Members of the Council;
- i) To determine the date of Full Council meetings, including the cancellation/amendment of published Full Council meetings where necessary;
  - j) To approve the inclusion of any other business within the agenda for Annual Council.
  - k) To determine any matters relating to civic or ceremonial activities that are not specifically considered elsewhere
  - l) Lead the management, development performance and continuous improvement of all services across the Council
  - m) Monitoring the achievement, impact and effectiveness of the council's corporate aims, priorities and policies;
  - n) Dealing with corporate personnel functions including reviews, policy and industrial relations, equalities and employee development;
  - o) Responsibility for the effective delivery of resolutions of Council, unless stipulated otherwise.
  - p) The following responsibilities linked with the Shareholder Committee:
    - i. approving changes to the location in which the company works;
    - ii. altering the company's name or registered office;
    - iii. matters relating to the employees or agents of the company other than its senior management team;
    - iv. where required giving any further specific approval to a matter provided for within the approved business plan;
    - v. approving changes to accounting arrangements; and
    - vi. entering, terminating or amending any agreements which create a potential liability for the company not exceeding £250,000.
  - q) Making decisions on behalf of the Council in cases of urgency as detailed within Appendix 21 in discharge of any nonexecutive functions of the council other than those which

are already delegated to an officer under this scheme or which by law can be discharged only by the Council.

- r) In consultation with the Chief Finance Officer and the Director of Governance, authorising payments for Officers (excluding chief officers) in the case of early retirement, voluntary redundancy, compulsory redundancy and redeployment.
- s) Granting extensions of sickness pay to officers (excluding chief officers).
- t) Responsibility for the health, safety and wellbeing of the workforce and to take such actions which are necessary following consultation with the Head of HR.
- u)

#### **Deputy to the Chief Operating Officer**

- 7. The Chief Operating Officer will designate one or more of the Corporate Directors as being able to exercise the powers of the Chief Operating Officer. Such designation shall carry with it the delegation to exercise all and any of the Chief Operating Officer's specific delegated functions, during any period where the Chief Operating Officer is absent in the sense that they are not in a position to exercise the powers of Chief Operating Officer, for example due to sickness, incapacity, or being out of contact in the case of emergency.

#### **Head of HR**

- 8. The functions of the Head of HR are set out below:
  - a) To develop review and monitor personnel policy and standards across the Council.
  - b) To advise on cases of voluntary redundancy, compulsory redundancy, dismissal and early retirement and other such employment related activities.
  - c) To establish and maintain effective consultation and negotiation arrangements with recognised Trade Unions.
  - d) To develop, review and monitor Employment Policy in relation to Equality of Opportunity.

- e) To approve the implementation of grades resulting from the job evaluation process.
- f) To approve changes to terms of conditions of employment where there is a cost of less than £100,000..
- g) Preparation of the Annual Pay Policy
- h) Health, Safety and Wellbeing of Workforce in consultation with the Chief Operating Officer, to take all steps necessary to promote the health, safety and wellbeing of the workforce.

### Staffing Conditions

- 9. Following consultation with the Chief Operating Officer, the Corporate Directors. Directors and Assistant Directors (who report directly to the Chief Operating Officer) will be responsible for appointing, managing, disciplining and dismissing all employees (excluding chief officers) within their Departments subject to complying with:
  - a) Corporate Employment Policies and Conditions of Service.
  - b) Any appropriate schemes or arrangements laid down by the Council or the Executive.
  - c) Any directions that may be issued from time to time by the Director of Governance & Monitoring Officer.
  - d) The Officer Employment Procedure Rules at Appendix 12 of this Constitution.
  
- 10. The following matters must be dealt with in conjunction with the Head of HR:
  - a) Departmental Monitoring of Equal Opportunities, attendance, ill health retirement etc.
  - b) Implementation of Workforce Development Plans.
  - c) Temporary Secondments and similar arrangements in accordance with the Council's policies and procedures.
  - d) Appeals against discipline, grievance etc.
  - e) Ill health retirements within Policy.
  - f) Work experience placements.
  - g) Secondary employment.
  - h) Reviewing and authorising changes to departmental structures and establishments.

- i) Authorising overtime payments for employees not otherwise entitled.
- j) Authorising the creation of additional temporary posts where budgetary provision exists, following formal evaluation of posts.
- k) Paying compensation to employees for pain and suffering incurred by them as a result of assault and or harassment and/attacked by animals whilst undertaking their duties and responsibilities.
- l) Authorising the payment of injury allowances.
- m) Allocating relocation allowances
- n) Approval to appoint to higher the first point of the salary Grade.

Specific approvals for employee exit and special severance payment

Item	Authorisation by	Staffing Matters Urgency role	Information given to meeting
Standard compulsory redundancy	Directorate Management Team & Section 151 Officer	For noting	Copy of Business Case
Voluntary redundancy	Directorate Management Team & Section 151 Officer	For noting	Copy of Business Case
Compulsory redundancy after 55 and before normal pension age	Directorate Management Team & Section 151 Officer	For noting	Copy of Business Case
Flexible retirement	For Chief Officers - Staffing Matters Urgency	Approval	Copy of Business Case
	All other staff - Directorate Management	For noting	

City of York Council Constitution  
 Appendix 1: Responsibility for Functions / Scheme of Delegation

	Team & Section 151 Officer		
Special Severance Payments (as per Exit Strategies: Guidance on the use of Settlement Agreements including Special Severance Payments)	For Head of Paid Service – Monitoring Officer & Section 151 Officer	Approval	Copy of Business Case
	For Monitoring Officer - Section 151 Officer & Head of Paid Service	Approval	
	For Section 151 Officer – Monitoring Officer & Head of Paid Service Chief Officers	Approval	
	Other Chief Officers	For Chief Officers – Approval	
	All other staff – Chief Officers and relevant Executive Member, Head of Paid Service, Section 151 Officer &	For all other staff – Noting	

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	Monitoring Officer		
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**Monitoring Officer and Chief Finance Officer**

- 11. The functions of the Monitoring Officer and Chief Finance Officer are set out below. The Council will provide the Monitoring Officer and Chief Finance Officer with such offices, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.
- 12. The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.
- 13. The Council has appointed the Director of Governance as the Monitoring Officer.

Functions of the Director of Governance & Monitoring Officer

- 14. The powers and functions of the Monitoring Officer are:
  - a) To be the Council’s solicitor and Chief Legal Officer and in that capacity to take all necessary steps, including the obtaining of Counsel’s advice in connection with any matter concerning the Council.
  - b) To be the Proper Officer for any purpose for which the Council has not designated another officer to be Proper Officer.
  - c) To maintain the Registers of:
    - o The financial and other interests of Members and co-opted members of the Council as required by the Local Government Act 2000
    - o Officers’ declarations of interest in contracts and other pecuniary interests.
    - o Any other matter relating to the interests of Members and co-opted members which the Council may from time to time establish.

- d) To maintain an up to date version of the Constitution and ensure that it is widely available for consultation by Members, Officers and the public. This responsibility includes the power to make such amendments to the Constitution and related documents as may be necessary. Such changes should not include any changes of substance but is restricted to changes which the Monitoring Officer considers are required to reflect and take account of changes in legislation, guidance, Council policy. This includes decisions of the Council and the Executive or drafting changes and/or improvements;
- e) To report to Full Council (or to the Executive in relation to an Executive function) after consulting with the Head of Paid Service and Chief Finance Officer, if they consider that any proposal, decision or omission would give rise to unlawfulness or to maladministration. Such a report will be sent to all Members of the Council and will have the effect of stopping the proposal or decision being implemented until the report has been considered;
- f) To contribute to the corporate management of the Council, in particular by providing professional legal advice;
- g) To contribute to the promotion and maintenance of high standards of conduct and ethics through provision of support to the Joint Standards Committee;
- h) To jointly advise with the Chief Finance Officer whether the decisions of the Executive are in accordance with the budget and policy framework;
- i) In conjunction, where necessary, with the Chief Finance Officer, to provide advice to all Members on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues;
- j) Where necessary, in conjunction, with the Chief Finance Officer, to exercise powers of sanction and intervention where they consider that any proposal, decision or omission would give rise to unlawfulness or maladministration or otherwise contravene the corporate governance of the authority;
- k) To ensure that Executive decisions as required under this Constitution, together with the reasons for those decisions and

relevant Officer reports and background papers are made publicly available as soon as possible.

- l) As solicitor to the Council the power to;
  - o Take any action intended to give effect to a decision of the Council, the Executive, a Committee of the Council or an Officer.
  - o Institute, defend, participate in, settle or withdraw from any legal or other proceedings or procedures in any case where such action is necessary to give effect to decisions of the Council, the Executive, a Committee of the Council or an Officer or in any case where they consider that such action is necessary to protect the Council's interests.
- m) To authorise Officers of the Council as being authorised under Section 223 of the Local Government Act 1972 to institute, prosecute, defend or appear on the Council's behalf in proceedings before a Magistrates' Court and to conduct such proceedings notwithstanding that the officer concerned may not be a solicitor holding a current practising certificate.
- n) To appoint, in writing, in pursuance of Section 60 of the County Courts Act 1984 (as amended) officers of the Council to address or appear before the District Judge in the County Court in proceedings which relate to the recovery of possession of a property belonging to the Council and for the recovery of rent, mesne profits, damages or other sums claimed by the Council in respect of the occupation by any person of such property.
- o) To take any action remitted to them under corporate procedures, with the exception of those matters where this constitution has directed that the delegated authority should not be exercised and that the matter should be referred to Full Council, a Committee of the Council or to the Executive for consideration.
- p) In consultation with the Chair of the Joint Standards Committee the power to grant dispensations allowing Members to participate in meetings where they have a disclosable pecuniary or prejudicial interest in the business being considered at the meeting.

- q) To undertake any revisions or amendments to the Constitution required as a consequence of amendments or variations to legislation, or the implementation of new legislation. Such amendments to be retrospectively approved by Council.
- r) To appoint an independent person of another authority's Standard Committee, where necessary because of a conflict of interest or non-availability, to serve a temporary member of the Joint Standards Committee.
- s) To make arrangements for dealing with the following kinds of appeal under the Schools Standards and Framework Act 1998:
  - o Admission Appeals
  - o Appeals against exclusion
  - o Appeals by Governing Bodies
  - o And to make arrangements for appeals against School exclusion or admission decisions.
- t) To maintain a central record of all delegations under this scheme and make this available for public inspection pursuant to Section 100G Local Government Act 1972.
- u) To act as the Council's Senior Information Risk Officer (SIRO).
- v) To act as the Senior Responsible Officer for the purposes of the Council's Regulation of Investigatory Powers Act (RIPA) activities;
- w) To undertake the recruitment and selection, and to appoint Independent persons to the Audit & Governance Committee and the Joint Standards Committee in consultation with the Chair and Vice Chairs of the respective Committee
- x) To act as the Deputy Returning Officer (with full powers) for the purposes of elections and referenda;
- y) To act as the Deputy Electoral Registration Officer
- z) Managing corporate consultation and communication policies and initiatives;
- aa) Preparing and publicising the council's national performance indicators;
- bb) Drawing up and implementing corporate policies on performance management.

## Functions of the Chief Finance Officer & s151 Officer

15. The functions of the Chief Finance Officer are:

- a) To be the Council's Chief Finance Officer under Section 151 of the Local Government Act 1972. This means that they are responsible for determining the way the Council administers its financial systems and processes.
- b) To carry out all Treasury Management activities within the Treasury Management Policy Statement and Annual Treasury Management Strategy approved from time to time by the Executive and in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities and the raising of loans and the issuing of Council bills in the case of emergency.
- c) To take and implement any decision which they are empowered to take in accordance with Financial Procedure Rules and the Contract Procedure Rules.
- d) Reporting to the Full Council (or to the Executive in relation to an Executive function) after consulting with the Head of Paid Service and the Monitoring Officer and send a copy of the report to all Members of the Council and to the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure or is unlawful and is likely to cause a loss or deficiency or if the Council (or the Executive) is about to enter an item of account unlawfully;
- e) To be responsible for the administration of the financial affairs of the Council. This involves providing effective financial management arrangements and systems, an effective internal audit function and internal controls arrangements, effective treasury managements, safeguarding assets and probity;
- f) To contribute to the corporate management of the Council, in particular by providing professional financial advice;
- g) To determine the commercial fees charged for use of council owned property by third parties as appropriate;
- h) To provide advice to all Members on the scope of powers and authority to take decisions, maladministration in relation to financial matters, financial impropriety, probity and budget and policy framework issues and to support and advise Members and

staff in their respective roles (in liaison, as necessary, with the Monitoring Officer);

- i) Where required by law or authorised by the Council, to provide financial information to the media, members of the public and the community;
- j) Where necessary, and in conjunction with the Monitoring Officer as appropriate, to exercise powers of sanction and intervention when they consider that any proposal, decision, omission or course of action is likely to incur unlawful expenditure or otherwise contravene the corporate governance interests of the Council;
- k) To undertake any revisions or amendments to the Financial Procedure Rules including the Contract Procedure Rules as required as a consequence of amendments or variations to legislation, or the implementation of new legislation. Such amendments to be retrospectively approved by Council;
- l) Establishing insurance arrangements as appropriate to safeguard the assets of, and services to, the council in consultation with the Director of Economy, Regeneration & Housing as to the valuation of interests in land and property.

#### **Treasury management scheme of delegation**

16. Executive / Full Council:

- a) receiving and reviewing reports on treasury management policies, practices and activities
- b) approval of annual strategy and annual outturn

17. Executive:

- a) approval of/amendments to the organisation's adopted clauses, treasury management policy statement and treasury management practices
- b) budget consideration and approval

- c) approval of the division of responsibilities

18. Audit & Governance Committee:

- a) receiving and reviewing reports on treasury management policies, practices and activities
- b) reviewing the annual strategy, annual outturn and mid-year review.

19. Chief Finance Officer (section 151 officer):

- a) reviewing the treasury management policy and procedures and making recommendations to the responsible body
- b) all operational decisions are delegated by the council to the Chief Finance Officer, who operates within the framework set out in this strategy and through the treasury management policies and practices
- c) Approving the selection of external service providers and agreeing terms of contract in accordance with the delegations in financial regulations.

20. The treasury management role of the section 151 officer:

- a) recommending clauses, treasury management policy/practices for approval, reviewing the same regularly, and monitoring compliance
- b) all operational decisions delegated by the council to the Chief Finance Officer (s151 officer), who operates within the framework set out in this strategy and through the treasury management policies and practices
- c) submitting regular treasury management policy reports
- d) submitting budgets and budget variations
- e) receiving and reviewing management information reports
- f) reviewing the performance of the treasury management function
- g) ensuring the adequacy of treasury management resources and skills, and the effective division of responsibilities within the treasury management function
- h) ensuring the adequacy of internal audit, and liaising with external audit
- i) recommending the appointment of external service providers.

- j) preparation of a capital strategy to include capital expenditure, capital financing, non-financial investments and treasury management, with a long term timeframe
- k) ensuring that the capital strategy is prudent, sustainable, affordable and prudent in the long term and provides value for money
- l) ensuring that due diligence has been carried out on all treasury and non-financial investments and is in accordance with the risk appetite of the authority
- m) ensure that the authority has appropriate legal powers to undertake expenditure on non-financial assets and their financing
- n) ensuring the proportionality of all investments so that the authority does not undertake a level of investing which exposes the authority to an excessive level of risk compared to its financial resources
- o) ensuring that an adequate governance process is in place for the approval, monitoring and ongoing risk management of all non-financial investments and long term liabilities
- p) provision to members of a schedule of all non-treasury investments including material investments in subsidiaries, joint ventures, loans and financial guarantees
- q) ensuring that members are adequately informed and understand the risk exposures taken on by an authority
- r) ensuring that the authority has adequate expertise, either in house or externally provided, to carry out the above
- s) creation of Treasury Management Practices which specifically deal with how non-treasury investments will be carried out and managed, to include the following: -
  - o Risk management, including investment and risk management criteria for any material non-treasury investment portfolios;
  - o Performance measurement and management, including methodology and criteria for assessing the performance and success of non-treasury investments;
  - o Decision making, governance and organisation, including a statement of the governance requirements for decision making in relation to non-treasury investments; and arrangements to ensure that appropriate professional due diligence is carried out to support decision making;
  - o Reporting and management information, including where and how often monitoring reports are taken;

- Training and qualifications, including how the relevant knowledge and skills in relation to non-treasury investments will be arranged.

### **Statutory Scrutiny Officer**

21. The statutory scrutiny officer cannot be the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer.
22. The Council has appointed the Head of Civic and Democratic and Scrutiny Services as the Statutory Scrutiny Officer.
23. The functions of the statutory scrutiny officer are:
  - a) to promote the role of the authority's overview and scrutiny committee or committees;
  - b) to provide support to the authority's overview and scrutiny committee or committees and the members of that committee or those committees;
  - c) to provide support and guidance to:
    - members of the authority,
    - members of the executive of the authority, and
    - officers of the authority,in relation to the functions of the authority's overview and scrutiny committee or committees.

### **Director of Customer and Communities**

24. To be responsible, for the preparation, maintenance, monitoring, review and implementation of the Council's Information Technology Strategy, which embraces the Council's Information Security Policy.
25. To act as the Proper Officer for the Council's Registration Service, including:
  - a) To approve premises for the solemnisation of marriages;
  - b) To carry out the Council's duties under the Marriage Acts 1949 and 1994 (other than those relating to fees and final appeals)

- c) To set such fees as are appropriate for ensuring full costs recovery to the Council in respect of civil marriage ceremonies on local authority approved premises;
- d) To act as Proper Officer for the Council's Registration Service pursuant to the Registration Service Act 1953 (as amended by the Statistics and Registration Service Act 2007);
- e) Determination of a Deputy to become Interim Superintendent Registrar or Interim Registrar for births and deaths if the Superintendent Registrar or Registrar ceases to hold office;
- f) Appointment of Interim Superintendent registrar or Registrar of Births and Deaths if there is no Deputy;
- g) Powers conferred in relation to the Local Scheme of Organisation for Registration Service.

26. To undertake responsibility for the following statutory executive functions:

- a) To undertake all functions of the council in respect of Council Tax and national non-domestic rates, except where these are reserved to Council or the Executive;
- b) To undertake all necessary actions under the Housing and Council Tax benefit schemes;
- c) All executive functions of the council in relation to the Libraries & Archives service;
- d) To undertake all necessary actions under the council's Equalities Policies.

27. Other areas of responsibility:

- a) Managing Customer Service Channels;
- b) Managing Bereavement Services and the Mansion House;
- c) Commissioning and contracting of or with the following services: Explore York, the council's leisure facilities including York Community Stadium, York Museums Trust, York CVS, Citizen's Advice York, Welfare Benefits Unit, Make It York, other cultural organisations;
- d) Delivery of the Business Support function including the payroll, pensions and creditors financial systems operating within related policies and statutory requirements;
- e) Managing area and neighbourhood working, including:
  - o ward schemes, committees and funding;

- oversight of Armed Forces Covenant and Parish Charter;
- community sport and health development;
- family information & advice;
- community centres, children's centres;
- Local Area Coordination;
- Community/Adult Learning.

### **Corporate Director of Place**

28. Where a Director from the Place Directorate is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, the Corporate Director of Place shall undertake, allocate or reallocate responsibility for exercising particular delegations to any officer of the council in the interests of effective corporate management as they think fit.
29. Where the Council has a material interest in a key, major development project within the City, for example as a landowner, potential investor or development partner, and there is a potential for a conflict to arise in relation to the roles undertaken by the separate arms of the Council, in particular in relation to Local Planning Authority and Highway Authority decision making, the Major Projects Conflicts Protocol at Appendix 30 shall be applied.

### **Director of Economy, Regeneration & Housing**

30. To undertake enforcement, administrative and, where necessary Proper Officer functions, in respect of the following Council Services:
- Economic Development (including Economic Strategy) and Tourism;
  - Regeneration including Major Projects delivery;
  - Property including asset management and facilities management
  - Housing including activity under the following Acts:
    - Anti-Social Behaviour Act 2003

- Anti-Social Behaviour Crime and Policing Act 2014
- Defective Premises Act 1972
- Estate Agents Act 1979
- Homes (Fitness for Human Habitation Act) 2018)
- Housing Acts 1985, 1988, 1996, 2004
- Housing and Planning Act 2016 (Part II)
- Land Drainage Act 1991
- Landlord and Tenant Act 1985
- Protection from Eviction Act 1977
- Tenant Fees Act 2019

- Business engagement

Together with:

- any Orders or Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972;
- any byelaws in relation to the foregoing;
- any offence under any legislation, or at common law, which is of a similar nature or related to the foregoing, including offences of aiding, abetting, counselling and procuring, incitement, conspiracy, perverting the course of justice and criminal attempts; and
- any modification or re-enactment to the foregoing.

31. To discharge the Council's functions under section 17 of the Crime and Disorder Act 1998 to prevent crime and disorder.
32. To authorise the sharing of council information in accordance with section 115 of the Crime and Disorder Act.

### **Director of Transport, Environment & Planning**

33. To undertake enforcement and administrative duties under the legislation detailed in the list below. The Director of Environment, Transport and Planning is responsible for appointing any members of staff to act as authorised or proper officers under the following acts insofar as the appointment relates to the functions listed:

- 1) Accommodation Agencies Act 1953
- 2) Administration of Justice Act 1970
- 3) Agriculture (Miscellaneous Provisions) Act 1968
- 4) Agricultural Act 1970
- 5) Agriculture Produce (Grading and Marking) Act 1928
- 6) Animal Act 1971
- 7) Animal Feed (Basic Safety Standards) (England) Regulations 2019
- 8) Animal Gatherings Order 2010
- 9) Animal Health & Welfare Act 1984
- 10) Animal Boarding Establishments Act 1963
- 11) Animal Health Act 1981
- 12) Animal Welfare Act 2006
- 13) Anti-Social Behaviour Act 2003
- 14) Anti-Social Behaviour, Crime and Policing Act 2014
- 15) Breeding of Dogs Act 1921, 1973 and 1991
- 16) Building Act 1984
- 17) Burials Act 1957
- 18) Business Names Act 1985
- 19) Business Protection from Misleading Marketing Regulations 2008
- 20) Caravan Sites and Control of Development Act 1960
- 21) Civil Contingencies Act 2004
- 22) Charities Act 2006
- 23) Cancer Act 1939

- 24) Caravan Sites Act 1968
- 25) Caravan Sites and Control of Development Act 1960
- 26) Children and Young Persons (Protection from Tobacco) Act 1991
- 27) Children and Young Persons Act 1933
- 28) Cinemas Act 1985
- 29) Christmas Day (Trading) Act 2004
- 30) Clean Air Act 1993
- 31) Clean Neighbourhoods and Environment Act 2005
- 32) Companies Acts 1985 and 2006
- 33) Consumer Credit Acts 1974 and 2006
- 34) Consumer Contracts (Information, Cancellation and additional Charges) Regulations 2013
- 35) Consumers, Estate Agents and Redress Act (CEARA) 2007 (including Redress Schemes for Lettings Agency Work and property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 made under this Act)
- 36) Consumer Protection Act 1987
- 37) Consumer Rights Act 2015
- 38) Control of Pollution Act 1974
- 39) Control of Pollution (Amendment) Act 1989
- 40) Copyright, Designs and Patents Act 1988
- 41) Crime and Disorder Act 1998
- 42) Criminal Attempts Act 1981
- 43) Criminal Justice Act 1988
- 44) Criminal Justice and Police Act 2001
- 45) Crossbows Act 1987
- 46) Dangerous Dogs Act 1991

- 47) Dangerous Wild Animals Act 1976
- 48) Data Protection Act 1998
- 49) Disability Discrimination Act 1995
- 50) Disabled Person Parking Badges Act 2013
- 51) Dogs (Fouling of Land) Act 1996
- 52) Dogs Acts 1871 and 1906
- 53) Education Reform Act 1988
- 54) Energy Conservation Act 1981
- 55) Energy Acts 2011 and 2013
- 56) Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, 2019 made under the Energy Act 2011
- 57) Energy Information Regulations 2011
- 58) Energy Performance of Buildings (England and Wales) Regulations 2012
- 59) Enterprise Act 2002
- 60) Environment Act 1995 - Parts II, IV, V
- 61) Environmental Protection Act 1990
- 62) Environmental Protection (Plastic Straws, Cotton Buds and Stirrers)(England) Regulations 2020
- 63) Equality Act 2010
- 64) European Communities Act 1972
- 65) Explosives Acts 1875 and 1923
- 66) Explosives (Age of Purchase etc) Act 1976
- 67) Factories Act 1961
- 68) Fair Trading Act 1973
- 69) Farm and Garden Chemicals Act 1967
- 70) Financial Services Act 2012
- 71) Financial Services and Markets Act 2000

- 72) Firearms Act 1968
- 73) Fire Safety and Safety of Places of Sports Act 1987
- 74) Fireworks Act 2003
- 75) Food and Environmental Protection Act 1985
- 76) Food Information to Consumers Regulations 2014
- 77) Food Information (Amendment)(England) Regulations 2019
- 78) Food Safety Act 1990
- 79) Food Standards Act 1999
- 80) Forgery and Counterfeiting Act 1981
- 81) Fraud Act 2006
- 82) Freedom of Information Act 2000
- 83) Gambling Act 2005
- 84) Game Act 1831
- 85) Gaming Act 1968
- 86) General Product Safety Regulations 2005
- 87) Highways Act 1980
- 88) House to House Collections Act 1939
- 89) Hallmarking Act 1973
- 90) Health Act 2006
- 91) Health & Safety at Work etc. Act 1974
- 92) Housing Acts 1985,1988, 1996, 2004
- 93) Housing and Planning Act 2016 (Part II)
- 94) Insurance Brokers (Registration) Act 1977
- 95) Insurance Companies Act 1981
- 96) Intoxicating Substances (Supply) Act 1985
- 97) Licensing Act 2003
- 98) Local Government Act 1972 and 2003

- 99) Local Government (Miscellaneous Provisions) Acts 1976 and 1982
- 100) Local Government Act 2000
- 101) Land Drainage Act 1991
- 102) Licensing Act 2003
- 103) Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018
- 104) Magistrates Court Act 1980
- 105) Medicines Act 1968
- 106) Money Laundering Regulations 2007 – power under regulation 46 for local authority to prosecute – also for Accredited Financial Investigators
- 107) Motor Cycle Noise Act 1987
- 108) National Assistance Act 1948
- 109) Noise Act 1996
- 110) Noise and Statutory Nuisance Act 1993
- 111) Offensive Weapons Acts 1996 and 2019
- 112) Office Shops and Railway Premises Act 1963
- 113) Performing Animals (Regulation) Act 1925
- 114) Pet Animals Act 1951
- 115) Petroleum (Consolidation) Act 1928
- 116) Petroleum (Transfer of Licences) Act 1936
- 117) Poisons Act 1972
- 118) Police, Factories etc (Miscellaneous Provisions) Act 1916
- 119) Pollution Prevention and Control Act 1999
- 120) Prevention of Damage by Pests Act 1949
- 121) Prices Acts 1974 and 1975
- 122) Proceeds of Crime Act 2002

- 123) Property Misdescriptions Act 1991
- 124) Protection of Animals (Amendment) Act 1954
- 125) Protection of Animals Act 1911
- 126) Psychoactive Substances Act 2016
- 127) Public Health Acts 1936 and 1961
- 128) Public Health (Control of Disease) Act 1984
- 129) Public Health Acts Amendment Act 1907
- 130) Refuse Disposal (Amenity) Act 1978
- 131) Regulatory Enforcement Sanctions Act 2008
- 132) Reservoirs Act 1975
- 133) Riding Establishments Act 1964 and 1970
- 134) Road Traffic Acts 1988 and 1991
- 135) Road Traffic (Foreign Vehicles) Act 1972
- 136) Road Traffic (Vehicle Emission)(Fixed Penalty)(England) Regulations 2002
- 137) Scotch Whisky Act 1988
- 138) Safety at Sports Grounds Act 1975
- 139) Scrap Metal Act 2013
- 140) Solicitors Act 1974
- 141) Sunbeds Regulations Act 2010
- 142) Sunday Trading Act 1994
- 143) Tenant Fees Act 2019
- 144) Telecommunications Act 1984
- 145) Theatres Act 1968
- 146) Theft Acts 1968 and 1978
- 147) Timeshare Act 1992
- 148) Town and Country Planning (Churches and Places of Religious Worship and Burial Grounds) Regulations 1950

- 149) Town and County Planning Act 1990 (as amended)
- 150) Tobacco Advertising and Promotion Act 2002
- 151) Town Police Clauses Act 1847 and 1889
- 152) Trade Descriptions Act 1968
- 153) Trade Marks Acts 1938 and 1994
- 154) Trading Representations (Disabled Persons) Act 1958
- 155) Trading Stamps Act 1964
- 156) Traffic Management Act 2004
- 157) Transmissible Spongiform Encephalopathies (England) Regulations 2010
- 158) Transport Act 1985
- 159) Unsolicited Goods and Services Act 1971
- 160) Vehicle (Crime) Act 2001
- 161) Video Recordings Act 1984 and 2010
- 162) Water Industry Act 1991
- 163) Weights and Measures Acts 1976 and 1985
- 164) Worship and Burial Grounds Regulations 1950
- 165) Zoo Licensing Act 1981
- 166) Health Protection Regulations:
  - Health Protection (Coronavirus, Restrictions)(England) Regulations 2020
  - Health Protection (Coronavirus, Restrictions)(No. 2) (England) Regulations 2020
  - Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020
  - The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020
  - Public Health (Control of Disease) Act 1984 and the Health Protection (Coronavirus, Restrictions)

(Obligations of Undertakings) (England)  
Regulations 2020

- The Health Protection (Coronavirus, Local Covid-19 Alert Level) (High) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (Self Isolation) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions)(Local Authority Enforcement Powers and Amendment) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020
- The Health Act 2006
- Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

34. Together with:

- any Orders or Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972;
- any byelaws in relation to the foregoing;
- any offence under any legislation, or at common law, which is of a similar nature or related to the foregoing, including offences of aiding, abetting, counselling and procuring, incitement, conspiracy, perverting the course of justice and criminal attempts; and
- any modification or re-enactment to the foregoing.

### Chief Planning Officer

35. The Chief Planning Officer is authorised (save where the Leader of the Council or relevant Portfolio Holder has directed or the Chief Officer considers that the matter should be referred to the Executive for consideration) to discharge the following functions in relation to the authority's role as Local Planning Authority including:
- Development Plan Functions including preparation, monitoring and review of the Development Plan (including the core strategy, site allocation plan, action plan and waste development plan)
  - Planning policy and guidance functions including the preparation, monitoring, review and adoption of other planning policy and guidance notes (including supplementary planning documents)
  - Neighbourhood Planning Functions
  - Conservation Area Functions including designation and review of Conservation Area appraisals and management plans.
36. The Chief Planning Officer's delegations do not cover those functions delegated to the Corporate Director of Place or the Director of Environment, Transport and Planning.

### Corporate Director of People

37. The Corporate Director of People will hold the following statutory responsibilities:
- Director of Children's Services
  - Director of Adult Social Services
38. Where a Director from the People Directorate is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, the Corporate Director for People shall undertake, allocate or reallocate responsibility for exercising particular delegations to any officer of the council in the interests of effective

**Commented [SM3]:** May be subject of potential change – SMU decision required

corporate management as they think fit.

39. Children's Services Responsibilities:

- a) To carry out the functions of the Council as a Children's Services Authority and Local Education Authority, (or Local Authority in the context of children's social care matters and/or educational matters), including to be the Council's Director of Children's Services and undertake the functions required by Section 18 of the Children Act 2004, as amended from time to time.
- b) To carry out the functions of the Council's Local Education Authority (or Local Authority in the context of educational matters) including the functions of the Council relating to education, child employment in the youth service but excluding functions relating to adult learning and further and higher education set out in Section 18 (3) of the Children Act 2004 (as amended from time to time).
- c) To be responsible for the general duties under sections 13(1) and 13A of the Education Act 1996 (as amended from time to time). To carry out the functions of the Council as local education authority in relation to adult/family learning and further and higher education including the functions set out in section 18(3) of the Children Act 2004 (as amended from time to time).
- d) To undertake all the powers and duties of the Council as an Adoption Agency having regard to the recommendations of the adoption panel and to approve the charge for home study assessments for inter country adoptions in accordance with the policy agreed by Executive, and to appoint the members (except for the appointment of any members who are Councillors) of the adoption and permanence panels in accordance with the Adoption Regulations 2011 or as amended from time to time.
- e) To carry out the functions of the Council under the NHS Act 2006 and any other health legislation (as amended or replaced from time to time) to enter into arrangements with the NHS or other bodies for

the exercise of the NHS or health functions or health related Council functions so far as those functions relate to children).

- f) To carry out the functions of the Council under Section 23(C) to 24(D) of the Children Act 1989 and the Children and Social Work Act 2017 (as amended from time to time) in relation to aftercare arrangements etc.
- g) To carry out the functions of the Council under Sections 10 to 13 and 17(A) of the Children Act 2004 (as amended from time to time) in relation to arrangements to safeguard and promote the welfare of children and young person's plans.
- h) To carry out the functions of the Council in relation to Early Help/Sure Start and the Childcare Act 2006.
- i) To carry out the functions of the Council in relation to youth justice services.
- j) To be responsible for the development of corporate parenting.
- k) To ensure the sufficiency of the child protection service and to promote and participate fully within multi-agency safeguarding arrangements to ensure that children within the Council's area are adequately safeguarded and protected.
- l) To ensure the effectiveness of the Multi Agency Safeguarding Arrangements within the City of York in accordance with the Children and Social Work Act 2017 and Working Together to Safeguard Children 2018.'
- m) To undertake statutory visits to children's homes and to make permanent or temporary variations in the approved number of places at any children services establishments.
- n) To enforce, make applications and representations to a Court or Magistrate and authorise, institute and defend proceedings under

any enactment which stand referred to the Executive, in consultation with the Director of Governance.

- o) To grant licences and to approve bodies of persons to enable children to take part in public performances under Section 37 of the Children and Young Persons Act 1963.
- p) To respond to alcohol licensing applications to highlight any concerns in relation to child safety.
- q) To institute, intervene, or defend, on the Council's behalf, wardship proceedings and to appear on the Council's behalf on any wardship proceedings involving the Council in consultation with the Director of Governance
- r) To approve the utilisation of funds received under Section 106 of the Town and Country Planning Act 1990 to the project named in the relevant Section 106 agreement, up to a maximum value of £150,000 per Section 106 agreement. A schedule of such expenditure will be maintained and reported quarterly to the Executive Member for Children, Young People and Education.

#### 40. Adult Care and Health responsibilities

- a) To exercise the functions of the Council with regard to, powers and duties of an Adult Services Authority under all relevant legislation including, but not limited to social services, safeguarding adults, Mental Health services including the deprivation of liberty and Health functions.
- b) To exercise all the powers and duties of the Council in accordance with general policies from time to time laid down by the Executive for the administration of any arrangements made under relevant legislation with respect to services for adults including people with disabilities.

- c) To make permanent or temporary variations in the approved number of places at any Adult Social Care establishment.
- d) Where litigation is conducted in Court with respect to those who are aged 18 and over, instructions are provided in the name of the Corporate Director for People.

### **Director of Public Health**

- 41. To undertake such statutory responsibilities as may be required by legislation or delegated to the authority or the Director by the Secretary of State from time to time.
- 42. To commission public health services on behalf of the Secretary of State in consultation with the relevant Executive Member and on behalf of the Council to address local Public Health challenges identified through the Public Health Outcomes Framework and tackle local priorities as set out in the joint Health and Wellbeing Strategy for City of York. The final decision rests with the Director of Public Health.
- 43. To provide public health and population healthcare advice to NHS Commissioners and Providers. Contribute to and influence the work of NHS commissioners, ensuring a whole system approach across the public sector.
- 44. To undertake the Council's statutory duties for health protection.
- 45. To authorise Consultants in Communicable Disease Control of Public Health England and/or their deputies to act on behalf of the Council as Proper Officer in the exercise of statutory functions relating to the control of infections and other disease and food poisoning.
- 46. To authorise allowances to persons excluded from work because of notifiable disease.

47. Lead the Council's development of the Local assessment of health and care needs. This to be done in partnership with local NHS Organisations and Clinical Commissioning Groups with a shared statutory duty to develop and deliver the JSNA for their defined population.
48. To be accountable for the use of the local authority Public Health ring fenced grant.
49. To be the Council's lead registered Caldicott Guardian with the responsibility for protecting the confidentiality of people's health and care information, and making sure such data is used properly including overseeing the use and sharing of clinical information. This is to be done with support from an additional registered Caldicott Guardian from Children's Services and Adult Care and Health.
50. To carry out functions in relation to the following legislation:
  - a. Health and Social Care Act 2012
  - b. Public Health (Control) of Disease Act 1984
  - c. Health Protection Regulations:
    - o Health Protection (Coronavirus, Restrictions)(England) Regulations 2020
    - o Health Protection (Coronavirus, Restrictions)(No. 2) (England) Regulations 2020
    - o Health Protection (Coronavirus, Collection of Contact Details etc. and Related Requirements) Regulations 2020
    - o The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020
    - o Public Health (Control of Disease) Act 1984 and the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020
    - o The Health Protection (Coronavirus, Local Covid-19 Alert Level) (High) (England) Regulations 2020
    - o The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020
    - o The Health Protection (Coronavirus, Restrictions) (Self Isolation) (England) Regulations 2020

- The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions)(Lowers and Amendment) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020
- The Health Act 2006
- Health Protection (Coronavirus, Collection of Contact Details etc. and Related Requirements) Regulations 2020

### **Proper Officer Functions**

#### Meaning of Proper Officer Functions

- i. Certain legislation requires the Council to designate a particular Officer as “Proper Officer” for the performance of certain functions.
- ii. The following officers are designated to perform the functions of Proper Officer in relation to the matters set out below in the following tables.
- iii. The Director of Governance & Monitoring Officer will:
  - a) act as authorised or proper officer for the purposes of any Act of Parliament or Statutory Instrument where qualified to do so and no other Officer has been appointed.
  - b) appoint officers to act as authorised/proper Officers for the purposes of any Act of Parliament or Statutory Instrument.

City of York Council Constitution  
Appendix 1: Responsibility for Functions / Scheme of Delegation

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**Local Government Act 1972**

No.	Section	Duties	Proper Officer
1	42	To receive notice in writing of a request for an election on casual vacancy occurring in the office of a Parish Councillor.	Chief Operating Officer
2	83 (1)	To receive the declaration of acceptance of office by the Lord Mayor, Deputy Lord Mayor, Sheriff or Councillor of the Council.	The Monitoring Officer or in their absence the Head of Democratic Governance.
3	83 (3)	To witness the declaration of acceptance of office by the Lord Mayor, Deputy Lord Mayor, Sheriff or Councillor of the Council.	The Monitoring Officer or in their absence the Head of Democratic Governance.
4	84	To receive written notice of resignation from any person elected to an office under the Local Government Act 1972.	The Monitoring Officer or in their absence the Head of Democratic Governance.
5	88 (2)	To convene a meeting of the Council for the election of Lord Mayor of the Council on a casual vacancy occurring.	Chief Operating Officer or in their absence the Monitoring Officer

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No.	Section	Duties	Proper Officer
6	89 (1) (b)	To receive written notice of a casual vacancy in the office of a Councillor from two local government electors.	The Monitoring Officer or in their absence the Head of Democratic Governance.
	Section 100C (2)	Making (without disclosing exempt information) a written summary to provide members of the public with a reasonable, fair and coherent record of the whole or part of the proceedings where part of the minutes of the meeting are not open to the public because they disclose exempt information	The Monitoring Officer or in their absence the Head of Democratic Governance.
	Section 100D	Compilation of lists of background papers and identification of background papers	Chief Operating Officer and Corporate Directors (each Corporate Director for their service reports), Directors
	Section 100D	Papers not open to inspection by Members	The Monitoring Officer and the Chief Operating Officer

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No.	Section	Duties	Proper Officer
7	146 (1)(a) (re: transfer of securities of a company in the name of a local authority)	To make statutory declarations as to the securities and the change of name and identity of an authority on the transfer of those securities into the new name of the authority	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.
8	146(1)(b) (re: transfer of securities of a company in the name of a local authority)	To give a certificate confirming that a local authority has become entitled to securities, dividends or interest standing in the name of the name of another local authority.	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.
9	151	Officer responsible for the proper administration of financial affairs.	Chief Finance Officer
10	191 (2)	To receive applications concerning surveying under section 1 of the Ordnance Survey Act 1841.	Corporate Director of Place.
11	210 (6) and (7)	Duties relating to charities.	Chief Finance Officer

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No.	Section	Duties	Proper Officer
12	225 (1)	To receive and retain such documents deposited with the Local Authority pursuant to the Standing Orders of either House of Parliament	The Monitoring Officer
13	229 (5)	To give a certificate in legal proceedings that a document is a photographic copy of a document or any part of a document which is in the custody of, or has been destroyed while in the custody of a Local Authority.	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.
14	234 (1)	To sign on behalf of the Authority any notice, order or other document which the Authority is authorised or required to authorise or required to give, make or issue.	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.
15	238	To sign a certificate endorsed on a printed copy of any byelaws (relating to the authenticity of the byelaws).	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.

City of York Council Constitution  
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No.	Section	Duties	Proper Officer
16	Schedule 12 Para 4	To receive written notice from a Member that the summons to a meeting of the Council shall be sent to some other address other than their place of residence.	The Monitoring Officer or in their absence the Head of Democratic Governance.
17	Schedule 14	To certify resolutions of the Council under Public Health Acts 1875-1925.	The Monitoring Officer
18	Schedule 16 (28)	To receive on deposit lists of buildings of special architectural or historic interest under section 54 (4) of the Town & Country Planning Act.	Corporate Director of Place
19	Schedule 29 Para 41 (3)	Substitution of Proper Officer for Clerk of Council in section 9 (1) of Registration Services Act 1953- the determination of a Deputy to become Interim Superintendent Registrar or Interim Registrar of births and deaths if the latter ceases to hold office.	Director of Customer & Communities

City of York Council Constitution  
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No.	Section	Duties	Proper Officer
20	Schedule 29 Para 41 (4)	<p>Substitution of Proper Officer for Clerk of Council.</p> <ol style="list-style-type: none"> <li>1. In section 9 (2) of Registration Service Act 1953- appointment of Interim Superintendent Registrar or Registrar of births and death were no Deputy.</li> <li>2. In section 13 (2) (h) details of running of service hours in business Superintendent Registrars.</li> <li>3. In section 13 (3) (b) general supervisory powers over administration of Registration Service Act.</li> </ol>	Director of Customer & Communities
21	Schedule 29 Para 41 (5)	<p>Substitution of Proper Officer for Clerk of Council in section 20 (b) of Registration Service Act 1953- prescription of duties in regulation of Clerks of Council under Registration Acts.</p>	Director of Customer & Communities

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No.	Section	Duties	Proper Officer
22	Section 100 b (2)	Excluding from inspection by Members of the public, the whole or part of any report which in their opinion is likely to be excluded from consideration in public at a Council, Executive, Committee or sub Committee meeting.	The Monitoring Officer or in their absence the Head of Democratic Governance.
23	Section 100 B (7)	Deciding whether or not a newspaper should be supplied with copies of any documents supplied to a Member of the Council other than the agenda, report and statement, or particulars indicating the nature of the agenda items.	The Monitoring Officer or in their absence the Head of Democratic Governance.

**The Highways Act 1980**

No.	Section	Duties	Proper Officer
1	Section 205 (5) (re: private street works)	To certify a copy of the resolution of the Local Authority approving the specifications, estimates and apportionment and a copy of those documents	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.

City of York Council Constitution  
Appendix 1: Responsibility for Functions / Scheme of Delegation

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		for keeping on deposit open to public inspection.	
2	Section 210 (2) (re: private street works)	To certify a document giving details of the amendment of any estimate and consequential amendment of any apportionment for keeping on deposit open to public inspection.	The Monitoring Officer or in their absence a solicitor nominated by the Monitoring Officer.

DRAFT

**Statutory non-executive functions, regulatory and other non-executive functions**

1. The following functions are either the responsibility of the responsible body named in the second column or the responsible officer named in the third column.
2. The responsible Officer will exercise the functions for all matters which fall outside of the Scheme of Delegations aforementioned in this constitution.

**KEY**

Responsible bodies

Planning Committee and any related sub-committees (PC),  
Licensing & Regulatory Committee and any related sub-committees (LRC),  
Audit & Governance Committee (A&G),  
Executive (EX)

Responsible officers

Chief Operating Officer (COO)  
Corporate Director of Place (CDPI)  
Corporate Director of People (CDPe)  
Director of Governance (DG)  
Chief Finance Officer (CFO)  
Director Public Health (DPH)  
Director of Environment, Transport and Planning (DETP)  
Director of Economy, Regeneration and Housing (DERH)  
Director of Customer & Communities (DCC)

**Commented [SM4]:** May be subject of potential change – SMU decision required

## NON EXECUTIVE FUNCTIONS

### Planning and Development Control Functions

Ref	Function	Responsible body	Responsible officer
1	Power to determine application for planning permission	PC	DETP
2	Power to determine applications to develop land without compliance with conditions previously attached	PC	DETP
3	Power to grant planning permission for development already carried out	PC	DETP
4	Power to decline to determine application for planning permission	PC	DETP
5	Duties relating to the making of determinations of planning Applications	-	DETP
6	Power to determine applications for planning permission made by a local authority, alone or jointly with another	PC	DETP
7	Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights	-	DETP
8	Power to enter into agreement regulating development or use of land	-	DETP following consultation with Chair and Vice Chair of PC
9	Power to issue a certificate of existing or proposed lawful use or development	-	DETP
9a	As per 9, but specifically in relation to existing use or redevelopment	-	DETP

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Ref	Function	Responsible body	Responsible officer
10	Power to serve a completion notice		DETP following consultation with DG
11	Power to grant consent for display of advertisements	PC	DETP
12	Power to authorise entry on to land	-	DETP
13	Power to require discontinuance of land	PC	-
14	Power to serve a planning contravention notice, breach of condition notice or stop notice	-	DETP following consultation with DG
14a	Power to issue a temporary stop notice	PC	DETP
15	Power to issue an enforcement notice	-	DETP following consultation with DG
16	Power to apply for an injunction restraining a breach of planning control	-	DETP following consultation with DG
17	Power to determine applications for hazardous substances consent, and related powers	PC	DETP
18	Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites or mineral permissions relating to mining sites, as the case may be, are to be subject	PC	DETP
19	Power to require proper maintenance of land	-	DETP
20	Power to determine application for listed building consent, and related powers	PC	DETP
21	Power to determine applications for conservation area consent	PC	DETP
22	Duties relating to applications for listed building consent and conservation area consent	-	DETP

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23	Power to serve a building preservation notice and related power	-	DETP following consultation with DG
24	Power to issue enforcement notice in relation to demolition of unlisted building in conservation area	-	DETP following consultation with DG
25	Power to acquire a listed building in need of repair and to serve a repairs notice	-	DETP following consultation with DG
26	Power to apply for an injunction in relation to a listed building	-	DETP following consultation with DG
27	Power to execute urgent works	-	DETP

**Licensing and Registration Functions**

Ref	Function	Responsible body	Responsible Officer
1	Power to issue licences authorising the use of land as a caravan site	LRC	DETP

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Ref	Function	Responsible body	Responsible Officer
2	Power to license the use of moveable dwellings and camping sites	LRC	DETP
3	Power to license Hackney Carriages and private hire vehicles	LRC	DETP
4	Power to license drivers of Hackney Carriages and private hire vehicles	LRC	DETP
5	Power to license operators of Hackney Carriages and private hire vehicles	LRC	DETP
7	Power to issue licenses in respect of premises where gambling takes place in accordance with the Gambling Act 2005	LRC	DETP following consultation with DPH
8	Power to issue permits in respect of premises where gambling takes place in accordance with the Gambling Act 2005	-	DETP following consultation with DPH
9	Power to issue licenses in respect of premises where activities take place in accordance with the Licensing Act 2003	LRC	DETP following consultation with DPH
10a	1) Functions relating to determining licensing policy and establishing licensing committees under sections 5 and 6 of the Licensing Act	Council	-
	2) Functions relating to the discharge of the council's licensing functions under section 7 of the Licensing Act 2003	LRC	DETP following consultation with DPH
	3) Functions relating to keeping a register of licensed premises under section 8 of the Licensing Act 2003	-	DETP following consultation with DPH
	4) Power to determine applications under the Minor Variations Procedure, Licensing Act 2003	-	DETP following consultation with DPH
10b	Power to resolve not to issue a casino premises licence	LRC	DETP following

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			consultation with DPH
10c	Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises under Section 304 of the Gambling Act 2005	-	DETP
10d	Power to institute criminal proceedings for offences under Section 342 of the Gambling Act 2005	-	DETP
10e	Power to exchange information in accordance with Section 350 of the Gambling Act 2005	-	DETP
10f	Function relating to the determination of fees for premises licences under the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007	LRC	DETP
11	Power to license sex shops and sex cinemas, other sex establishments and sexual entertainment venues	LRC	DETP
12	Power to license performances of hypnotism	LRC	DETP
13	Power to register premises for acupuncture, tattooing, cosmetic body piercing, electrolysis and semi-permanent skin colouring	LRC	DETP following consultation with DPH
14	Power to license pleasure boats and pleasure vessels	-	DETP
15	Power to issue consents for Street Trading	LRC	DETP
16	Power to license dealers in game and the killing and selling of game	LRC	DETP
17	Power to license and register premises for the preparation of food	LRC	DETP
18	Power to license scrap metal dealers	LRC	DETP
19	Power to issue, amend or replace safety certificates (whether general or special) for sports grounds	-	DETP following consultation with DPH
20	Power to issue, cancel, amend or replace safety certificates for regulated stands of sports grounds	-	DETP following consultation with DPH

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Appendix 1: Responsibility for Functions / Scheme of Delegation

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Ref	Function	Responsible body	Responsible Officer
21	Power to issue fire certificates	N/A	DETP
22	Power to license businesses involving animal licensable activities under the Animal Welfare Act 2006	-	DETP
23	Power to license zoos	LRC	DETP
24	Power to license dangerous wild animals	LRC	DETP
25	Power to license knackers yards	LRC	DETP
26	Power to license the employment of children	LRC	DETP in conjunction with CDPe
27	Power to approve premises for the solemnisation of marriages	-	DETP
28	Power to register common land or town or village greens	PC	DETP
29	Power to register variations of rights of common	PC	DETP
30	Power to license persons to collect for charitable and other causes	LRC	DETP
31	Power to grant consent to use a loud speaker	-	DETP
32	Power to grant a street works licence	PC	DETP
33	Power to license agencies for the supply of nurses	N/A	DETP in conjunction with DPH
34	Power to issue license for the movement of pigs	LRC	DETP
35	Power to license the sale of pigs	LRC	DETP
36	Power to license collecting centres for the movement of pigs	LRC	DETP
37	Power to issue a license to move cattle from a market	LRC	DETP
38	Power to grant permission for provision of services, amenities, recreation and refreshment facilities on highway, and related powers	PC	DETP
39	Power to permit deposit of builder's skips on	-	DETP

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	highways		
40	Duty to publish notice in respect of proposal to grant permission under 115E of the Highways Act 1980	PC	DETP
41	Power to license planting, retention and maintenance of trees etc in part of the highway	PC	DETP
42	Power to authorise erection of stiles etc on footpaths or bridle ways	PC	DETP
43	Power to license works in relation to buildings etc which obstruct the highway	PC	DETP
44	Power to consent to temporary deposits or excavations in streets	PC	DETP
45	Power to dispense with obligation to erect hoarding or fencing	PC	DETP
46	Power to restrict the placing of rails, beams etc over the highway	PC	DETP
47	Power to consent to construction of cellars etc under streets	PC	DETP
48	Power to consent to the making of openings into cellars etc under streets, and pavement lights and ventilators	-	DETP
50	Power to issue licences to retail butchers carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready to eat Foods	-	DETP
51	Power to approve wholesale food businesses supplying food of animal origin	-	DETP
52	Duty to keep a register of food business premises	-	DETP
53	Power to register food business premises	-	DETP

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Appendix 1: Responsibility for Functions / Scheme of Delegation

Ref	Function	Responsible Body	Responsible Officer

**Functions Relating To Health and Safety at Work**

Ref	Function	Responsible Body	Responsible Officer
1	Functions under any of the relevant statutory provisions within the meaning of part 1 of the Health and Safety at Work Act 1974, other than those discharged in the council's capacity as an employer	-	CDPI in conjunction with COO

**Functions Relating to the Elections**

Ref	Function	Responsible Body	Responsible Officer
1	Duty to appoint an electoral registration officer	Council	COO
2	Power to assign officers in relation to requisitions of the electoral registration officer	-	COO
3	Functions in relation to parishes and parish councils	Council	DG
4	Power to dissolve small parish councils	Council	DG
5	Power to make orders for grouping parishes, dissolving groups and separating parishes from groups	Council	DG
6	Duty to appoint returning officer for local elections	Council	DG
7	Duty to provide assistance at European elections	N/A	N/A
8	Duty to divide constituency into polling districts	Council	COO

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9	Power to divide wards into polling districts at local government elections	Council	COO
10	Power to approve polling places for polling districts	-	COO
11	Powers in respect of holding elections (parish councils)	-	COO
12	Power to pay expenses properly incurred by electoral registration officers	-	COO
13	Power to fill temporary vacancies in the event of insufficient nominations (parish councils)	N/A	COO
14	Duty to declare vacancy in office in certain cases	-	DG
15	Duty to give public notice of casual vacancy	-	DG
16	Power to make temporary appointments to parish councils	N/A	DG
17	Power to determine fees and conditions for supply of copies of, or extracts from, elections documents	-	COO
18	Power to submit proposals to the Secretary of State for an order under Section 10 (Pilot Schemes for local elections in England and Wales, of the representation of the People Act 2000)	Council	COO

### Functions Relating To Name and Status of Areas and Individuals

Ref	Function	Responsible Body	Responsible Officer
1	Power to change the name of the city	Council	COO in conjunction with DG
2	Power to change the name of a parish	Council	DG
3	Power to confer title of honorary alderman or to admit to be an honorary freeman	Council	COO

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Ref	Function	Responsible Body	Responsible Officer
4	Power to petition for a charter to confer borough status	N/A	N/A

**Power to Make, Amend, Revoke, Re-enact or Enforce By Laws**

Ref	Function	Responsible Body	Responsible Officer
1	Power to make, amend, revoke, re-enact or enforce by laws	Council	DG

**Power to Promote or Oppose Local or Personal Bills**

Ref	Function	Responsible Body	Responsible Officer
1	Power to promote or oppose local or personal bills	Council	DG

**Functions Relating to Pensions**

Ref	Function	Responsible Body	Responsible Officer
1	Functions relating to local government pensions etc and key employer decisions	N/A	COO in consultation with HHR
2	Functions under the fireman's pension scheme	N/A	N/A

**Miscellaneous Functions**

Ref	Function	Responsible Body	Responsible Officer
1	Power to create footpaths and bridleways	PC	DETP

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	by agreement		
2	Power to create footpaths and bridleways	PC	DETP
3	Duty to keep register of information with respect to maps, statements and declarations	-	DETP
4	Power to stop up footpaths and bridleways	PC	DETP
5	Power to determine application for public path extinguishments order at request of owner where land is used for agricultural purposes	PC	DETP
6	Power to make a rail crossing extinguishment order	-	DETP
7	Power to make a special extinguishment order to prevent crime	PC	DETP following consultation with DG
8	Power to divert footpaths and bridleways	PC	DETP
9	Power to make a public path diversion order	PC	DETP
10	Power to make a rail crossing diversion order	PC	DETP
11	Power to make a special diversion order to prevent crime	PC	DETP following consultation with DG
12	Power to require applicant for a special diversion order to enter into an agreement under section 119A of the Highways Act 1980	PC	DETP following consultation with DG
13	Power to make a SSSI diversion order	PC	DETP
14	Duty to keep register with respect to applications under sections 118Z, 118C, 119ZA and 119C of the Highways Act 1980	-	DETP

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Ref	Function	Responsible Body	Responsible Officer
15	Power to decline to determine certain applications under section 121C of the Highways Act 1980	PC	DETP
16	Duty to assert and protect rights of the public for use and enjoyment of the highway	-	DETP
17	Duty to serve notice of proposed action in relation to an obstruction where a notice to remove the obstruction has been served on the council	-	DETP
18	Power to apply for variation of an order requiring the council to remove an obstruction under section 130B of the Highways Act 1980	-	DETP following consultation with DG
19	Power to authorise temporary disturbance on surface of footpath or bridleway	-	DETP
20	Power temporarily to divert footpath or bridleway	-	DETP
21	Functions relating to the making good of damage and the removal of obstructions	-	DETP
22	Powers related to the removal of things so deposited on the highways as to be a nuisance	-	DETP
23	Power to extinguish certain public rights of way in connection with the compulsory purchase of land	PC	DETP
24	Duty to keep a definitive map and statement under review	-	DETP
25	Power to include modifications in other orders	PC	DETP
26	Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Country side act 1981	-	DETP
27	Duty to reclassify roads used as public paths	-	DETP
28	Power to prepare map and statement by way of consolidation of definitive map and	-	DETP

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	statement		
29	Power to designate footpath as cycle path	PC	DETP
30	Power to extinguish public right of way over land acquired for clearance	PC	DETP
30a	Power to authorise stopping up of diversion on highway	-	DETP
31	Power to authorise stopping up or diversion of footpath or bridleway	PC	DETP
32	Power to extinguish public rights of way over land held for planning purposes	PC	DETP
33	Power to enter into agreements with respect to means of access	-	DETP
34	Power to provide access in absence of agreement	PC	DETP
35	Functions relating to sea fisheries	N/A	N/A
36	Power to make standing orders	Council	DG
37	Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal)	See relevant Articles and Appendices in this Constitution	
38	Power to make standing orders as to contracts	Council	DG
39	Duty to make arrangements for proper administration of financial affairs etc	A&G	CFO
40	Power to appoint proper officers for particular purposes under section 270(3) of the Local Government Act 1972	-	DG
41	Power to make a limestone pavement order	PC	DETP

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Ref	Function	Responsible Body	Responsible Officer
42	Power to make closing order with respect to take-away food shops	-	DETP
43	Duty to designate officer as Head of Paid Service, and carry out the functions in section 4(1) of the Local Government and Housing Act 1989,	Council	DG
44	Duty to designate officer to act as the Monitoring Officer, and to carry out the functions in section 5(1) of the Local Government and Housing Act 1989	Council	COO
44a	Duty to provide staff etc to person nominated as Monitoring Officer and S151 Officer	Council	COO
44b	Powers relating to overview and scrutiny committees (voting rights of co-opted members)	Council	DG
45	Duty to approve the authority's accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be)	A&G	CFO
46	Powers relating to the protection of important hedgerows	PC	DETP
47	Powers relating to the preservation of trees	PC	DETP
47a	Power to deal with complaints arising from high hedges	PC	DETP
48	Power to make payments or provide other benefits in cases of maladministration etc	-	DG
49	Power to issue Deprivations of Liberty authorisations	-	CDPe in consultation with DG
50	Appointment of an independent member of another authority's Standards Committee, where necessary, because of a conflict of interest or non-availability, to serve as a temporary member of the Standards	-	DG

	Committee.		
51	Power to consult with North Yorkshire Police on closure orders (Anti-Social Behaviour Crime & Policing Act 2014)	-	DERH in consultation with DG
52	Power to consult with North Yorkshire Police for the application of an injunction (Section 1 Anti-Social Behaviour Crime & Policing Act 2014)	-	DERH in consultation with DG
53	Power to apply for a Drink Banning Order (Sections 1-5 and 9- 14 Violent Crime Reduction Act 2006)	-	DERH in consultation with DG
54	Power to consult with North Yorkshire Police on the application for a Public Places Protection Order (Anti-Social Behaviour Crime & Policing Act 2014)	-	DERH in consultation with DG
55	Power to authorise directed surveillance and the use of covert human intelligence sources as prescribed for the purposes of s30(1) of the Regulation of Investigatory Powers Act 2000.	-	DG

## Appendix 2 - Petitions Scheme

- 1 City of York Council is committed to involving local people in its decision making. For some years, it has been operating a public participation scheme enabling members of the public to attend meetings and speak on an issue. It has also responded to petitions from the public, received in an number of ways e.g. through a Ward Councillor submitting a petition on behalf of a constituent or by a resident submitting one direct to a council office by post/hand. As part of its approach to petitions, the Council has also introduced an ePetitions facility, providing another way in which a particular issue can be brought to the attention of Councillors.
  
- 2 Through this Petitions Scheme, the Council is making a commitment to:
  - Enable anyone who lives, work or studies in the local authority area to organise and submit a petition either on paper or electronically
  - Respond to the concerns raised within a petition
  - Review its handling of a petition where a lead petitioner believes it has not been dealt with in accordance with this scheme.
  
- 3 To support the scheme, the Council has:
  - Set a low threshold of ten signatures on the number of petitioners to enable as many valid local opinions to be heard as possible
  - Provided an ePetitions facility to enable those who want to, to create their petition on line and allow others to sign it electronically

## 4 Petitions Not Covered By This Scheme

4.1 This scheme does not cover petitions which:

- a) Relate to a planning or licensing application – in this case a petition will be referred to the relevant decision maker
- b) Relate to matters where there is a legal right to seek a review or appeal
- c) Respond to a public consultation organised by the Council – in this case a petition will be referred to the decision maker
- d) Relate to matters which are of a defamatory or discriminatory nature, personal attacks on identifiable individuals or disclosure of confidential or personal information, particularly where appropriate the lead petitioner will be directed to the most appropriate route for raising such concerns with the Council.
- e) The Council's Monitoring Officer, acting in consultation with the Chief Operating Officer, considers to be vexatious i.e. a petition with insufficient substance to merit action and the use effective use of public resource, abusive or otherwise inappropriate

4.2 In addition to these rules where a petition has resulted in a debate at a meeting of Full Council, the Council will not hold a further debate in response to a petition which the Lord Mayor considers to be substantially similar within a period of two years.

4.3 During the period leading up to a local or national election the Council may temporarily suspend the hosting of e-petitions or delay holding debates.

## **5 Submitting a Petition**

### **Paper Petitions**

- 5.1 Paper petitions can be submitted via a number of routes e.g. via a Ward Councillor, by post or hand delivered to the Council Offices.
- 5.2 Paper petitions handed in to a Ward Councillor are normally presented at Full Council and then passed to a senior officer within the relevant Directorate and referred to the Customer and Corporate Services Scrutiny Management Committee. Those that come directly into the Council Offices are also referred to the Customer and Corporate Services Scrutiny Management Committee.
- 5.3 Paper petitions should contain the details of the petition on the front of each sheet so that it is clear that each signatory has responded to identical wording.

## **6 ePetitions**

- 6.1 All ePetitions submitted to the Council must:
- a) Include a clear and concise statement covering the subject of the Petition.
  - b) State what action the petitioners wish the Council to take.
- 6.2 The ePetition organiser will need to provide us with their name, postal address including postcode, email address and contact telephone number. The name of the petition organiser (but no other contact details) will be published alongside details of the petition.
- 6.3 The ePetition organiser will also need to decide how long their petition will be open for signatures. Most ePetitions run for six months, but it can be a shorter or longer timeframe, up to a

maximum of 12 months.

- 6.4 When an ePetition is created, it may take up to five working days before it is published online. This is because we have to check that the content of the ePetition meets the guidelines before it is made available for signature.
- 6.5 The relevant Executive Member will be advised of the publication of any e-petition relating to their service area.
- 6.6 If a petition does not follow the guidelines set out above, or if we need clarification on any issues raised within an ePetition, we will contact the ePetition organiser within 5 working days of receipt to explain.
- 6.7 We will also contact the ePetition organiser if we feel we cannot publish an ePetition for any reason, and where possible, we will offer assistance to change and resubmit it.
- 6.8 If the required clarification is not provided, or if an ePetition that we cannot publish is not re-submitted within 14 days, a summary of the ePetition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the Council's ePetitions facility.

## **7 How to 'sign' an ePetition**

- 7.1 An individual wanting to sign an ePetition, will be asked to provide their name, address and postcode, plus a valid email address. They will then receive an email containing a link which they must click on in order to confirm their email address is valid. Once this step is completed their 'signature' will be added to the ePetition.

*NB: Anyone viewing an e-petition will only be able to see the names of those who have signed - no contact details will be visible.*

- 7.2 All ePetitions currently available for signature on the Council's website can be viewed at:  
<http://democracy.york.gov.uk/mgePetitionListDisplay.aspx?bcr=1>

## **8 How will the Council respond?**

- 8.1 Within 5 days of a petition being received or of an ePetition being closed to signatories, we will send acknowledgement to the petition organiser, providing information on when they can expect to hear from us again and what process needs to be followed.
- 8.2 Our response will depend on what the petition/ePetition asks for and how many people have signed it but details of the petition will be referred to our Customer and Corporate Services Scrutiny Management Committee (CCSMC) who may decide a range of potential actions, including:
- a) Requesting a detailed report on the issues;
  - b) Noting receipt of the petition and proposed action;
  - c) Requiring the Executive Member or person taking any decisions on the matter to attend a meeting and answer questions;
  - d) Undertaking a detailed scrutiny review, gathering evidence, hearing from witnesses and making recommendations to the appropriate person or Member making the decisions;
  - e) Referring the matter to Full Council for debate according to the significance of the issues
- 8.3 CCSMC will have the right to call for reports and undertake reviews in relation to petitions where it is concerned that they have not been dealt with properly.

8.4 The relevant Executive Member may also be required to consider the petition to agree appropriate actions, depending upon the issues raised.

8.5 If the petition relates to an operational Highways matter, for example a traffic regulation order or Respark, it will be referred directly to the relevant Executive Member and will not be considered by CCSMC.

8.6 If the petition/ePetition is about something over which the council has no direct control e.g. the local railway or hospital, we may refer it to the Council's relevant partner organisation, and where appropriate, may work with them to respond to the petition.

## **9 Getting Involved When Your Petition Is Considered**

9.1 A petitioner may choose to attend any meeting where their petition/ePetition is to be considered to listen to the debate, or register to speak at the meeting via the Council's Public Participation Scheme. This scheme enables participants to address Councillors before they debate the issues raised.

## **10 What happens next?**

10.1 The petition/ePetition organiser will receive notification of the outcome of their petition. Where a petition/ePetition has been considered at a public meeting, information on the related decisions will be made available electronically via the meeting minutes published online. It will also be possible to track the implementation of any actions arising from them, via the online committee management system.

## **Appendix 3 - Council Procedure Rules**

### **Introduction**

#### **1 Full Council**

- 1.1 The Full Council is a formal meeting of all Councillors. The Full Council is required by law to take certain important decisions including setting the Council's budget and Council Tax and approving a number of key plans and strategies. Full Council is responsible for all of the functions which are not the responsibility of the Executive. It will carry out some functions itself, but others will be delegated to Committees or named Officers. Further details of the functions which Council has delegated are set out in Appendix 1 of this Constitution.

#### **2 The Policy Framework**

- 2.1 The Policy Framework means the following plans and strategies:

Partnership and Community Plans:

- a) 10 Year City Plan
- b) Health and Wellbeing Strategy
- c) Children and Young People's Plan
- d) Corporate Parenting Strategy
- e) Youth Justice Plan
- f) Community Safety Strategy
- g) Joint Waste Strategy
- h) Climate Change Strategy
- i) Annual Library Plan
- j) Food Law Enforcement Service Plan

Council:

- a) Council Plan or its equivalent

- b) Local Plan documents
- c) Local Transport Plan
- d) Statement of Licensing Policy under Licensing Act 2003
- e) Gambling Act Licensing policy
- f) Medium Term Financial Strategy
- g) Treasury Management Plan

### **3 Functions of the Full Council**

#### **3.1 The functions reserved to Full Council are:**

- a) To approve, adopt amend, monitor and /or review the plans, strategies and policies which together make up the Council's Policy Framework
- b) Determine and amend the Council's Revenue and Capital budgets, including the initial allocations of financial resources to different services and projects, proposed contingency funds, proposed precepts, setting the Council Tax and decisions relating to the Council's borrowing requirement and the control of its capital expenditure.
- c) Approve the Treasury Management Strategy.
- d) Approve expenditure that falls outside the Council's total annual budget.
- e) Take any decision, which is contrary to the approved Policy Framework and/or the approved Budget.
- f) Appoint and remove the Leader.
- g) Decide the composition of Committees and sub-committees of Full Council and make appointments including co-opted members to them and other non-Executive bodies except in the case of ad hoc scrutiny sub-committees which will be determined by the Customer & Corporate Services Scrutiny Management Committee respectively.

- h) Appoint representatives to outside bodies unless the appointment is one that must by law be made by the Executive in relation to its functions or has been delegated by the Council.
- i) Make and, subject to the provisions of Article 25 of this Constitution, amend Standing Orders, Financial Regulations and rules in relation to contracts.
- j) Change the name of the City or of a Parish.
- k) Elect a Lord Mayor, Deputy Lord Mayor and Sheriff and exercise related functions.
- l) Confer the title of the Honorary Alderman, Honorary Recorder and Honorary Freeman and grant the Freedom of the City.
- m) Promote or oppose local or personal bills.
- n) Where it is the function of the Council, divide Parliamentary Constituencies and local government electoral divisions into polling districts.
- o) Make, amend, revoke or re-enact Byelaws.
- p) Make orders for grouping parishes, dissolving groups and separating parishes from groups.
- q) Dissolve small parishes.
- r) Carry out functions in relation to parishes and Parish Councils under Part 11 of the Local Government and Rating Act 1997 and subordinate legislation under that Part.
- s) Fill Council or Parish Council vacancies in the event of insufficient nominations.
- t) Submit proposals to the Secretary of State for an Order under Section 10 of the Representation of the People Act 2000 (pilot schemes for local elections).
- u) Appoint the Chief Operating Officer (or equivalent) (Head of Paid Service) and designate officers as the Monitoring Officer,

the Chief Finance Officer and Proper Officers under the relevant legislation, except to the extent that the power to designate Proper Officers has been otherwise delegated in this Constitution.

- v) Make a scheme for the payment of allowances to Members and determine the amount of all allowances payable to Members of the Council, its Committees, sub Committees and other bodies.
- w) Take decisions and/or give advice on matters brought to the Council by the Executive and other bodies or persons.
- x) Carry out any other functions reserved by law or by this Constitution to Full Council, including those “local choice” functions reserved to Full Council under this part of the Constitution

#### **4 Chairing the Council**

- 4.1 The Lord Mayor will preside at meetings of the full Council. In the absence of the Lord Mayor the Deputy Lord Mayor will preside. In the absence of both, then the Council will elect a Member to preside for that meeting. Any powers or duties of the Lord Mayor, as Chair, in relation to the conduct of a meeting may be exercised by the person presiding at the meeting.
- 4.2 The Lord Mayor will cease to be Lord Mayor if they resign, is dismissed by a vote of Full Council, ceases to be a Member of the Council, or is unable to act as a Member of the Council. They will continue to act as Lord Mayor (whether or not remaining a Councillor) after an election until their successor has been appointed. If the Lord Mayor is no longer a Councillor they may not vote other than to exercise a casting vote.
- 4.3 The Lord Mayor shall:
  - a) uphold and promote the purpose of the Constitution, and interpret the Constitution when necessary;

- b) preside over meetings of the Council so that its business can be carried out fairly and efficiently and with regard to the rights of Councillors and the interests of the local community;
- c) ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the Executive are able to hold the Executive and Committee Chairs to account;
- d) promote public involvement in the Council's activities.

## 5 Council Meetings

- 5.1 Whilst there are three types of Council meeting, this constitution will list Budget Council as a fourth meeting due to the different Procedure Rules to be followed:
- a) The Annual Meeting;
  - b) The Budget Council;
  - c) Ordinary Meetings;
  - d) Extraordinary Meetings.

## 6 Rules of Procedure and Debate

- 6.1 These Council Procedure Rules will apply to all meetings of the Full Council unless expressly stated otherwise.

## 7 Notice of and Summons to Meetings

- 7.1 The Chief Operating Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules in Appendix 7 of this Constitution.
- 7.2 At least five ~~working~~ clear days before a meeting, the Chief Operating Officer will send a summons signed by them 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.

## **8 Quorum**

- 8.1 The quorum for all meetings of the Council is one quarter of the whole number of Members of the Council.
- 8.2 If at any time during the meeting of the Council, the Lord Mayor declares there is not a quorum present, the meeting stands adjourned. The consideration of any business not transacted will be deferred to a time fixed by the Lord Mayor at the time the meeting is adjourned, or if the Lord Mayor does not fix a time, to the next ordinary meeting of the Council.

## **9 Duration of Meetings**

- 9.1 All Ordinary Meetings, Budget Council and Extraordinary Meetings will finish 3 hours and 30 minutes after the start time of the meeting, unless extended by agreement of the Council. The 3 hours and 30 minutes will not include any periods of adjournment and / or breaks taken by the Lord Mayor. For clarity, this rule does not apply to Annual Council and Extraordinary meetings of Council.
- 9.2 The Lord Mayor will remind Council when three hours and 20 minutes has lapsed.
- 9.3 A motion to extend the meeting which has been duly proposed and seconded, before the allocated time has elapsed shall be put to the vote without debate.
- 9.4 All outstanding items of business will be deemed to have been proposed and seconded and will be voted on individually per agenda item without debate prior to the expiry of the meeting time.

## **10 Public Participation**

- 10.1 The Public Participation Rules/Protocol is at Appendix 8 of this Constitution.

- 10.2 The time spent on this item shall not, except at the discretion of the Lord Mayor, exceed 30 minutes.
- 10.3 Public participation applies to ordinary meetings, budget council and extraordinary meetings only.
- 10.4 Any member of the public shall be entitled to address the Council for up to 3 minutes or to ask any Member of the Council a question.
- 10.5 In order to exercise this right prior notice must be given to the Head of Democratic Governance before 5:00 pm 2 working days before the meeting.
- 10.6 At an ordinary meeting any address or question from a member of the public may be on any matter directly relevant to the business of Council or the City.
- 10.7 In the case of Budget Council, any public participants must address business on the agenda in so far as it may relate to the setting of the budget for the coming financial year.
- 10.8 In the case of an extraordinary meeting public participants must only address the business on the agenda.
- 10.9 In the light of the special nature of the annual meeting the public participation rights given by this Rule will not apply.
- 10.10 In exercising their public participation rights a member of the public is entitled to express views positive or negative about the performance of the Council but must not:
- a) Say anything which is defamatory or discriminatory
  - b) Make any personal attack on any Officer and / or Member
  - c) Disclose confidential or exempt information including personal information.
- 10.11 Any questions to Council shall be put and answered without discussion, either by a direct answer or, on questions which could not reasonably be dealt with at the meeting, by a written answer which will be passed on to Members to answer within ten working days.
- 10.12 No other discussion will take place on any matter raised by a member of the public when addressing the Council. When the speaker has

finished, the Lord Mayor will announce how the issues raised by the participant will be dealt with. The options most usually being:

- a) to note the comments made;
- b) to refer the issues to the Executive or another appropriate Committee for consideration; or
- c) to take into account the comments made as part of any debate on related decisions to be made later on the agenda.

## **11 Removing the Leader of the Council and Members of the Executive**

11.1 The Leader of the Council will be elected by Council and will hold office for a period of four years or until the next all out city council election and can only be removed during the period of office by resolution of Council in the circumstances below.

11.2 Members of the Executive are appointed directly by the Leader of the Council and therefore their position as members of the Executive falls if the Leader is removed from Office by Council. In all cases, if the motion to remove the Leader is successful the Leader and Executive Members continue to be City of York Councillors until either the next council elections or they chose to resign their position as councillor.

11.3 If Council resolves to remove the Leader of the Council, and in turn the members of the Executive, it shall elect a new Leader of the Council at the same Council meeting as its next item of business.

### Notice of Motion to remove the Leader of the Council

11.4 Notice of motion to remove the Leader of the Council shall be:

- a) Given in writing; and
- b) Signed by a proposer and a seconder who are both City of York Councillors; and
- c) Received by the Chief Operating Officer; and

d) State why the signatories consider that the Leader of the Council should be removed

- 11.5 If the Chief Operating Officer receives the notice of motion less than 15 working days but not less than 5 clear working days, before the next scheduled Council meeting, the motion will be considered at that Council meeting.
- 11.6 If the notice of motion is received more than 15 clear working days before the next scheduled Council meeting, the Chief Operating Officer shall within 5 working days of receipt, summon an Extraordinary meeting of Council for the purposes of considering the motion. Unless required by law, no other business shall be conducted at that meeting, other than election of a new Leader of the Council, should the motion succeed. The Extraordinary meeting shall take place within 10 working days of the summons.

Duties of a newly Elected Leader of the Council

- 11.7 A new Leader of the Council elected under these provisions shall, within 5 working days of their election:
- a) appoint a Deputy Leader;
  - b) ensure that areas of responsibility are allocated by the Executive to each member of the Executive; and
  - c) inform the Chief Operating Officer of the names of the Deputy Leader and the areas of responsibility of Members of the Executive.

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**Procedure rules for Annual meeting of the Council****A1 Annual Meeting of the Council.**

- 1 The date and time of the Annual Meeting will be determined by the Chief Operating Officer following consultation with the Lord Mayor Elect and the Leader of the Executive and Political Group Leaders.
- 2 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 normally take place in May.

**A2 Agenda for the Annual Meeting**

- 1 At the Annual Meeting of the Council, the order of business shall be as follows:
  - a) declarations of interest;
  - b) to elect the Lord Mayor for the ensuing municipal year;
  - c) to appoint a Deputy Lord Mayor for the ensuing municipal year;
  - d) to appoint a Sheriff for the ensuing municipal year;
  - e) at the first Annual Meeting following local elections to appoint a Member as the Executive Leader;
  - f) to approve the size and membership of the Council Committees in accordance with the political balance rules;
  - g) to approve any new terms of reference for those committees;
  - h) to appoint Chairs and Vice-Chairs (where appropriate) of the Council's Committees for the ensuing municipal year;
  - i) to approve appointments of Council representatives on outside bodies for the ensuing municipal year except where this is the function of the Executive or is delegated to another person or body under the Council's Constitution;
  - j) to agree a schedule for the allocation of motions for Ordinary Meetings during the forthcoming Municipal year;

- k) to consider any business brought before the Council by the Lord Mayor on grounds of urgency in accordance with Section 100B(4)(b) and paragraph 4 (5) of schedule 12 of the Local Government Act 1972.

### **A3 Rules for the conduct of the meeting**

- 1 Unless otherwise directed by the Lord Mayor, the following rules for Ordinary meetings of Council do apply to Annual Council:
  - a) Points of order
  - b) Personal explanation
  - c) Voting
  - d) Minutes
  - e) Exclusion of the public
  - f) Misconduct by Members
  - g) Disturbance by the public
  - h) Filming and use of social media during meetings

### **A4 Voting on Appointments**

- 1 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.
- 2 In the event of a tie, the Lord Mayor would exercise a casting vote.

### **A5 Duration of meetings**

- 1 The time limit of 3 hours and 30 minutes does not apply to Annual meetings of the Council.

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**Procedure rules for Ordinary meetings of the Council****B1 Ordinary Meetings**

- 1 The Council will hold Ordinary Meetings for the transaction of general business. The arrangements for these meetings shall be determined by the Chief Operating Officer in consultation with the Leaders of Political Groups.
- 2 Normally Ordinary Meetings of the Council will be held at 6.30 pm at the Guildhall, different arrangements may be made with the agreement of the Lord Mayor.

**B2 Duration of Meetings**

- 1 All Ordinary Meetings will finish 3 hours and 30 minutes after the start time of the meeting, unless extended by agreement of the Council. The 3 hours and 30 minutes will not include any periods of adjournment and / or breaks taken by the Lord Mayor.
- 2 The Lord Mayor will remind Council when three hours and 20 minutes has lapsed.
- 3 A motion to extend the meeting which has been duly proposed and seconded, before the allocated time has elapsed shall be put to the vote without debate.
- 4 All outstanding items of business will be deemed to have been proposed and seconded and will be voted on individually per agenda item without debate prior to the expiry of the meeting time.

**B3 Agenda for Ordinary Meetings**

- 1 The order of business at every Ordinary Meeting of the Council shall be:
  - a) to choose a person to preside if the Lord Mayor or Deputy Lord Mayor is absent;
  - b) declarations of interest;

- c) to approve as a correct record and sign the minutes of the last meeting or meetings of the Council;
- d) Lord Mayor's Business;
- e) Public Participation;
- f) to dispose of any business standing adjourned from any previous meeting of the Council;
- g) to receive without discussion petitions which Members wish to present to Council;
- h) to receive and consider a written report from the Leader on the work of the Executive, to ask them questions thereon;
- i) to receive and consider a written report from the Deputy Leader on the work of the Executive, to ask them questions thereon;
- j) to debate such recommendations requiring Council approval as may have been made by the Executive;
- k) to consider motions;
- l) to ask questions of the Leader, Deputy Leader or Executive members in respect of any matter for which they have responsibility;
- m) to receive and consider a written report from Executive Members in an agreed rotation as set out in Rule B5 and to question such Members thereon;
- n) to receive and consider a written report from the Chair of Customer & Corporate Services Scrutiny Management Committee including such recommendations for approval as may have been made by that Committee under Rule B8;
- o) to receive and consider and report on recommendations of other Scrutiny Bodies;
- p) to receive and consider recommendations of Committees (other than Scrutiny Bodies) under Rule B8;
- q) to make any changes in the membership of the Executive, Committees and outside bodies, together with changes to relevant Chairs and Vice Chairs;
- r) to consider any other business set out in the notice convening the meeting;

s) to consider any business, brought before the Council by the Lord Mayor on the grounds of urgency in accordance with Section 100B(4)(b) of the Local Government Act 1972.

2 The order of business may be varied at the Lord Mayor's discretion, or by resolution passed on a motion duly moved, seconded and decided without discussion.

#### **B4 Public Participation**

1 The time spent on this item shall not, except at the discretion of the Lord Mayor, exceed 30 minutes.

2 Any member of the public shall be entitled to address the Council for up to 3 minutes or to ask any Member of the Council a question.

3 In order to exercise this right prior notice must be given to the Head of Democratic Governance before 5:00 pm 2 working days before the meeting.

4 At an ordinary meeting any address or question from a member of the public may be on any matter directly relevant to the business of Council or the City.

5 In exercising their public participation rights a member of the public is entitled to express views positive or negative about the performance of the Council but must not:

- a) Say anything which is defamatory or discriminatory
- b) Make any personal attack on any Officer and / or Member
- c) Disclose confidential or exempt information including personal information.

6 Any questions to Council shall be put and answered without discussion, either by a direct answer or, on questions which could not reasonably be dealt with at the meeting, by a written answer which will be passed on to Members to answer within ten working days.

7 No other discussion will take place on any matter raised by a member of the public when addressing the Council. When the speaker has

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finished, the Lord Mayor will announce how the issues raised by the participant will be dealt with. The options most usually being:

- a) to note the comments made;
- b) to refer the issues to the Executive or another appropriate Committee for consideration; or
- c) to take into account the comments made as part of any debate on related decisions to be made later on the agenda.

## **B5 Petitions presented by Members**

- 1 A Member may submit a petition for inclusion on the Council agenda by giving notice of the petition to the Head of Democratic Governance not later than midday on the eighth working day before the day of Council meeting at which it is to be received. Members will be permitted to speak for up to one minute to present a petition.
- 2 Petitions will be formally received without discussion and will stand referred to Customer & Corporate Services Scrutiny Management & Policy Committee and the appropriate decision maker.

## **B6 Report of the Leader**

- 1 The maximum time limits for this item are as follows:
  - a) The presentation of the Leader's report will not exceed 5 minutes;
  - b) Leaders of Opposition groups on the Council will have up to 5 minutes each to respond;
  - c) The Leader will have 5 minutes to respond thereafter.
- 2 The Leader will present a written report on the work of the Executive. In the absence of the Leader, the Deputy Leader will present the report. In the absence of both the Leader and Deputy Leader, an Executive Member will present the report.

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**B7 Questions and comments on the Leader's report**

- 1 A maximum of 10 minutes will be permitted for questions and comments on the Leader's report.
- 2 A Member of the Council may ask any question or make any comments together with one supplementary question or comment directly arising from an item of the Leader's report.
- 3 A maximum of two other Members of the Council may each ask one further supplementary question or make one supplementary comment. All supplementary questions or comments must arise from the response of the Leader.
- 4 The Leader may respond directly to any question asked or comment made or may agree to submit a written answer to be circulated to all Members of the Council within five working days.

**B8 Report of Deputy Leader**

- 1 A maximum of 10 minutes will be permitted for questions and comments on the Deputy Leader's report.
- 2 The Deputy Leader will present a written report on the work of the Executive. They will formally move receipt of the report but will not otherwise speak to it.
- 3 A Member of the Council may ask any question or make any comments together with one supplementary question or comment directly arising from an item of the Deputy Leader's report.
- 4 A maximum of two other Members of the Council may each ask one further supplementary question or make one supplementary comment. All supplementary questions or comments must arise from the response of the Deputy Leader.
- 5 The Deputy Leader may respond directly to any question asked or comment made or may agree to submit a written answer to be circulated to all Members of the Council within five working days.

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**B9 Report of Executive Member**

- 1 At each Council meeting an Executive Member, decided by rotation, will submit a written report. The Executive Member will formally move their report but will not deliver a speech in support of it.

**B10 Questions and comments on the Executive Member's report**

- 1 A maximum of 10 minutes will be permitted for questions and comments on the Executive Member's report.
- 2 A Member of the Council may ask any question or make any comments together with one supplementary question or comment directly arising from an item of the Executive Member's report.
- 3 A maximum of two other Members of the Council may each ask one further supplementary question or make one supplementary comment. All supplementary questions or comments must arise from the response of the Executive Member.
- 4 The Executive Member may respond directly to any question asked or comment made or may agree to submit a written answer to be circulated to all Members of the Council within 5 working days.

**B11 General Questions to Leader and Executive Members**

- 1 A maximum of 15 minutes will be permitted for questions under this Rule.
- 2 A Member of the Council may ask the Leader or any Executive Member any question together with one supplementary question on any matter within their portfolio responsibility.
- 3 A maximum of two other Members of the Council may each ask one further supplementary question. All supplementary questions must arise from the response of the Leader or Executive Member.
- 4 The Leader or Executive Member may respond directly to any question asked or may agree to submit a written answer to be

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circulated to all Members of the Council within 5 working days.

## **B12 Committees of Council**

- 1 The Chair of a Committee will present any recommendations of that Committee requiring confirmation to Council, and move that they be received and approved. In the absence of the Chair, the Vice Chair and only following that another Member of the Committee may move the recommendation.
  - a) When the recommendations of a Committee requiring confirmation have been presented to Council and duly moved and seconded, they will be open to debate;
  - b) Any Member may without notice move references back of any item requiring confirmation by Council.
- 2 The Chair of the Committee has the final right of reply to any amendment or motion moved under this Rule.

## **B13 Motions on Notice**

### Scope

- 1 Motions must be about matters for which the council has a responsibility or which affect the city. For functions which can be only carried out by the Executive, Council cannot take decisions but can recommend a course of action for the Executive to consider.
- 2 Notice of every motion to be considered by Council, must be given in writing to the Head of Democratic Governance no later than midday on the eighth working day before the day of Council meeting at which it is to be considered. This Rule does not apply to motions which may be moved without notice under Rule B10 or to recommendations brought before the Council by the Executive or a Committee.
- 3 No Council meeting will receive more than 4 Motions on notice at any one meeting.

- 4 Motions may only be submitted in accordance with the schedule for allocation of motions approved at Annual Council.
- 5 Motions will be considered in the order determined by the Lord Mayor based on an appropriate order for the effective conduct of business.
- 6 If notice is given of any original motion that, in the opinion of the Chief Operating Officer (acting in the capacity as proper officer) is out of order, illegal, irregular or improper, the Chief Operating Officer shall immediately submit such notice to the Lord Mayor and it shall not be accepted and placed on the agenda without the Lord Mayor's sanction. In the event of non-acceptance, the Chief Operating Officer shall inform the Member who submitted the notice.
- 7 A notice of motion would be deemed out of order if it required the Council to do something which it patently cannot.
- 8 A notice of motion would be deemed illegal if it sought action that was ultra vires.
- 9 A notice of motion would be deemed irregular or improper if for example it was offensive or defamatory.
- 10 In all of the above circumstances or in other such circumstance whereby a notice of motion is rejected, the Chief Operating Officer will retain a formal record of the rejected notice.

Motion to rescind a previous decision

- 11 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 one third of the Members of the Council.

Motion similar to one previously rejected

- 12 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 one third of the Members of Council. Once the motion or amendment is dealt with, no Member can propose a similar motion or amendment for six months.

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**B14 Motions without Notice**

- 1 All motions and amendments not requiring prior notice must, if the Lord Mayor so requests, be put in writing and handed to the Lord Mayor, before they are discussed or put to the meeting.
- 2 The following motions may be moved without notice:
  - a) to appoint a Chair of the meeting at which the motion is moved;
  - b) in relation to the accuracy of the minutes;
  - c) to change the order of business in the agenda;
  - d) to refer something to an appropriate body or individual;
  - e) to appoint a committee or Member arising from an item on the summons for the meeting;
  - f) to receive reports or adopt recommendations of the Executive, committees or Officers and any resolutions following from them;
  - g) that leave be given to withdraw a motion;
  - h) to proceed to the next business (such a motion may only be moved by a Member who has not already participated in the debate);
  - i) to adjourn a meeting (such a motion may only be moved by a Member who has not already participated in the debate);
  - j) to suspend a particular Council Procedure Rule;
  - k) to exclude the public and press in accordance with the Access to Information Procedure Rules;
  - l) to not hear further a Member named under Rule B28 or to exclude them from the meeting;
  - m) to give the consent of the Council where its consent is required by this Constitution.
  - n) to extend the meeting, such a motion must be moved and seconded before the Lord Mayor announces that the guillotine has fallen and will have the effect of suspending the relevant standing order.
  - o) to extend any other time limit set out in these Rules.

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**B15 Notice of amendments**

- 1 Written notice of every amendment, must be delivered to the Head of Democratic Governance no later than midday on the third working day before the day of Council meeting at which it is to be considered.
- 2 An amendment must be relevant to the motion and must:
  - a) propose leaving out words, or
  - b) propose leaving out words and inserting or adding others, or
  - c) propose inserting or adding words.
- 3 The effect of an amendment must not be to negate the effect of the motion before Council.

**B16 Rules of Debate****General**

- 1 The decision of the Lord Mayor is final on all matters of order or personal explanation in consultation with the Monitoring Officer.
- 2 When speaking, a Member is to stand, if able to, and address the Lord Mayor as Lord Mayor.
- 3 When the Lord Mayor speaks or rises to speak during a debate, any Member then speaking or seeking to speak is to sit down.
- 4 If two or more Members indicate that they wish to speak, the Lord Mayor will call one and the other(s) will wait until called by the Lord Mayor. When a Member is speaking, the others are to remain sitting unless rising to make a point of order or a personal explanation.
- 5 Members may speak once only on the matter under discussion except for the following reasons:
  - a) to speak once on an amendment moved by another Member;
  - b) to move a new amendment if the motion has been amended since they last spoke;

- c) to speak on the main issue, if the Member first spoke on an amendment moved by another Member (whether or not it was carried);
- d) as the mover of a motion (but not of an amendment), to exercise the right to reply at the end of the debate on the motion before it is put to the vote;
- e) as the seconder of a motion or amendment, having reserved (when seconding the motion or amendment) the right to speak until later in the debate;
- f) to make a point of order (any point of order must refer to the relevant Standing Order or statutory provision) or personal explanation

### **B17 Content and Time Limits**

- 1 Speeches must be directed to the question under discussion or to a personal explanation or point of order.
- 2 When moving a motion a Member may speak for a maximum of 5 minutes.
- 3 No other speeches (including the moving of amendments and the right to reply) may take more than 3 minutes without the consent of the Council, which will be determined by a vote on a motion without discussion.

### **B18 Altering and withdrawing motions**

- 1 With the consent of the Council, indicated without discussion, a Member may alter a motion or amendment of which they have given notice.
- 2 A motion or amendment may be withdrawn by the mover with the consent of the seconder and of the Council (indicated without discussion). No Member may speak after the mover has asked permission for its withdrawal, unless permission to withdraw the motion or amendment is refused.

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**B19 Order of debate**

- 1 No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.
- 2 When seconding a motion or amendment, a Member may reserve their speech until later in the debate.
- 3 When a motion is under debate no other motion may be moved except:
  - a) to amend the motion;
  - b) to proceed to the next business (such a motion may only be moved by a Member who has not already participated in the debate);
  - c) that the question now be put (such a motion may only be moved by a Member who has not already participated in the debate);
  - d) that a Member be no longer heard;
  - e) that a Member leave the meeting;
  - f) to exclude the public and press from the meeting under the terms of the Local Government Act 1972;
  - g) to extend the time of the meeting or the time for the agenda item.
- 4 No Member may move more than 1 amendment to any motion or substantive question before the Council unless the further amendment comprises new material which is not related to the subject of the previous amendment.
- 5 Only 1 amendment may be moved and discussed at a time unless the Lord Mayor rules otherwise and no further amendment is to be moved until the Council has reached a decision on the amendment under discussion.
- 6 When the Council has reached a decision on a motion or amendment, the Lord Mayor will refuse to put at the same meeting any subsequent motion or amendment which, if carried, would substantially contradict, override or repeat the former one.
- 7 If an amendment is lost, other amendments may be moved on the original motion.

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- 8 If an amendment is carried, the amended motion replaces the original motion on which any further amendments are moved.

## **B20 Right of reply**

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

## **B21 Closure motions**

- 1 A Member who has not spoken on the substantive issue may move without comment at the end of another Member's speech one of the following:
- a) "That the Council proceed to the next business"
  - b) "That the question be now put" or "Move to the vote"
  - c) "That the Council now adjourn"
- 2 If the motion is seconded, the Lord Mayor may do one of the following:
- a) on a motion to proceed to the next business, unless in the Lord Mayor's opinion the matter has not been sufficiently discussed, they may put to the vote the motion to proceed to the next business. If that vote is carried the Lord Mayor shall give the mover of the original motion the right of reply before putting that motion to the vote;
  - b) on a motion that the question be now put, unless in the Lord Mayor's opinion the matter has not been sufficiently discussed, they may put to the vote the motion that the question be now put. If that vote is carried, the Lord Mayor shall give the mover of the original motion the right of reply before putting that motion to the vote;

- c) on a motion to adjourn the meeting, the Lord Mayor may put the adjournment motion to the vote without giving the mover of the original motion their right of reply on that occasion.

## **B22 Points of Order**

- 1 A member who believes that there is some irregularity in the constitution or conduct of the meeting may rise on a point of order. Such irregularities may include:
  - a) discussion of a question not before the Council
  - b) the use of improper language
  - c) interjection of remarks while a Member is speaking.
  - d) that a quorum is not present
  - e) breach of any other Procedure Rule or law
- 2 When a Member rises on a point of order they must state at the outset the rule or law which they consider to have been breached. The Member raising the point of order must then sit down immediately while the Lord Mayor gives a ruling.
- 3 A Member against whom a point of order is being raised must sit down until the Lord Mayor has ruled on the matter.
- 4 If the Lord Mayor rules that the language used by a Member is improper, it is the duty of the Member to withdraw it.

## **B23 Personal Explanation**

- 1 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 appears to have been misunderstood or is being misquoted in the present debate. The ruling of the Lord Mayor on the admissibility of a personal explanation will be final.

## **B24 Voting**

- 1 All matters will be determined by use of the electronic voting system unless at least three Members of the Council demand that the names be recorded. In that event, the Monitoring Officer will ensure that the names and votes of the Members present are recorded and included in the Minutes of the meeting.
- 2 If the Lord Mayor indicates that electronic voting is not available then votes may be taken by a show of hands
- 3 If there are equal numbers of votes for and against, the Lord Mayor will have a second or casting vote. There will be no restriction on how the Lord Mayor chooses to exercise a casting vote.
- 4 Any Member is entitled to have their own vote recorded in the Minutes whether or not a full recorded vote is taken.
- 5 Details of all motions and amendments that are lost will be duly recorded in the published minutes of the meeting.

## **B25 Voting on Appointments**

- 1 If there are more than 2 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.
- 2 In the event of a tie, the Lord Mayor would exercise a casting vote.

## **B26 Minutes**

- 1 The Lord Mayor will sign the minutes of the proceedings at the next suitable ordinary meeting of the Council. The Lord 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.

**B27 Exclusion of Public**

- 1 Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Appendix 7 of this Constitution or Rule B25 (Disturbance by Public)
- 2 If any question arises at any meeting of the Council relating to the appointment, dismissal, promotion, conduct, remuneration or conditions of service of any member of the Council's staff no discussion shall take place until the meeting has considered whether or not to exclude the public and press in accordance with the Access to Information Procedure Rules.

**B28 Misconduct by Members**

- 1 If any Member at a meeting of the Council disregards the authority of the Lord Mayor or is guilty of obstructive or offensive conduct the meeting may, on a motion being duly moved, seconded and carried, resolve that the Member should not be heard and should leave the meeting. Such a motion need not be in writing and is put without discussion. If the motion is carried, the Member must leave the meeting immediately.

**B29 Disturbance by Public**

- 1 If a member of the public interrupts the proceedings of any Council meeting, they will be warned by the Lord Mayor. If the disruption continues, the Lord Mayor may order them to leave the meeting. In the event of general disturbance in any part of the Council Chamber, the Lord Mayor may order that part to be cleared.
- 2 In the event of general disturbance which in the opinion of the Lord Mayor makes the orderly conduct of business impossible, the Lord Mayor may suspend the meeting for as long as necessary.

### **B30 Filming and Use of Social Media during Meetings**

- 1 Filming and use of social media is permitted during meetings in accordance with a protocol approved by the Council so long as there is no disturbance to the conduct of the meeting.

### **B31 Suspension of Council Procedure Rules**

- 1 All of these Council Rules of Procedure except B24 (4) the right for an individual Member to have their vote recorded) may be suspended by motion on notice identifying the Procedure Rule which is to be suspended. Such a motion may only be moved without notice if at least 24 Councillors are present in the room at the time. Suspension can only be for the duration of the meeting.

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## **Procedure rules for Budget Council**

### **C1 Budget Council**

- 1 The order of business at Budget Council shall be:
  - a) to consider any business raised by the Lord Mayor;
  - b) to hear any public participants in relation to business associated with setting the Council's budget for the coming financial year;
  - c) to receive any petitions presented by Members in relation to business associated with setting the Council's budget for the coming financial year;
  - d) to consider and determine the Executive's recommendations on setting the following budgets for the coming financial year;
    - i) revenue budget (including fees and charges and Housing Revenue Account estimates);
    - ii) capital programme;
  - e) to agree a Council Tax resolution for the coming year based on the above agreed budget; and
  - f) to consider and determine the Executive's recommendations in relation to the Treasury Management Statement and Prudential Indicators, as necessary;
  - g) to consider any other business set out in the notice convening the meeting;
  - h) to consider any business, brought before the Council by the Lord Mayor on the grounds of urgency in accordance with Section 100B(4)(b) of the Local Government Act 1972.

### **C2 Duration of Meetings**

- 1 All Budget Meetings will finish 3 hours and 30 minutes after the start time of the meeting, unless extended by agreement of the Council. The 3 hours and 30 minutes will not include any periods of adjournment and / or breaks taken by the Lord Mayor.

- 2 The Lord Mayor will remind Council when three hours and 20 minutes has lapsed.
- 3 A motion to extend the meeting which has been duly proposed and seconded, before the allocated time has elapsed shall be put to the vote without debate.
- 4 All outstanding items of business will be deemed to have been proposed and seconded and will be voted on individually per agenda item without debate prior to the expiry of the meeting time.

### **C3 Public Participation**

- 1 The time spent on this item shall not, except at the discretion of the Lord Mayor, exceed 30 minutes.
- 2 Any member of the public shall be entitled to address the Council for up to 3 minutes or to ask any Member of the Council a question.
- 3 In order to exercise this right prior notice must be given to the Head of Democratic Governance before 5:00 pm 2 working days before the meeting.
- 4 Any public participants must address business on the agenda in so far as it may relate to the setting of the budget for the coming financial year.
- 5 In exercising their public participation rights a member of the public is entitled to express views positive or negative about the performance of the Council but must not:
  - a) Say anything which is defamatory or discriminatory
  - b) Make any personal attack on any Officer and / or Member
  - c) Disclose confidential or exempt information including personal information.
- 6 Any questions to Council shall be put and answered without discussion, either by a direct answer or, on questions which could not reasonably be dealt with at the meeting, by a written answer which will be passed on to Members to answer within ten working days.

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- 7 No other discussion will take place on any matter raised by a member of the public when addressing the Council. When the speaker has finished, the Lord Mayor will announce how the issues raised by the participant will be dealt with. The options most usually being:
- a) to note the comments made;
  - b) to refer the issues to the Executive or another appropriate Committee for consideration; or
  - c) to take into account the comments made as part of any debate on related decisions to be made later on the agenda.

#### **C4 Petitions presented by Members**

- 1 The rules of Petitions as detailed at B1 apply to Budget Council, but subject to the following amendment:
- petitions presented by Members must be in relation to business associated with setting the Council's budget.

#### **C5 Content and Time Limits**

- 1 The Leader of the Council and the Leaders of other Groups on the Council are not time limited when they are proposing a motion or an amendment at Budget Council, in relation to the setting of the budget.
- 2 No other speeches (including the moving of amendments and the right to reply) may take more than three minutes without the consent of the Council, which will be determined by a vote on a motion without discussion.
- 3 Speeches must be directed to the question under discussion or to a personal explanation or point of order.

#### **C6 Voting**

- 1 All matters will be determined by use of the electronic voting system unless at least three Members of the Council demand that the names be recorded. In that event, the Monitoring Officer will ensure that the

names and votes of the Members present are recorded and included in the Minutes of the meeting.

- 2 If the Lord Mayor indicates that the electronic voting system is not operating then votes may be taken by a show of hands.
- 3 Unless otherwise directed by the Lord Mayor, all votes taken at Budget Council will be named votes and elected Members will be required to vote for, against or abstain.
- 4 If there are equal numbers of votes for and against, the Lord Mayor will have a second or casting vote. There will be no restriction on how the Lord Mayor chooses to exercise a casting vote.
- 5 Details of all motions and amendments that are lost will be duly recorded in the published minutes of the meeting.

#### **C7 Rules for the conduct of the meeting**

- 1 All of the rules relating to Ordinary Meetings shall apply to Budget Council unless otherwise directed by the Lord Mayor, subject to it addressing the business on the agenda. This includes application of the rules to suspend Council Procedure Rules as detailed at B31.

## **Procedure rules for Extraordinary meetings of the Council**

### **D1 Extraordinary Meetings**

- 1 Schedule 12 of the Local Government Act 1972 allows extraordinary meetings of the Council to be called by the Lord Mayor. In addition any five Members of the Council may sign and present to the Lord Mayor a requisition calling for an extraordinary meeting. If the Lord Mayor refuses to call a meeting or does not call for one within seven days of being presented with the requisition, then any five Members of the Council may call an extraordinary meeting of the Council.
- 2 Extraordinary meetings of the Council will only deal with the business for which the meeting has been called.

### **D2 Public Participation**

- 1 The time spent on this item shall not, except at the discretion of the Lord Mayor, exceed 30 minutes.
- 2 Any member of the public shall be entitled to address the Council for up to 3 minutes or to ask any Member of the Council a question.
- 3 In order to exercise this right prior notice must be given to the Head of Democratic Governance before 5:00 pm 2 working days before the meeting.
- 4 For any extraordinary meeting public participants must only address the business on the agenda.
- 5 In exercising their public participation rights a member of the public is entitled to express views positive or negative about the performance of the Council but must not:
  - a) Say anything which is defamatory or discriminatory
  - b) Make any personal attack on any Officer and / or Member

c) Disclose confidential or exempt information including personal information.

- 6 Any questions to Council shall be put and answered without discussion, either by a direct answer or, on questions which could not reasonably be dealt with at the meeting, by a written answer which will be passed on to Members to answer within ten working days.
- 7 No other discussion will take place on any matter raised by a member of the public when addressing the Council. When the speaker has finished, the Lord Mayor will announce how the issues raised by the participant will be dealt with. The options most usually being:
- a) to note the comments made;
  - b) to refer the issues to the Executive or another appropriate Committee for consideration; or
  - c) to take into account the comments made as part of any debate on related decisions to be made later on the agenda.

### **D3 Rules for the conduct of the meeting**

- 1 All of the rules relating to Ordinary Meetings shall apply to Extraordinary Meetings unless otherwise directed by the Lord Mayor, subject to it addressing the business on the agenda.

### **D4 Duration of meetings**

- 1 The time limit of 3 hours and 30 minutes does not apply to Extraordinary meetings of the Council.

## **Appendix 4 - Executive Procedure Rules**

### **1 Executive Functions**

1.1 Executive functions may be discharged by [as prescribed in Appendix 1 of this Constitution]:

- a. the Leader of the Council
- b. the Executive as a whole
- c. a committee of the Executive
- d. an individual member of the Executive
- e. an officer
- f. joint arrangements; or
- g. another local authority.

### **2 Sub-delegation of Executive functions**

2.1 Where the Leader of the Council or a committee of the Executive is responsible for an Executive function, they may delegate further to an executive member, a Ward Committee, joint arrangements or an officer.

2.2 Where Executive functions have been delegated, this does not prevent the discharge of delegated functions by the person or body who delegated it.

### **3 The Council's Scheme of Delegation and Executive functions *[Appendix 1 of this Constitution]***

- 3.1 In so far as it relates to executive functions, the Council's scheme of delegation will be determined by the Leader of the Council and may only be amended by the Leader of the Council. It will contain the details required in Article 6 and Appendix 1.

#### **4 Conflicts of Interest**

- 4.1 Where a member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Appendix 14 of this Constitution.
- 4.2 If every member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Appendix 14 of this Constitution.
- 4.3 If the exercise of an Executive function has been delegated to a committee of the Executive, an Executive 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 Appendix 14 of this Constitution.

#### **5 Meetings of the Executive**

##### Frequency and Venue

- 5.1 The Executive will meet at least 12 times per year at times to be agreed by the Leader of the Council. The Executive shall meet at the Council's main offices or another location (or in accordance with Remote Meetings Guidance as set out at Appendix 23 of this Constitution,) and to be agreed by the Leader of the Council.

### Public and private meetings of the Executive

5.2 Where the Executive or an Executive Member is taking a decision, they will meet in public (subject to the Access to Information rules at Appendix 7 of this Constitution). All public meetings of the Executive are live streamed regardless as to whether they are physical face to face meetings or a remote meeting.

5.3 The agenda for meetings will be divided as follows:

- Declarations of Interest;
- Exclusion of Press and Public – this section will highlight which extracts of the various reports for each agenda item which are classed as exempt or confidential and this cannot be debated in the public domain. A vote will be required at the commencement of the meeting to exclude the press and public from the meeting in respect the listed agenda item extracts;
- Minutes – these will be managed in accordance with the Protocol on the Production and ~Content of Minutes of Meetings at Appendix 28 of this Constitution;
- Public participation – this will be conducted in accordance with the Public Participation Protocol at Appendix 8 of this Constitution;
- Forward Plan;
- Reports to be debated will then be listed;
- Urgent Business – any other business which the Chair considers urgent under the Local Government Act 1972.

*(Note: To be assured of transparency in its decision making, reports for the Executive will be listed the agenda for consideration. Where exempt (or confidential) information is required to assist in the decision making process, this will be highlighted where necessary).*

### Quorum

- 5.4 The quorum of the Executive that business will not be transacted unless at least four Members are present.

### Substitutes

- 5.5 The Council may appoint named substitutes for Member bodies as follows:-
- Any Member of the Executive may substitute for another Member of the Executive who is (either individually or as part of a Committee of the Executive) unavailable.
  - The Council may appoint a Member of the Executive as the Deputy Leader who will act for the Leader of the Council in their absence or unavailability.

### Taking decisions

- 5.6 Executive decisions which have been delegated to the Executive or an Executive Member will be taken at a meeting convened in accordance with the Access to Information Rules in Appendix 7 of this Constitution.
- 5.7 Where Executive decisions are delegated to a committee of the Executive or an Executive Member, the rules applying to Executive decisions taken by them shall be the same as those applying to those taken by the Executive as a whole.

### Chair

- 5.8 If the Leader is present they will chair the meeting. In their absence, the Deputy Leader will chair the meeting. If both are

absent, then a person appointed to do so by those present will chair the meeting.

### Attendance

- 5.9 These details are set out in the Access to Information Rules in Appendix 7 of this Constitution.
- 5.10 If not a member of the Executive, the Leader (or a nominated substitute) of the main political opposition group will be invited to attend the meetings of the Executive, including the consideration of items containing exempt information, and to speak but not to vote.

### Agenda

- 5.11 The agenda for each meeting of the Executive will be constructed as set out in paragraph 5.3 above. Where necessary and following a vote to exclude the press and public, relevant items of the reports will be debated in the confidential section of the meeting. This confidential section will not be live streamed.
- 5.12 The Minutes will contain the minute extract for any decisions made where the press and public were excluded from the meeting for a particular agenda item.
- 5.13 The agenda for each meeting of an individual member of the Executive will follow the same format as that for a meeting of the Executive including the same arrangements for items which require the exclusion of the press and public.

## **6 Publication of Agendas**

- 6.1 Unless otherwise prescribed by this Constitution, all Agendas will be published in accordance with the legislative requirements and the Access to Information Rules at Appendix 7 of this Constitution.

## **7 Consultation**

- 7.1 All reports to the Executive on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation, and the outcome of that consultation.
- 7.2 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.

## **8 Items on the Executive agenda**

### Items from Officers

- 8.1 All reports presented to the Executive for a decision will be in the name of the relevant Chief Officer and the relevant Portfolio Holder.
- 8.2 All reports must contain relevant information and professional advice or opinion of appropriate officers including the statutory officers.

Items from the Leader of the Council

- 8.3 The Leader of the Council may place on the agenda, (following the published procedures contained within this constitution relating to publication, format of reports etc.) of any Executive meeting any matter which they wish, whether or not authority has been delegated to the Executive, a committee of it or any member or officer in respect of that matter.
- 8.4 The Chief Operating Officer will comply with the Leader's requests in this respect.

Items from Executive Members

- 8.5 Executive Members may place items on the agenda, with the consent of the Leader of the Council.

Items required by statutory officers

- 8.6 The Monitoring Officer and/or the Section 151 Officer may include an item for consideration on the agenda of an Executive Meeting and may require the Chief Operating Officer to call such a meeting in pursuance of their statutory duties.
- 8.7 If there is no meeting of the Executive soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

## Appendix 5 - Scrutiny Procedure Rules

### 1 Quorum

- 1.1 Customer & Corporate Services Scrutiny Management Committee and all other scrutiny committees will not transact any business unless at least four members are present.

### 2 The Party Whip

- 2.1 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 shall speak or vote on any matter before the Council and any committee or sub-committee or the application or threat to apply any sanction by the group in respect of that Councillor should they speak or vote in any particular manner.”*
- 2.2 When considering any matter in respect of which a member of an 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 committee’s deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

### 3 Chairs of overview and scrutiny Committees

- 3.1 The Council will appoint the Chairs and Vice-Chairs of Overview and Scrutiny Committees.
- 3.2 Chairs and Vice-Chairs of Sub-Committees will be appointed by the Committee establishing them.
- 3.3 Where the Committee establishes a Sub-committee or Working Group, the Committee will appoint a Chair (and, if necessary, a Vice-Chair).

- 3.4 Membership of a Sub Committee or working Group will be from Members of the parent Scrutiny committee.

Proportionality

- 3.5 All Scrutiny committees and Sub-Committees will be established in accordance with the political proportionality principles. However any informal Working Groups will not be the subject of proportionality.
- 3.6 Government Statutory Scrutiny Guidance (2019) promotes the four core principles for effective scrutiny originally proposed by The Centre for Governance and Scrutiny namely:
- a) Provide constructive 'critical friend' challenge;
  - b) Amplify the voices and concerns of the public;
  - c) Be led by independent people who take responsibility for their role;
  - d) Drive improvement in public services.
- 3.7 Each Committee within the existing structure will meet in public on a staggered, quarterly basis as a minimum. These quarterly meetings will principally be focused on the 'overview' function, e.g. receiving performance & monitor type reports and identifying areas for further work.
- 3.8 Informal ~~meetings will continue but will be re-designated as~~ Forum ~~meetings rather than Committees and~~ will take place quarterly between public Committee meetings. The initial Forum meeting of each municipal year will be used as an opportunity for the Committee to meet with the relevant Executive Member to discuss the development of a work programme for the forthcoming year. Thereafter Forum ~~meetings can~~ will be utilised ~~as these can be used for horizon-scanning and scoping~~

~~work, as task groups to undertake work which to informs a work topic future agenda topics or for other such uses which inform and contribute to the -or piece of research as part of a eCommittees' work programme.~~

- 3.9 There will be two additional slots every month for potential public Scrutiny meetings. One will be dedicated for a 'commissioned' policy development / pre-decision scrutiny and the second will be used for CSMC Call-ins or a second 'commissioned' meeting. Call-in will continue to function in the usual way and must be requested using the call-in pro forma. The additional public Scrutiny meetings will be commissioned through CSMC following discussion with Executive Members, Corporate Management Team (CMT) and Scrutiny Chairs.
- 3.10 A Scrutiny Chairs' and Vice Chairs Forum will meet bi-monthly to discuss work-plans after these have been agreed by the relevant Committee members, in conjunction with the Chair and Vice Chair of the Customer & Corporate Services Scrutiny Management Committee.
- 3.11 The Forums will be a place in which the members of the Corporate Management Team and Executive Members can speak about their plans longer term and identify potential areas for policy development and pre-decision Scrutiny. Forums will discuss and manage their Quarterly Committee's work plans and make recommendations for policy development and pre-decision input to CSMC.
- 3.12 Scrutiny Chairs, in liaison with CMT and Executive will identify the most appropriate timescales to recommend pre-decision and policy development meetings on particular topics and CSMC will then 'commission' a Scrutiny Committee to undertake a discreet piece of work which will either come back to CSMC or make a recommendation to a meeting of the Executive or Executive Member Decision Session.

- 3.13 Executive Members, CMT and appropriate Officers will attend Forums and Committee meetings as required.
- 3.14 Reports will be published in advance of meetings wherever possible. Where this is not possible (e.g. due to short notice) this will be with the agreement of the Chair / Vice Chair.
- 3.15 Reports and Information will be provided to Members in advance of Forum meetings wherever possible but this cannot be guaranteed.
- 4 Agreeing New Scrutiny Topics**
- 4.1 In order for a scrutiny review to be carried out Councillors must complete a topic registration form outlining the reasons behind the need for the review. Councillors can do this in writing or online through their 'Work to Do' area on the Council intranet.
- 4.2 New topics are added to the scrutiny committees work plan for consideration at a Scrutiny Chairs Forum, which is coordinated and support by CSMC.
- 4.3 For each topic the Scrutiny Chair's and Vice Chair's Forum may decide, with the coordination and support of CSMC, to:
- a) defer a decision until such time as further information is available which may influence that decision.
  - b) decide not to carry out a review of the registered topic. In which case, the reasons will be recorded in the minutes of the meeting to inform any decisions about topics registered in the future.
  - c) decide to proceed with a review. The new review will be added to the committee's work plan following consultation with the Chair and Vice Chair of the CSMC.

**5 Carrying Out a Scrutiny Review**

5.1 Common Practice

5.2 All scrutiny committees can:

- a) carry out a review or appoint a task group from within their membership, to carry out the review on their behalf. Alternatively a task group can be formed to examine specific aspects of a review and report back its findings to the Committee.
- b) appoint non-voting co-optees for the duration of a review. Such co-optees will be chosen for their relevant professional knowledge, expertise and/or where their involvement will ensure that the views of local residents or interested parties are represented. All co-opting arrangements shall be subject to periodic review by the Customer & Corporate Services Scrutiny Management Committee.
- c) seek the advice of an Expert Advisor (one who has previously been identified to support the work of the Scrutiny Committee based on their relevant academic knowledge), and may pay them expenses for doing so.
- d) hold enquiries, go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations, subject to budget availability.
- e) ask any external consultants / witnesses to attend to address them on any matter under consideration and may pay them a reasonable fee and expenses for doing so - see Witness Charter in Annex 4.

- f) require any Councillor (including Members of the Executive) or Officers to attend a meeting to explain about matters within their remit. It is the duty of those persons to attend if so required and they may be required to answer questions relating to:
- any particular decisions or series of decisions;
  - the extent to which the actions taken implement Council policy;
  - their performance.

***Note:** All attendees (Councillor or officer) must be informed of why they have been asked to attend, the date and time of the scheduled meeting, what they need to prepare i.e. produce a report or provide statistical information, and be given enough time in which to do so. All such Councillors and Officers will be treated fairly and considerately in accordance with the Witness Charter. Where, in exceptional circumstance, an attendee is unable to attend on the required date then the Scrutiny Officer in consultation with the Chair shall arrange an alternative date for attendance.*

## **6 Councillors Rights to Access Information**

- 6.1 In addition to their rights as Councillors, members of scrutiny committees have additional right to documents and to notice of meetings if they can claim a 'need to know' basis in law – see the Access to Information Procedure Rules at Appendix 7 of this Constitution.

## **7 Co-opted Voting Members**

- 7.1 The Children, Education & Communities Policy & Scrutiny Committee shall include in its membership such co-opted voting Members as are required by statute for scrutinising educational matters. These will include the following representatives:

- a) one Church of England diocese representative
- b) one Roman Catholic diocese representative
- c) two parent governor representatives

7.2 These statutory co-optees will be invited to attend meetings of the Children, Education & Communities Policy & Scrutiny Committee whenever educational issues are being discussed and scrutinised. They will not be expected to attend meetings when the published agenda does not contain education related matters.

7.3 All co-opted voting Members are required to abide by the standards set out in the Council's Code of Conduct for elected Councillors, and appointments do not take effect until such an undertaking has been given.

## **8 Cycle of Meetings**

8.1 On commencement of a scrutiny review, the committee will consider a scoping report. If required, the Committee may agree some additional formal public meeting dates in order to progress the ongoing review and these will be added to the Committee's workplan.

8.2 Councillors can also hold a number of **informal** Forum meetings to ensure the review remains on focus. These meetings are usually supported by a briefing note to update Members on the review's progress.

## **9 Producing Scrutiny Reports**

9.1 A scrutiny committee may produce an interim report to update Customer & Corporate Services Scrutiny Management Committee during an ongoing review. Once the review has

been completed and the recommendations have been formed, scrutiny committees must prepare a final report and submit it for consideration to the Executive and/or Council. If requested, it may also be presented to Customer & Corporate Services Scrutiny Management Committee for their consideration.

9.2 Where a scrutiny committee cannot agree on one single final report to Customer & Corporate Services Scrutiny Management Committee then the report with the support of the greatest number of Members of the scrutiny body shall be the report of that.

9.3 The final report shall be added to the Executive Forward Plan for consideration by the Executive within one month of it being submitted (or at the earliest available meeting if there is not a meeting scheduled within one month).

## **10 Pre-Decision Scrutiny**

10.1 The Council has established a Pre-Decision Scrutiny Protocol which is Annex 1 to these Rules.

## **11 Post-Decision Call-in**

11.1 When a decision is made either by an Executive Member or the Executive it is published in a decision list online and circulated to all Councillors. In the case of an Officer key decision this is published online and all Councillors receive electronic notification.

11.2 Within two days of the decision being made, the decision lists and electronic notifications bear the date on which they are published and will specify that the decision will come into force, and may then be implemented on the expiry of 5 working days after the publication of the decision, unless it is called-in under these procedures.

- 11.3 Not fewer than 3 named Councillors must lodge a written notice using the Call-In Request Form at Annex 2 of these rules of their wish to call-in a decision with Democratic Services not later than 4pm five working days after the decision has been taken.
- 11.4 The Monitoring Officer will then consider the completed Call-In Request form and may take one of the following options:
- a) Accept the Request for a Call-In as valid in which case arrangements will be made for a meeting of the Customer & Corporate Services Scrutiny Management Committee using the next available published Call-In meeting slot;  
or
  - b) Reject the Call-In for one or more of the following reasons:
    - i. The request is relating to a decision of a non-executive function;
    - ii. The decision was a non-key decision taken by an Officer under delegated powers;
    - iii. The decision was an urgent decision taken under the urgent decision procedures;
    - iv. The issue has been the subject of a call-in within the last 6 months of the date of the decision being made;
    - v. The issue was the subject of pre-decision scrutiny in accordance with the Pre-decision scrutiny Protocol
    - vi. The decision relates to the formulation of a policy or budget matter that requires Full Council approval;
    - vii. The decision was, or is a decision, requiring a decision of Full Council;
    - viii. The request is vexatious in that there are no, or insufficiently detailed, reasonable

grounds which could justify the call-in request being accepted;

- ix. The request for a call-in was received after the expiry of the five working days of the decision being made.

11.5 In the event that the Monitoring Officer is absent when a call-in request is received, the matter shall be referred to the Chief Operating Officer for consideration.

11.6 If, having considered the decision, the Customer & Corporate Services Scrutiny Management Committee is still concerned about it, then it may exercise the powers set out in the Local Government Act 2000 which will usually be by a referral to the Executive. If referred to the decision maker they shall then reconsider the decision, amending the decision or not, before adopting a final decision.

11.7 If, following an objection to the decision, the Customer & Corporate Services Scrutiny Management Committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the Customer & Corporate Services Scrutiny Management Committee meeting.

11.711.8 The call-in procedure shall not apply where the decision being taken is urgent. A decision will be considered urgent if any delay likely to be caused by the call-in process would, for example, seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one together with the reason for urgency, and therefore not subject to call-in.

11.811.9 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Customer & Corporate Services Scrutiny Management

Committee with proposals for review if necessary. This will be incorporated as part of the six monthly and annual review of the constitution.

- 11.10 There may be requirements for changes and/or additions to these procedures in the future. Any such changes are subject to the approval of Council for inclusion in or amendment of the constitution.

**Procedure to be followed by the Customer & Corporate Services Scrutiny Management Committee when considering a Call-In request**

**12 Procedure to be Adopted When a Decision is Called-In**

- 12.1 Democratic Services will check that the call-in notice [completed Call-In Request Form] is signed by at least three Members. The call-in notice must identify which principle(s) and give reasons. This requirement will be checked by the Monitoring Officer or the Chief Operating Officer.
- 12.2 If the Call-In Request has been accepted by the Monitoring Officer, Democratic Services will arrange a meeting of the Corporate Management Scrutiny & Policy Committee, for the next published / scheduled call-in meeting in consultation with the Chair. This meeting will be scheduled within 14 working days of the Call-In request being received if an appropriate date has not already been diarised.
- 12.3 Democratic Services will acknowledge the call-in request and notify all Executive Members.
- 12.4 Democratic Services will invite all of the signatories to the call-in request, the relevant Executive Member(s) and the relevant Chief Officer to attend the call-in meeting. All of the call-in signatories and the relevant Executive Member or their nominee would be expected to attend. The relevant Chief Officer may nominate an officer to attend in their place. If none

of the call-in signatories attend, the Committee will decide whether to proceed. If the Committee decides not to proceed, then the call-in will be determined on the basis that the Committee does not have any concerns it wishes to refer to the Executive, and the Executive will not be required to reconsider the decision.

- 12.5 Democratic Services will send copies of the completed Call-in Request Form, decision notice (or minute) of Executive and any associated reports to Members of the Committee with the agenda for the meeting, or to follow if the agenda has already been issued.
- 12.6 Democratic Services will liaise with the Chair and Vice Chair of CSMC over any other appropriate arrangements for the call-in, e.g. additional information, witnesses etc. If the Chair or Vice Chair(s) have signed the call-in notice, Democratic Services will liaise with another Member of the Committee nominated by the Chair or Vice Chair.
- 12.7 The aim of the Committee meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a Call-in of an Executive decision will be adopted which is detailed within these Rules.

### **13 The role of the Chair**

- 13.1 This Meeting Procedure for a call in shall be implemented at the meeting by the Chair and any deviation from this procedure will be at the discretion of the Chair. The Chair will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.
- 13.2 In the absence of the Chair, the meeting will be led by the Vice-Chair. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chair is appointed. The appointed Member will chair for the

duration of the meeting or until the Chair or Vice-Chair is present.

- 13.3 Where the Chair is in attendance, the Vice-Chair shall be treated in the same way as every other Member of the Committee.

**14 Role of signatories to the Call-in notice and the Executive Member**

- 14.1 Signatories to the completed Call-in Request Form will be invited to provide evidence to the CSMC, in terms of a presentation of their reasons supporting the call-in and by answering questions put to them by the Committee. The Executive Member will be invited to respond to the call in and provide reasoning and evidence supporting the subject decision.

- 14.2 There is no provision for either the signatories to the Call-in or the Executive Member to question each other, either directly or through the Chair.

**15 Role of Officers in attendance**

- 15.1 Supporting Officers will be present from Democratic Services (providing advice to the Chair and Committee as required and recording decisions). The Monitoring Officer or their representative will also be present and may undertake any of these duties in addition to providing any legal advice if required.

- 15.2 Chief Officers and or Heads of Service may provide ~~assistance~~support to the Executive Member and contribute to the meeting as required by advising the Committee on the strategic, financial, legal, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to technical or procedural questions referred by the Executive Member to them. Officers must not be

drawn into offering opinion or answering questions of political judgment.

**16 Procedure at the meeting**

16.1 Public Participation as per the Public Participation Protocol at Appendix 8 of this constitution will be included as part of the agenda for a meeting of CSMC solely focussed on considering a Call-In Request. Any contributions from members of the public are to be directed towards the topic of the call-in only.

16.2 The signatories will nominate a lead spokesperson and all three signatories to the Call-in notice will be invited to address the Committee on the Call-in, and will be required to focus on justifying why they considered the core principles set out in the Call In Request Form have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. Signatories shall limit their contributions to the reasons for the call-in. The time allowed for the signatories to state their case is limited to 10 minutes in total.

16.3 After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions. As a guide it is anticipated that this should not exceed 20 minutes in total.

**Commented [BJ1]:** Full council is asked to determine if this is 20 minutes or 30 minutes. Please note that this is only a guide provided to offer informal time management for the overall length of the meeting

16.4 The Executive Member will then be invited to address the Committee on the Call-in by the Chair and will be required to respond to the assertions relating to the failure to meet the principles as set out in the Call-in notice. ~~The Executive Member may in some instances require the input from Officers for example in respect of technical, financial or legal matters.~~ The time allowed for the Executive Member to respond to the call-in is limited to 10 minutes.

- 16.5 After the Executive Member has made their contribution, Members of the Committee will be invited to put questions to the Executive Member. ~~In the event of being asked an operational or technical question, the Executive Member shall be entitled to refer questions put to them to the Officers supporting them. There is no other opportunity for the Members of CCSCMC to ask questions of these Officers present.~~
- 16.6 By way of summing up, the nominated lead signatory shall be invited to make a further statement to the Committee, lasting no more than five minutes, summarising the signatories' case for the call in.
- 16.7 By way of summing up, the Executive Member shall be invited to make a further statement to the Committee, lasting no more than five minutes, responding to the Call-in
- 16.8 There shall be no further contributions from signatories to the Call-in notice, Executive Member or Officers attending in support of the Executive Member.
- 17 Contributions by Members of the Committee**
- 17.1 The Chair, following any observations they may have:
- ~~in~~ direct response to, and or
  - to acknowledge any concessions made by the Executive Member and lead signatories during the meeting which have directly arisen during the debate in the call in meeting,
- shall invite Members of the Committee to make any contributions they may wish prior to the vote being taken. Each Member of the Committee shall be permitted to make one speech lasting no more than five minutes.
- 18 Voting on whether core principles have or have not been breached**

18.1 The Chair shall then ask each Member in turn to state whether they consider the core principles identified in the Call-in Request were, or, were not, breached giving reasons if they so wish. There is no requirement to seek a recommendation which is seconded to enable a vote to be taken.

18.2 The Chair may, at their discretion, state whether they believe the core principles identified in the Call-in Request were or were not breached, giving reasons if he or she so wishes.

18.3 The vote to be taken will be by a show of hands. Where multiple breaches are alleged, a vote shall take place in respect of each potential breach.

Commented [BJ2]: Full Council is to determine if this addition is approved

## 19 Finding of no breach

19.1 In the event that a majority of Members consider that there was not a breach, the Chair will state that the Committee has resolved that the Executive decision identified in the Call-in Request did not breach the core principles and immediately close the call-in aspect of the meeting. Members of the committee, without re-opening the debate, may then continue the meeting to suggest any areas they consider worthy of future exploration via the scrutiny function. At the conclusion of this discussion, the meeting will formally end.

## 20 Finding of a breach

20.1 In the event that a majority of Members consider that there was a breach, the Chair will declare the outcome and the resultant resolution and close the meeting referring the decision in full back to the next appropriate meeting of the Executive.

## 21 Consideration of multiple Call-in notices in relation to one decision of Executive

- 21.1 In the event that more than one Call-in notice is received in relation to a single matter, the Chair will use their discretion to vary the procedure accordingly to afford signatories to all Call-in Requests equal opportunity to state their case.

DRAFT

### Annex 1 - City of York Council Pre-decision scrutiny Protocol

- 1 The Leader and relevant Portfolio Holders attend the relevant Overview and Scrutiny Committee to outline their aims and objectives for the year and issues likely to be in the Forward Plan.
- 2 From this the Overview and Scrutiny Committee considers areas where Overview and Scrutiny may wish to contribute and via the Chair and Vice Chair of each Committee share their agreed preferences with the Chair and Vice Chair of the Customer and Corporate Services Scrutiny Management Committee for consideration of the Council's Scrutiny Annual Work Programme.
- 3 The Overview and Scrutiny Committee determines which items it would like scrutiny input into, based on strategic impact, relevance to the Committee's work programme, public interest and/or financial implications, and the Democratic Services Officer, on behalf of the Chair of CCSMC and Chair of the relevant scrutiny committee advises the relevant Corporate Director and or Chief Officer of the Overview and Scrutiny Committee's request for pre-decision Scrutiny. The Chief Officer discuss the request with the relevant Senior Officers and Executive Member(s) will consider the request, in particular in respect of timings and will then provide a response to the Chair of CCSMC and Chair of the relevant scrutiny committee via Democratic Services regarding the viability of the request. The Chair of CCSMC must give consideration to any such response when agreeing the future work plan of the Scrutiny Committees. ~~request for pre-decision Scrutiny also requires the agreement of the Leader or relevant Portfolio Holder.~~
- 4 The Chief Officer and Portfolio Holder will attend the Committee Forum meeting ~~or (formal) Committee meeting~~ to discuss the issue and set out the nature of the matter under consideration, the key issues identified, any constraints, timescale for a decision, intended impact and a summary of progress to date.

- 5 The Overview and Scrutiny Committee discusses the issue and identifies any points, by way of recommendations, it would like addressed in the final report. These are minuted.
- 6 The report author drafts the final report for Executive, clearly identifying points/recommendations raised by the Overview and Scrutiny Committee and demonstrating how they have been addressed, or alternatively giving reasons as to why these recommendations were not able to be taken forward for example, legal, financial or technical issues. Where points or recommendations represent a political or judgment call, Officers will only make technical comment relevant to the decision and professional advice. This will clearly demonstrate how Overview and Scrutiny is contributing to better cross-party decision-making.
- 7 The Overview and Scrutiny Committee ~~is not obliged would not usually to have~~ an input at this stage, though early input in decision-making is encouraged, if practicable. Where no input has been provided, Members although they would retain the right to call-in the decision after it had been made on specific grounds (using the Council's call-in request form).
- 8 Where it was felt appropriate for the Overview and Scrutiny Committee to consider a draft final report for Executive, it must be approved for release by the relevant Corporate Director, the Leader or the relevant Portfolio Holder, before submission to the Overview and Scrutiny Committee. If the Overview and Scrutiny Committee consider a draft report, the item will not be subject to call-in procedures.
- 9 The final report is submitted to Executive with any relevant Minute and/or recommendation from the Overview and Scrutiny Committee formally recorded with the report as appropriate.

**Annex 2 - Call-in Request Form**

This form must be completed and signed by THREE City of York Councillors and MUST be returned to Democratic Services within 5 working days of the decision being published (*not including the day of publication*).

Decision taker:	
Date of publication of decision:	
Title of Decision Called in:	
Date Decision Called in:	

	REASONS FOR CALL-IN	Tick which reason applies
1.	Decision contrary to the policy framework?	
2.	Decision contrary <u>to</u> or not wholly consistent with the budget?	
3.	Decision is Key but it has not been dealt with in accordance with the Council's Constitution.	
4.	Decision does not follow principles of good decision-making set out in Article 7 of the Council's Constitution.	
If reason 4, please tick which specific element of Article 7 the decision maker has not followed, did he or she not:		
(a)	Meaningfully consider all alternatives and, where reasonably possible, consider the views of the public.	
(b)	Understand and keep to the legal requirements regulating their power to make decisions.	
(c)	Take account of all relevant matters, both in general and specific, and ignore any irrelevant matters.	
(d)	Act wholly for proper purpose and/or in the	

City of York Council Constitution  
Appendix 5: Scrutiny Procedure Rules

	interests of the public.	
(e)	Keep to the rules relating to local government finance.	
(f)	Follow procedures correctly and be fair.	
(g)	Make sure they are properly authorised to make the decisions.	
(i)	Take appropriate professional advice from Officers.	

Detailed Reason(s) for Call-in.

*Please explain below why one of the reasons for call-in applies (e.g. for number 1 - which major policy affected and how/why).*

*PLEASE NOTE: If you wish to produce and rely on significant supplementary, external evidence in support of your reasons for this call-in it must be provided to Democratic Services prior to the publication of the agenda. It will not be permissible to introduce and rely upon evidence at the meeting without it being subject to prior circulation unless by consent of the Chair.*

	Name (please print)	Signature ( <i>please note that signatures will not be published with the agenda. Electronic signature will be accepted</i> )	Date
1.			
2.			
3.			

**For office use only:**

Received on behalf of the Monitoring Officer by: (signature)

Name:

Date:

Time:

**Validation Check (if necessary):**

Monitoring Officer / Chief Operating Officer

Valid: YES / NO

Reason:

Completed by: (signature)

Date:

Time:

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**Annex 3 - Councillor Call for Action (CCfA)  
Guidance for Councillors and Officers**

<p><b>Introduction</b></p>	<p>Ward Councillors play a central role in the life of a local authority, as a conduit for discussion between the Council and its residents and as a champion for local concerns. To strengthen Councillors' ability to carry out this second role the Government has enacted in the Local Government and Public Involvement in Health Act 2007, provisions for a "Councillor Call for Action" (CCfA). This provides Councillors with the opportunity to ask for discussions at Scrutiny Committees on issues where local problems have arisen and where other methods of resolution have been exhausted.</p>
<p><b>Background &amp; context</b></p>	<p>For some time the Government has been pursuing the aim of giving more power to local people and local Ward Councillors. This aim has run through both 2006's 'Strong and Prosperous Communities' and 2008's 'Communities in Control' White Papers.</p> <p>Recent legislation has given more powers for overview and scrutiny functions to work more closely with partners and across organisational boundaries. These include powers to scrutinise a wide range of national, regional and local bodies, some of which were not previously subject to local authority challenge. This means that scrutiny is in a stronger position to resolve a wide range of policy issues. CCfA needs to be viewed in this context.</p>

<b>Principles</b>	<p>The successful operation of CCfA relies on several broad principles being recognised and supported in local authorities. These principles are:</p> <ul style="list-style-type: none"><li>• Transparency in decision making and the involvement of scrutiny in the decision making process at some level;</li><li>• A willingness to identify mistakes and shortcomings and the recognition of the need to resolve problems through discussion;</li><li>• An understanding (among senior Officers and Executive Members) of the role that scrutiny can play to help the Council improve its services;</li><li>• An understanding and a wish to bolster and support the role that Ward Councillors play as champions and leaders of their communities.</li></ul>
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<p><b>How can CCfA be used?</b></p>	<p>CCfA is a tool that can be used by Councillors to tackle problems on a neighbourhood or ward specific basis that it has not been possible to resolve through the normal channels.</p> <p>A CCfA should represent genuine local community concerns and should focus on neighbourhood and ward issues, specifically the quality of public service provision, both by the Council and its partners. CCfA is a means of last resort when all other avenues have been exhausted and the Council has been unable to resolve the issue.</p> <p>It is important to recognise that CCfA is not guaranteed to solve a problem. What CCfA can provide is:</p> <ul style="list-style-type: none"> <li>• Recognition that an issue is significant enough for time, attention and resources to be spent in trying to resolve it;</li> <li>• A public forum for discussion of the issues;</li> <li>• An opportunity to discuss the issues in a neutral environment;</li> <li>• An opportunity to discuss a problem with the explicit and sole aim of solving it;</li> </ul> <p>A high profile process owner by the Ward Councillor.</p>
<p><b>What CCfA is not</b></p>	<p>CCfA should not be regarded as merely a scrutiny process. It is a whole council approach which can help councillors to resolve issues and problems on behalf of their residents.</p> <p>CCfA is not:</p> <ul style="list-style-type: none"> <li>• About a Councillor's everyday casework;</li> <li>• Appropriate for dealing with individual complaints;</li> <li>• To be used for dealing with issues that relate to individual quasi-judicial decisions (e.g. planning or licensing) or to council tax and non-domestic rates as these are subject to their own statutory appeals</li> </ul>

	<p>process.</p> <p>Any member can bring a CCfA on any issue they choose, however there are certain exceptions for example if a CCfA is:</p> <ul style="list-style-type: none"> <li>• Vexations, not reasonable and/or persistent – whether the request is likely to cause distress, disruption or irritation without any proper or justified cause;</li> <li>• Discriminatory – implying a group of people or an area receives better or worse services on account of that group’s predominant religion, race, sex or other characteristic.</li> </ul> <p>It does not replace the corporate complaints procedure or petitions to Council.</p>
<p><b>What kind of issues can be tackled?</b></p>	<p>Issues should be genuine local community concerns which focus on the quality of public service provision at a local level. It can include any function of the authority which affects the Councillor’s ward and constituents. It can also include issues relating to crime and anti social behaviour.</p> <p>Issues that can be tackled by CCfA are usually persistent and have remained unresolved for a long period of time. They may be issues that the Councillor is aware of from their work within their ward or they may decide to champion a request on behalf of the public.</p>
<p><b>What does championing a request mean?</b></p>	<p>Championing a request will mean taking the issue up on behalf of the resident(s) concerned and trying to resolve the problem by liaising with council services, the Executive and/or outside agencies.</p>

<p><b>What if a councillor doesn't want to champion a request from a member of the public?</b></p>	<p>If a Councillor decides not to champion a request, no further action will be taken under a CCfA. There is not a right of appeal by a member of the public.</p>	
	<p><b><i>Implications for Members</i></b></p>	<p><b><i>Implications for Officers</i></b></p>
<p><b>Who can raise a CCfA</b></p>	<p>The power to initiate a CCfA lies solely with a Councillor and it is up to them to determine which issues they want to take forward as a potential CCfA.</p>	<p>If a member of the public contacts an officer to say that they want to raise a CCfA, the officer should signpost them to their local Ward Councillor.</p>
<p><b>Initiating a CCfA</b></p>	<p>The first thing a Councillor should do is log a potential CCfA with the Scrutiny Team who will help them to decide if any issue is suitable for the CCfA process (see contact details below).</p>	
<p><b>If it is a CCfA, what next?</b></p>	<p>The Councillor will need to continue trying to resolve the concern themselves. They should keep the Scrutiny Team informed about the progress they have made, keeping them up to date with</p>	<p>As part of Councillors' attempts to resolve issues Officers may be asked to assist, for example by:</p> <ul style="list-style-type: none"> <li>• Support Councillors through the usual</li> </ul>

	<p>key developments. The scrutiny team will try to assist in resolving the concern by, for example:</p> <ul style="list-style-type: none"> <li>• Providing advice to Councillors in approaching partner agencies such as the PCT, Police or relevant partnerships;</li> <li>• Helping to formally raise an issue with services/partner agencies.</li> </ul>	<p>complaint or enquiry processes;</p> <ul style="list-style-type: none"> <li>• Attend meetings specifically set up to try and help Councillors resolve the issue.</li> </ul>
<p><b>If the issue remains unresolved</b></p>	<p>At this stage the councillor should inform the Scrutiny Team who will discuss the issue and actions to date in more detail with the Councillor. A scrutiny officer will then prepare a feasibility report to the relevant Standing Policy and Scrutiny Committee which details the background and history of the issue.</p> <p>The Standing Policy and Scrutiny Committee will then consider the request to carry out a CCfA review. The Councillor is welcome to participate at the meeting and a decision will be made to either:</p> <ul style="list-style-type: none"> <li>• Carry out the review; or</li> <li>• Identify possible courses of action that the</li> </ul>	<p>Officers may be asked to provide advice to the Scrutiny Team on action taken in relation to the issue. If the Councillor flags an issue as a potential CCfA, Officers might wish to consider more detailed recording of actions taken in case they are required to produce it for scrutiny purposes.</p> <p>Officers may also be asked to attend the relevant Standing Policy and Scrutiny Committee meeting.</p>

	<p>Councillor has not thus far pursued; or</p> <ul style="list-style-type: none"> <li>• Request further information in order to make a decision; or</li> <li>• Determine that the issue is not suitable for the CCfA process and that no further action will be taken.</li> </ul>	
<p><b>The Scrutiny Committee has agreed to carry out a CCfA review – what happens now?</b></p>	<p>The CCfA will be added to the Scrutiny Committee’s work plan. The Scrutiny Team will produce a scoping report and if appropriate the Councillor will be invited to participate in the review.</p>	<p>Officers may be required to provide technical support throughout the scrutiny review and/or to participate at relevant scrutiny meetings</p>
<p><b>What will happen after a CCfA review has been concluded?</b></p>	<p>A report will be produced together with a set of recommendations which will be presented to the Executive for consideration.</p> <p>Those recommendations approved by the Executive will be implemented and that implementation will be tracked by the Scrutiny Team and reported back to the Scrutiny Committee on a regular basis until completion.</p>	<p>Officers will be responsible for implementing agreed recommendations relevant to their service areas and providing update information as necessary to the Scrutiny Team.</p>
<p><b>Contact</b></p>	<p>For further information and</p>	

<b>details</b>	advice contact the Scrutiny Team on 01904 552054/4279.	
<b>Partner organisations (examples)</b>	North Yorkshire Fire & Rescue Service North Yorkshire Police Safer York Partnership Leeds and York Partnership NHS Foundation Trust Vale of York Clinical Commissioning Group York Teaching Hospital NHS Foundation Trust Council for Voluntary Service Higher York Partnership	

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#### Annex 4 – Scrutiny Witness Charter

Attending a Scrutiny Committee meeting as a witness is voluntary and often a new experience for people. The City of York Council recognises the need to support witnesses. We will keep witnesses informed throughout the scrutiny process to try and ensure that the experience is as stress free as possible.

The Council will:

- 1 inform the witness of the time, date and place of the scrutiny meeting at which their evidence is to be taken.
- 2 inform the witnesses of the matters about which the scrutiny committee wish to ask them. Inform the witnesses of any documents that the scrutiny committee want the witness to produce or provide to them
- 3 provide reasonable notice of all of the requirements of the scrutiny committee to enable the witness to respond in full at the earliest opportunity.
- 4 provide copies of all relevant reports, papers and background information.
- 5 arrange for the Chair of the scrutiny meeting to introduce [him/herself/themselves](#) to the witness prior to the proceedings.
- 6 ensure that all witnesses are treated with courtesy and respect and that all questions to witnesses are made in an orderly manner as directed by the Chair of the meeting.
- 7 ensure where appropriate that the witness is provided with information about claiming expenses.
- 8 following the proceedings, write to the witness and where appropriate, inform them of the outcome.

- 9 the Council's protocol on Officer/Member relations will apply to all internal witnesses.

### Notes of Guidance for Witnesses

- 1 Who will be at the scrutiny meeting?

All formal scrutiny meetings are held in public and the press and media may be present. In practice, unless it is a high profile issue it is rare for there to be more than one journalist taking notes. Members of the public are always welcome, but are not usually present in large numbers. Members of the scrutiny committee will be elected Councillors and possibly one or two co-opted Members e.g. from the voluntary sector. A Scrutiny Officer will be present (usually the person you've had contact with about attending the meeting), and a Democracy Officer will minute the meeting. Other Officers with an interest in the scrutiny topic(s) on the agenda may also be present.

- 2 What happens when I arrive to attend a scrutiny meeting?

Upon arrival at the venue for the scrutiny meeting you will normally be met by someone from the Scrutiny team. The Scrutiny Officer will make contact with you prior to the meeting to confirm the arrangements, and where possible give you an indication of when your evidence is likely to be heard and explain the format for the meeting. If you have any particular anxieties or questions then you should not hesitate to raise these with the Scrutiny Officer. The Chair of the scrutiny meeting will also introduce ~~themselves~~him/herself to you before the start of the meeting.

- 3 What happens when I give evidence?

Witnesses are welcome to attend the entire meeting or can wait at reception until needed. When you are called you will be shown to a seat at the table with the Members of the scrutiny committee. Members of the scrutiny committee will ask you questions in an orderly and respectful manner as directed by the Chair of the meeting. Remember:

- Take your time and speak slowly and clearly;
- Ask for questions to be repeated if you don't understand or cannot hear;
- If you are not sure of the answer then say so.

After you have finished giving your evidence you are free to leave if you wish to do so.

4 Can I claim expenses?

If you have incurred any “out of pocket” expenses when asked to attend a scrutiny committee, where possible obtain receipts for them. If you would like to claim for your expenses, please ask the Scrutiny Officer and they will provide a form for you to make your claim. The Council does not reimburse the expenses of witnesses employed by the City of York Council.

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## Appendix 6 - Other Committee Procedure Rules

### 1 Application

- 1.1 Unless specifically prescribed within this Constitution, these Committee Procedure Rules will apply to Committees, Sub-Committees and Boards, Task Groups and Meetings specified in this Constitution.

### 2 Powers and Duties

- 2.1 The powers and duties of the relevant Committee, Board, Sub-Committee, Task Group and Meeting are set out or referred to in the Council's Constitution.

### 3 Minutes

- 3.1 All Minutes will be produced in accordance with the Protocol on the Production and Content of Minutes of Meetings Appendix 28 of this Constitution.
- 3.2 All minutes of all bodies which require confirmation by Council will be recorded and reported to the next ordinary meeting of the Council.
- 3.3 Copies of the Minutes of all bodies requiring confirmation will be submitted to Members on the day on which the notice convening the meeting is sent to Members. In cases where the date of a meeting is so late in the cycle that the minutes are not available to be included in the published Council Summons, they will be sent to Members as soon as practicable. The meetings to which this applies will be specified on the notice convening the meeting.

**4 Quorum**

- 4.1 Except where it may legally be authorised or ordered by the Council or is specifically referenced within this Constitution the following will apply:
- a) The Joint Standards Committee and any sub-committee of the Joint Standards Committee will not transact any business unless at least four and at least three Members are present respectively and, if Parish Council business is being transacted, a Parish Council Member is present.
  - b) The Licensing Committees, any Sub-Committees, and Working Groups specified in the Council's Constitution will not transact any business unless at least three Members are present.
  - c) Customer & Corporate Services Scrutiny Management Committee and Scrutiny Committees (including Ad-Hoc) will not transact any business unless at least four and three Members are present respectively.
  - d) Any other Committee of the Council, including Planning ~~Major Committee and~~ & Planning ~~Minor Area Sub-Committee~~ will not transact any business unless at least four Members are present.

**5 Special Meetings and Agenda Items**

- 5.1 A special meeting of any of the Committee in question may be called at any time, either by the Chair or at the written request of at least one third of its membership. The conduct of business at a special meeting will be in accordance with Section 100 of the Local Government Act 1972.

**6 Rules of Debate**

The rules of debate for Council, as set out in in the Council Procedure for Ordinary Meetings at Rule B12, will apply with the following exceptions:

General

6.1 Members are not required to stand to speak.

Voting

6.2 Voting at a meeting will be by show of hands. Any Member may require their vote to be recorded in the minutes.

6.3 In the event of any vote being equally divided the Chair of any meeting of a committee will have a second or casting vote.

6.4 Details of all motions and amendments that are lost will be duly recorded in the published minutes of the meeting.

Motions and Amendments to Motions

6.5 Notice is not required of motions.

6.6 Motions must concern an item of business on the agenda.

6.7 In order to be admissible, motions and amendments to motions must be moved by one Member and seconded by another before they are discussed or put to the meeting.

Speaking Rights

6.8 At meetings the following speaking rights shall apply.

6.9 All public meetings will have a standing item on the agenda regarding public participation. Members of the public may register to speak on an item on the agenda or an issue within the meeting's remit, in accordance with the Public Participation protocol at Appendix 8 of this constitution. Speakers will have a maximum of 3

minutes to speak. There is no public right of reply following the decision of the meeting.

- 6.10 The promotion of public participation shall be publicised generally, in correspondence with applicants and the public, and on all relevant agendas.

Substitutes (see also Article 7 of this Constitution)

- 6.11 The Council may appoint named substitutes for Member bodies as follows:-

- (a) For the Planning Major Committee and Planning Minor Committee up to four named substitutes shall be allowed for each of the political Groups. For other Member bodies up to three named substitutes shall be allowed for each political Group. Substitutes shall be appointed from within the same political group. Independent Councillors may also be appointed to act as named substitutes for other Independent Councillors within this rule.
- (b) Any Member of the Executive may substitute for another Member of the Executive who is (either individually or as part of a Committee of the Executive) unavailable.
- (c) Where no named substitute is available a political group may instruct the Chief Operating Officer or the Monitoring Officer to replace for the duration of a particular meeting, an existing Member with another substitute identified by the political group provided always that this provision will not apply to Licensing and Regulatory Committee or Joint Standards Committee or any Sub-Committees thereof.
- (d) There is no ability to appoint substitutes to the Joint Standards Committee or its sub-committees and panels;

Commented [BJ1]: To be determined by Full Council

Commented [BJ2]: To be determined by Full Council

- (e) The Council may appoint a Member of the Executive as the Deputy Executive Leader who will act for the Executive Leader in their absence or unavailability.

6.12 If a meeting which is attended by a substitute is adjourned, then the substitute will have the right to attend on the adjourned date in place of the original Member. If the substitute is unable to attend, then the original Member or another named substitute may attend.

## **7 Agenda Setting**

7.1 Is it worth including here that “Unless otherwise prescribed by the constitution, Agenda Setting meetings will be established between the Chair and Vice Chair of the Meeting in question with the relevant supporting Chief Officer and Democratic Services Officer.

## **8 Publication of Agendas**

8.1 Unless otherwise prescribed by this Constitution, all Agenda's will be published in accordance with the legislative requirements and the Access to Information Rules at Appendix 7 of this Constitution.

## **9 Access to Information**

9.1 The Access to Information Rules at Appendix 7 of this Constitution will apply to all Meetings prescribed by this Constitution.

## **Appendix 7 - Access to Information Procedure Rules**

### **1 Scope**

- 1.1 These rules apply to all public meetings of the Council, the Executive, Scrutiny Committees, the Regulatory Committees and other Committees of the Council (together called meetings).
- 1.2 Where the Joint Standards 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 Council's procedure for considering complaints that Members have breached the Code of Conduct shall apply and the meeting and papers will not be open to the public.

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

- 2.1 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 arising from the provisions of the Access to Information Legislation.

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

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

## **4 Notice of Meetings**

- 4.1 The Council will give at least five clear days' notice of any meeting by posting details of the meeting at West Offices, Station Rise, York and on its website at [www.york.gov.uk](http://www.york.gov.uk).

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

- 5.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and on the website at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after a summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors).

## **6 Supply of Copies**

- 6.1 The Council will supply copies of:
- a. any agenda and reports which are open to public inspection;
  - b. any further statements or particulars necessary to indicate the nature of the items in the agenda; and
  - c. if the Director of Governance thinks fit, copies of any other documents supplied to Councillors in connection with an item.
- 6.2 The Council may require any person to make a payment in advance covering postage and costs connected to the supply of any papers supplied.

## **7 Access to Minutes after the Meeting**

7.1 The Council will make available copies of the following for six years after a meeting but will retain them as archived documents in perpetuity:

- a. the minutes of the meeting where minutes are required to be made, excluding any part of the minutes relating to the conduct of business when the public were not present or where exempt or confidential information would be disclosed;
- b. the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Executive excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information.
- c. 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;
- d. the agenda for the meeting; and
- e. reports relating to items when the meeting was open to the public.

## **8 Background Papers**

### List of background papers

8.1 The report author will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in their opinion:

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

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

### 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 the Rights of the Public**

- 9.1 A written summary of the rights of the public to attend meetings and to inspect and copy documents must be kept at and be available to the public at West Offices, Station Rise, York.

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

- 10.1 The public may only be excluded under 10.2 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information will be disclosed.

### Confidential information – requirement to exclude public

- 10.2 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.

- 10.4 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.

#### Meaning of confidential information

- 10.5 Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

#### Meaning of exempt information

- 10.6 Schedule 12A LGA 1972 defines exempt information as information falling within the following categories, subject to any condition set out below if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information:

Category		Condition
1	Information relating to any individual	
2	Information which is likely to reveal the identity of an individual	
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	Information is not exempt information if it is required to be registered under:

		<p>(a) the Companies Acts;                  (b) the Friendly Societies Act 1974;                  (c) the Friendly Societies Act 1992;                  (d) The Co-operative and Community Benefits Act 2014;                  (e) the Building Societies Act 1986; or                  (f) the Charities Act 2011.</p> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities.</p>
<p>4</p>	<p>Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority</p>	<p>“Labour relations matters” are any matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ie matters which may be the subject of a trade dispute or any dispute about any of those matters.</p> <p>For the purposes of this paragraph this shall apply to office-holders under the authority as it applies in relation to employees of the authority</p>

5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	
6	Information which reveals that the authority proposes: (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make any order or direction under any enactment.	
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	

10.7 Information falling within any of paragraphs 1 to 7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and County Planning General Regulations 1992.

10.8 In all cases the Director of Governance shall determine whether the public interest as set out above is satisfied.

## 11 Exclusion of Access by the Public to Reports

11.1 If the Director of Governance thinks fit, the Council may exclude access by the public to reports which in their 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" pursuant to Schedule 12A together with the category of information likely to be disclosed.

## 12 Application of Rules to the Executive

- 12.1 Rules 13-28 apply to the Executive and its committees. If the Executive or its committees meet to take a key decision then it must also comply with Rules 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 15 of this Constitution.
- 12.2 If the Executive or its committees meet to discuss a key decision to be taken collectively, within 28 days of the date according to the Notice of key decision by which it is to be decided, then it must also comply with Rules 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 7 of this Constitution. This requirement does not include meetings whose sole purpose is for Officers to brief Members.

## 13 Procedure before taking Key Decisions

### Notice of Key Decision

- 13.1 Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:
- a. a notice (called here a Notice of Key Decisions) has been published in connection with the matter in question;
  - b. at least 28 clear calendar days have elapsed since the publication of the Notice of Key Decision; and
  - c. where the decision is to be taken at a meeting of the Executive, its committees or sub-committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

Contents of Notice of Key Decision

- 13.2 The Notice of Key Decision will state that a key decision is to be made by the Executive, a Committee or sub-Committee, an individual Member of the Executive or under joint arrangements in the course of a discharge of a function. It will describe the following particulars:
- a. the matter in respect of which the decision is to be made;
  - b. where the decision maker is an individual, that individual's name and title, if any, and, where the decision-maker is a decision-making body, the name of the body and a list of the Membership of the body making the decision;
  - c. the date on which, or the period within which, the decision is to be made;
  - d. a list of the documents submitted to the decision maker for consideration in relation to the matter;
  - e. the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
  - f. that other documents relevant to those matters may be submitted to the decision maker;
  - g. the procedure for requesting details of those documents (if any) as they become available.
- 13.3 Where in relation to any matter the public may be excluded from the meeting at which the matter is to be discussed or documents relating to the decision need not be disclosed to the public, the document referred to must contain particulars of the matters but may not contain any confidential, exempt information or particulars of the advice of a political adviser or assistant.

Publication of the Notice of Key Decision

13.4 The Notice of Key Decision must be made available for inspection by the public at West Offices, Station Rise, York and on the Council's website at least 28 clear calendar days before the decisions is made.

**14 General Exception**

14.1 Where the publication of the intention to make a key decision (the Notice of Key Decision) is impracticable, then subject to Rule 15 (special urgency), the decision may only be made if:

- a. the Director of Governance has informed the Chair of CCSMC Scrutiny Committee, or in their absence the Lord Mayor, in writing, or if there is no such person, each Member of that Committee in writing, by notice, of the matter to which the decision is to be made;
- b. the Director of Governance has made copies of that notice available to the public at the offices of the Council and on the Council's website; and
- c. at least 5 clear working days have elapsed since the Director of Governance complied with (a) and (b).

14.2 As soon as is reasonably practicable after the Director of Governance has complied with Rule 14 (a-c), they must make available at West Offices, Station Rise, York and publish on the Council's website a notice setting out the reasons why compliance with Rule 13 is impractical.

## **15 Special Urgency**

- 15.1 If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the key decision can only be taken if the decision maker (if an individual) or the chair of the body making the decision, obtains the agreement of the Chair of CCSMC Scrutiny Committee that the taking of the decision is urgent cannot be reasonably deferred. If there is no Chair of CCSMC Scrutiny Committee, or the Chair of CCSMC Scrutiny Committee is unable to act, then the agreement of the Lord Mayor will suffice.
- 15.2 As soon as is reasonably practicable after the decision maker has obtained agreement under Rule 15(a) they must make available at the Council's offices and publish on the website a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

## **16 Report to Council**

- 16.1 The CCSMC Scrutiny Committee can require a report if it thinks that a key decision has been taken which was not:
- a. the subject of a Notice of Key Decision; or
  - b. the subject of the general exception procedure under Rule 14; or
  - c. the subject of an agreement with the CCSMC Scrutiny Committee Chair, or the Lord Mayor under Rule 15.
- 16.2 The committee may require the Executive to submit a report to the Council within such reasonable time as the committee specifies. The report must include details of the decision and the reasons for the decision, the decision-maker, and the

reasons for the Executive believing that the decision was a key decision. The power to require a report rests with the committee, but is also delegated to the Director of Governance who shall require such a report on behalf of the committee when so requested by the chair of the CCSMC Scrutiny Committee or any 5 Members of the Scrutiny Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the CCSMC Scrutiny Committee.

### Executive's report to Council

- 16.3 The Executive 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 the particulars of the decision, the individual or body making the decision, and if the Executive is of the opinion that it was not a key decision the reasons for that opinion.

### Quarterly reports on special urgency decisions

- 16.4 In addition to 16.2 above, the Executive will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 15 (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.

## **17 Notice of Meeting of the Executive**

- 17.1 Members of the Executive 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.

## **18 Attendance at Meetings of the Executive**

### Executive Members

- 18.1 All Members of the Executive will be served notice of all (both those to be held in public and those to be held in private ie meetings held with the exclusion of the press and public ) meetings of committees of the Executive, whether or not they are Members of that committee. All Members of the Executive are entitled to attend private meetings of the Executive and its committees. Members who are not a Member of the Executive or a Member of the Committee making the decision are not entitled to attend private meetings save for Leader of the Main Opposition Group.

### Officers

- 18.2 The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Executive and its committees. The Executive may not meet unless the Chief Operating Officer has been given reasonable notice that a meeting is to take place.
- 18.3 Corporate Directors, or their nominees, may attend meetings of the Executive or its committees to provide advice on relevant issues.

## **19 Meetings of the Executive to be Held in Public**

19.1 Meetings of the Executive 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 will be disclosed.

## **20 Notice of Private Meetings of the Executive**

20.1 At least 28 clear working days before a private meeting of the Executive or any of its committees, the decision making body must make available at the designated offices a notice of its intention to hold the meeting in private (a Notice of Private Meeting) and publish that notice on the Council's website.

20.2 At least 5 clear working days before a private meeting, the decision making body must make available at the offices of the Council a further notice of its intention to hold the meeting in private and publish that notice on the Council's website.

20.3 A notice under paragraph 20.2 must include:-

- a. a statement of the reasons for the meeting to be held in private;
- b. details of any representations received by the decision making body about why the meeting should be open to the public; and
- c. a statement of its response to any such representations.

## **21 General Exception**

- 21.1 Where the date by which a meeting must be held makes compliance with Rule 20 impracticable, the meeting may only be held in private where the decision making body has obtained the agreement of the Chair of CCSMC Scrutiny Committee that the taking of the decision cannot reasonably be deferred. If there is no Chair of CCSMC Scrutiny Committee, or if the chair of CCSMC Scrutiny Committee is unable to act, then the agreement of the Lord Mayor.
- 21.2 As soon as is reasonably practicable after the decision making body has obtained agreement to hold a private meeting under paragraph 21.1 above, it must 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 publish that notice on the Council's website.

## **22 Record of Decisions**

- 22.1 After any meeting of the Executive or any of its committees, whether held in public or private, the Director of Governance or, where no Officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a record of the decision including the date that it was made, a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, together with details of any conflict of interest relating to the matter decided which was declared by any Member of the decision making body which made the decision and in respect of any declared conflict of interest, a note of dispensation.

### Record of Individual Decision

- 22.2 As soon as is reasonably practicable after an Executive decision has been taken by an individual Member of the Executive, they will prepare a report containing a record of the decision including the date it was made. The record will include a statement of the reasons for each decision and any alternative options considered and rejected by the Member when making the decision. The record will also include details 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, the record will also contain a note of dispensation granted.

## **23 Inspection of Documents Following Executive Decisions**

- 23.1 Subject to rule 29, 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 Director of Governance must ensure that a copy of any records prepared in accordance with Rule 22 (record of individual decision) and any report considered at the meeting or, as the case may be, considered by the individual Member relevant to a decision recorded in accordance with Rule 22 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. 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.
- 23.2 Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule 6 (supply of copies), 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.

## **24 Inspection of Background Papers**

24.1 Subject to rule 29 where 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 (access to agenda and reports before the meeting) or 22 (record of decisions) at the same time, a copy of the list compiled by the author of the background papers 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 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.

## **25 Executive Meetings Relating To Matters Which Are Not Key Decisions**

25.1 The Executive will decide whether meetings relating to matters which are not key decisions will be held in public or private. Meetings of the Executive 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.

## **26 Overview and Scrutiny Committee Access to Documents**

### Rights to Copies

- 26.1 Subject to Rule 26.2 below, CCSMC Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Executive or its committees, and which contains material relating to:
- a. any business transacted at a meeting of the Executive or its committees; or
  - b. any decision taken by an individual Member of the Executive in accordance with Executive arrangements; or
  - c. any decision that has been made by an Officer of the Authority in accordance with Executive arrangements.

### Limit on Rights

- 26.2 CCSMC Scrutiny Committee (including its sub-committees) will not be entitled to:
- a. any document that is in draft form;
  - b. any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or any review contained in any work programme of a scrutiny committee or scrutiny sub-committee; or
  - c. of a document or part of a document containing advice of a political adviser or assistant.

## **27 Additional Rights of Access for Members**

Material relating to business to be transacted at a Public Meeting

- 27.1 All Members will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees (except those in draft form) and which contains material relating to any business previously transacted at a public meeting unless (a), (b) or (c) below applies:
- a. it contains exempt information falling within paragraphs 1, 2,4,5 or 7 of the categories of exempt information; or
  - b. 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 to the Council in the course of negotiations for a contract;
  - c. it contains the advice of a political adviser or assistant.
- 27.2 Any document which is required by Rule 27.1 to be available for inspection by any Member of the Council must be available for such inspection for at least five clear working days before the meeting except for:-
- a. where a meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
  - b. where an item is added to the agenda at short notice, a document that would be required to be available under Rule 27.1 in relation to that time, must be available for inspection when the item is added to the agenda.

Material relating to previous business

- 27.3 All Members will be entitled to inspect any document (except those only available in draft form) which is in the possession or control of the Executive or its committees and contains material relating to any business previously transacted at a private meeting or to any decision made by a Member in accordance with executive arrangements 27.1 (a), (b) or (c) applies.
- 27.4 Any documents required to be made available for inspection under 27.3 must be made available when the relevant meeting concludes or, where an Executive decision is made by an individual Member, immediately after the decision has been made, and in any event, within 24 hours of the conclusion of the meeting or the decision having been made as the case may be.

Material relating to key decisions

- 27.5 All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession of, or under the control of, the Executive or its committees which relates to any key decisions unless it contains exempt information falling within the table at 10.5.

Nature of rights

- 27.6 These rights of a Member are additional to another right they may have.

**28 Members Other Rights to Information**

- 28.1 A Member of the Council may, for the purposes of their duty as a Member and no other, inspect any document that has been considered by a public meeting of the committee or the Council including background papers unless the Director of Governance considers that the exempt information is of a nature that

Members be required to demonstrate a need to know. Applications should be made to the Director of Governance and, if available, copies will be supplied upon request.

28.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which he:-

- a. is professionally interested; or
- b. has a registerable or non-registerable personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

28.3 This shall not preclude the Director of Governance 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 access to information legislation.

28.4 Subject to 28.1 above, 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 matter to which such reports or minutes relate.

## **29 Confidential Information, Exempt Information and Advice of a Political Adviser or Assistant**

29.1 Nothing in these Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

29.2 Nothing in these Rules:-

- a. 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 Director of Governance, that document or part of a document contains or may contain confidential information; or
- b. 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 Director of Governance, that document or part of a document contains or is likely to contain exempt information or the advice of a political adviser or assistant.

29.3 Where a Member of the Executive makes an executive decision in accordance with executive arrangements, nothing in these Rules:-

- a. 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
- b. 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 making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.

## **Appendix 8 – Public Participation Protocol**

### **PART A – Rules applying to all meetings**

#### **General**

1. These rules apply to all physical, remote and hybrid meetings unless otherwise stated in this protocol. The Monitoring Officer and the Head of Democratic Governance will review this protocol every six months to ensure it remains fit for purpose. Any changes to this protocol will be reported to the Audit & Governance Committee and ultimately Full Council for the purposes of updating the Council's Constitution.
2. Residents are encouraged to participate in the Council's decision making process by sharing their views in a number of ways.

#### **Making representations in response to the Forward Plan**

3. You can find out about forthcoming Executive and Executive Member business by looking at the Council's Executive Forward Plan which is published on the Council's website. You can make representations on any forthcoming Executive business by sending your views in writing to the report author either by email or post up to 3 weeks before the decision is due to be taken – residents views received after that time may not be addressed in the report but may be addressed at the meeting. The public can contact the Council regarding this through HaveYourSay, or can contact the author of the report.
4. The report author's contact details can be found on each individual Forward Plan item.

#### **Participating at a public meeting**

5. All meetings are open to the public except when confidential information is being discussed. Agendas for meetings can be found on the Council's website, at least five working days before the meeting.

6. Dates, times and agendas for meetings are available via the calendar of council meetings on the Council website, at local libraries and on the West Offices notice board, usually five days before the meeting. You can also contact Democratic Services by emailing [democratic.services@york.gov.uk](mailto:democratic.services@york.gov.uk) or telephoning York (01904) 551088 to find out when a meeting is taking place or to request an agenda.
7. Physical Council meetings take place at West Offices, although meetings of the Full Council are held at The Guildhall unless alternative details are published in the notice of meeting.
8. Remote meetings take place on a video conferencing platform.
9. **Hybrid meetings** take place at West Offices (or Guildhall (or alternative venue detailed within the notice/summons) for Full Council) and on a video conferencing platform.
10. Council meetings are usually live webcast and retained on YouTube which you can find out more about at <https://www.youtube.com/user/cityofyorkcouncil>  
In some instances the meeting will be recorded and not live webcast. In these circumstances, the recording of the meeting will be uploaded to the YouTube page as soon as practically possible after the meeting.
11. You can participate in a meeting by attending and listening to councillors debate and make decisions or by registering to speak.

### **How do I do this and what are the rules?**

12. Any member of the public living or working in the City of York Council area, or any appointed representative of any organisation operating within the council's area, may participate or register to speak. Anyone wishing to speak should register no later than 5pm two working days before the meeting takes place. You can register on the Council's website at <https://www.york.gov.uk/form/SpeakAtCouncilMeetings>.

13. Only the Lord Mayor chairing Full Council, or the Councillor chairing the meeting, has the authority to accept a late registration to speak at a meeting.
14. With the exception of Licensing Sub Committee Hearings, Planning Major Committee and Planning MinorSub- Committee meetings (see Part B, paragraph 27), there is a maximum period of 30 minutes at each meeting to listen to public speakers. Each person registered to speak is allocated a maximum time of 3 minutes and there will be a maximum of 10 registered public speakers at each meeting, registered on a first come first served basis.
15. Councillors will listen to each speaker but will not usually make any comments or seek to debate any issues raised at this stage other than occasionally to ask questions of clarification.
16. A registered speaker may speak about an item on the published agenda for that meeting or issues which fall within the remit of that committee.
17. In exercising their public participation rights a member of the public is entitled to express views positive or negative about the Council but must not:
  - Say anything which is defamatory or discriminatory;
  - Make any personal attack on an Officer and / or Member;
  - Disclose confidential information or exempt information including personal information.

### **Written representations from Members of the Public and those registered to speak at meetings**

18. The following rules apply to all meetings of the Council except for Licensing Sub Committee Hearings, Planning Major Committee and Planning MinorSub- Committee meetings which are set out in Part B.

19. If you are unable to be present or speak at the meeting at which you have registered to speak a written representation may be submitted for consideration at the meeting. The statement must be sent to Democratic Services using the contact details on the published agenda for the relevant officer or, alternatively by emailing [democratic.services@york.gov.uk](mailto:democratic.services@york.gov.uk) no later than 5pm two working days before the meeting at which it is to be raised takes place. Your name and address must be included along with the name of any group or organisation you are representing. Any written representations received will be published along with the agenda for the relevant meeting. If within the 2 day period of the meeting taking place you are unexpectedly unable to attend or speak at the meeting, you may submit your written representation to Democratic Services and the Chair will exercise their discretion as to whether to accept your representation.
20. Written representations shall be circulated to Members prior to the commencement of the meeting. No discussion shall be allowed upon written representations. Written representations may not be read out on your behalf.
21. If all or part of the written representation is defamatory, discriminatory or relates to confidential information or exempt information including personal information, the Chair, in consultation with the Monitoring Officer, shall have the right to redact those parts of the written representation prior to circulation to Members and publication with the agenda or rule the written representation out of order in which case it shall not be circulated to Members and shall not be published with the agenda.

### **City of York Councillors wish to speak at a meeting of which they are not a Member**

22. City of York Councillors who wish to speak at a meeting of which they are not a Member may participate in meetings in any of the ways described in these rules. The rules in relation to public participation will apply to such City of York Councillors as they would to any member of the public.

## **PART B – Rules applying to specific meetings**

### **General**

23. The rules in Part A of this public participation protocol apply to all physical, remote and hybrid meetings other than for the specific exceptions set out in this Part B. Only exceptions to the rules in Part A are set out in Part B. For all other matters the rules remain the same as those in Part A.

### **Remote Meetings**

24. Where public meetings are held remotely or in hybrid form, the provisions for Public Participation will be in accordance with the Council's Procedure Rules and Guidance for Remote Meetings contained in Appendix 23 of the Constitution. Anyone wishing to register to speak at a remote meeting will do so no later than 5pm two working days before the meeting takes place.

### **Meetings of Council chaired by the Lord Mayor**

25. Public participation at all meetings of Full council will occur in accordance with the Council Procedure Rules at Appendix 3 of this constitution.

### **Planning Committee and Area Planning Committee**

26. The applicant, their advisor and members of the public may register their wish to speak on the matters or applications to be considered by members by contacting Democratic Services using the contact details on the published agenda for the relevant officer or, alternatively by emailing [democratic.services@york.gov.uk](mailto:democratic.services@york.gov.uk) no later than 5pm two working days before the meeting takes place. If the meeting is being held remotely or in hybrid form, clear instructions will be provided to public speakers who have

registered to speak on how to join the meeting remotely.

27. Members of the public that have registered to speak remotely are strongly encouraged to email the points they wish to make to the Committee to Democratic Services as set out in paragraph 24 above prior to the meeting taking place so that in the event of technology difficulties, they can still be taken into consideration at the meeting. Subject to the Chair's discretion, these will not be circulated to the members of the Planning Major Committee and Planning Minor Committee unless technical difficulties are experienced during the meeting meaning that public participation of one or more registered public speakers is not possible. This is to ensure all views are taken into consideration within the Planning Committee meetings itself and there is no discussion outside the meeting.
28. It will be at the Chair's discretion as to the limit on the number of speakers at that particular committee meeting and speakers will be registered on a first come first served basis. Each speaker will be invited to make their representation and will be allowed a maximum of 3 minutes each to speak and may subsequently be asked questions by Members.
29. After each registered public speaker has finished speaking and Members have no further questions of them they will be asked to return to their seat but they may observe the remainder of the meeting. Public speakers who are attending the meeting remotely will be asked to leave the remote meeting platform and will be able to view the remainder of the meeting via the live webcast broadcast online.
30. After all registered public speakers have spoken and there are no further questions from Members, the Chair will invite Members to debate the application in question. At this point there will be no further public speaking.
31. At any time it may be necessary for officers to address the Committee to answer questions asked or to comment or clarify any points (including public participation) that have been raised during consideration of the application or to advise the Committee.

32. Any dispute or question as to procedure at the Committee, including the operation of this public participation protocol, will be determined by the Chair, whose decision on all matters will be final.

**Licensing Committee meetings**

33. The rules on public participation at Licensing Committee meetings are as set out in Part A.

**General Licensing Sub-Committee and Taxi Licensing Sub-Committee hearings**

34. The rules on public participation at General Licensing Sub-Committee and Taxi Licensing Sub-Committee hearings is set out in Annex 1 to this document.

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**ANNEX 1 – GENERAL LICENSING SUB – COMMITTEE AND  
TAXI LICENSING SUB COMMITTEE  
PROCEDURE FOR LICENSING HEARINGS**

1. The procedure adopted at licensing hearings is at the discretion of the Sub-Committee but will normally follow the pattern outlined below.
2. The Council's licensing hearings procedure is based on regulations made under the Licensing Act 2003. The procedure is intended as a general framework to ensure natural justice and a fair hearing. The Sub-Committee will be guided by legal principles in determining whether evidence is both relevant and fairly admitted. Sub-Committee Members have a duty to view all evidence presented before them impartially. No matter how strong local opinion may be, Sub-Committee Members can only make decisions in the context of the licensing objectives as set out in legislation as follows:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
3. The licensing hearing will be in public session and this involves the publication of all paperwork relevant to the hearing on the Council's website. This includes letters of representation either in support or objection. Name and address details of those making representations will be made public. Telephone numbers, email addresses and signatures will be omitted. The Sub-Committee may exclude the public from a hearing if it considers it in the public interest to do so. However, the decision will be made in private.
4. In view of the requirement to hold hearings within specified timescales (usually 20 working days from the last date for representations), the Council is unable to enter into discussions to identify dates convenient to all parties concerned. In exceptional circumstances, the Council will consider applications to hold hearings at a later date.
5. The Council will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination

or disposal of any Appeal. The live stream of the Hearing will be recorded and the recording placed on the Council's website.

### **Representations at Licensing Hearings**

6. The Applicant is permitted to speak at the hearing. Ward Councillors, responsible Authorities and Representors are only permitted to speak if they have made written submissions during the consultation period. The Applicant and any Representors shall attend in person wherever possible. Any party to a hearing may be assisted or represented by any person, legally or otherwise.
7. All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee and question each other. Each party will have 15 minutes to address the Sub-Committee and call any witnesses and 5 minutes for questions.
8. However, where there are groups of individuals with a common interest, for example local residents making similar representations either for or against an application, consideration should be given to nominating a spokesperson. Otherwise the Sub-Committee may impose a time limit for such representations where there is pressure on the Sub-Committee to hear numerous applications in a short period of time or for any other valid reason.
9. The Sub-Committee may take into account any documentary evidence or other information in support of the application or representations either before the hearing or, with the consent of all other parties, at the hearing. For remote meetings the procedure set out in paragraphs 14 to 18 below will be followed.
10. If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written representation. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by the Applicant and Members.
11. The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the

application, representations, or notice, and the promotion of the licensing objectives. Duplication should be avoided. Comments must be confined to those points already made, although the parties may expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be made at length. The Applicant and Representors cannot raise substantial new information at a hearing which has not been seen previously by the other parties.

12. A Representor **may not** introduce any new ground or objection not referred to in their written submission. Additional representations which do not amount to an amplification of the original representation will not be considered by the Sub-Committee.
13. Any person behaving in a disruptive manner will be asked to leave the hearing. However, if this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

#### **Procedure prior to the Hearing - remote and hybrid meetings**

14. Where the meeting is held remotely or in hybrid form the Sub-Committee will use a video-conferencing platform when the hearing is in public session. Clear instructions will be provided to participants on how to join the remote hearing. The Sub-Committee may exclude the public from all or part of a hearing if it considers it is in the public interest to do so. Should any part of the hearing need to be held in private session, a separate private online meeting will be convened by the Sub-Committee using a secure video-conferencing platform. This video-conferencing platform will also be used for decision making in private.
15. All paperwork relevant to the hearing will be published online on the Council's website, 5 working days before the remote hearing. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote hearing. Name and address details of those making representations will be made public. Telephone numbers, email addresses and signatures will be omitted.

16. 5 working days before the remote hearing is due to take place, the Council will contact the parties with a list of issues they would like any party to specifically address them on or clarify at the hearing.
17. If in light of the Council's list of issues any party wishes to produce any further documentary evidence they should submit this to the Council by email three working days before the hearing.
18. Any documentary evidence that is not submitted to the Council by email three working days before the hearing will not be admitted without the agreement of all parties. If it is essential to a party's case that the material be admitted, then the Sub-Committee will consider adjourning the remote hearing to allow all parties a fair opportunity to consider it.
19. Should any party wish to rely on any points of law, specific references in the s.182 Guidance, specific references in the Council's Policy or any other external resources, these should be set down in an electronic document and submitted to the Council by email three working days before the hearing.

### **Procedure prior to the Hearing – Physical Meetings**

20. The Members sitting on the Sub-Committee will have a briefing prior to the hearing, usually in the meeting room where the hearing is to take place. They will only be accompanied by the Democratic Services Officer and the Council's Legal Advisor. During the briefing, attention will only be drawn to the nature of the application and the premises or person to which it relates and any procedural matters.
21. At any hearing of an application, the Licensing Officer, the Applicant and any Representors or representatives will report to reception and be asked to wait in reception until called into the meeting room. Please arrive 15 minutes before the advertised start time.

### **Procedure at the Hearing**

22. The Chair introduces the Sub-Committee Members and Officers and welcomes the Applicant and Representors (or their representatives), and establishes the identity of all who will be taking part.

23. The Chair will outline the procedure to be followed.

24. The Chair will proceed with the order of business on the agenda.

### **Licensing Officer**

25. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application.

26. The Chair will invite all parties (who have registered to speak) and/or their representative to ask questions of the Licensing Officer [maximum 5 minutes each party] in the following order:

- Applicant
- Police
- Other Responsible Authority [each in turn]
- Ward Councillors [each in turn]
- Interested Parties [each in turn]
- Sub-Committee Members [each in turn]

### **The Application**

27. The Chair will invite the Applicant and/or their representative to address the Sub-Committee, present information in support of the application and call any witnesses to support their application, one witness at a time [*maximum 15 minutes*].

28. The Chair will invite the Representors (who have registered to speak) and/or their representative to ask questions of the Applicant and/or their representative in the following order [*maximum 5 minutes each party*]

- (i) Police
- (ii) Other Responsible Authorities [each in turn]
- (iii) Ward Councillors [each in turn]
- (iv) Interested Parties [each in turn]
- (v) Sub-Committee Members [each in turn]

29. The Applicant and each of their witnesses may be questioned by:

- Members of the Sub-Committee;
- The Sub-Committee's legal adviser.

### **The Representations**

30. The Chair will invite the Representors (who have registered to speak) and/or their representatives to address the Sub-Committee, present information and call any witnesses in support of their representation [*maximum 15 minutes each party*] in the following order:

- (i) Police
- (ii) Other Responsible Authorities [each in turn]
- (iii) Ward Councillors [each in turn]
- (iv) Interested Parties [each in turn]

31. After each presentation the Chair will invite questions from the Applicant and Representors (who have registered to speak) [*maximum 5 minutes per party*] in the following order:

- Applicant
- Police
- Other Responsible Authority [each in turn]
- Ward Councillors [each in turn]
- Interested Parties [each in turn]
- Sub-Committee Members [each in turn]

32. Where there are groups of individuals with a common interest, for example local residents, presentation through an appointed spokesperson is preferred but not mandated.

### **Cross-examination**

33. Cross-examination of another party is not normally permitted. However, the Sub-Committee will consider any application for permission to cross examine another party should any party wish to make such an application.

### **Summaries**

34. The Chair will invite the Applicant and Representors (who have registered to speak) or their representative to summarise their case [*maximum 5 minutes each party*] in the following order:

- (i) Police
- (ii) Other Responsible Authorities [each in turn]
- (iii) Ward Councillors [each in turn]
- (iv) Interested Parties [each in turn]
- (v) Applicant

35. The Chair will provide the Sub-Committee members with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor on law and jurisdiction.

36. The Sub-Committee's legal adviser may seek points of clarification from the Applicant, Representors or their representative.

### **Determination**

37. When all the evidence has been heard, the Chair will declare the hearing closed and ask the Licensing Officer, the Applicant and Representors (or their representatives) plus any witnesses present to leave the committee room and the Sub-Committee will consider the evidence. Where the meeting is being held remotely or in hybrid form the Sub-Committee will withdraw to consider their decision in a separate private on line meeting.

38. The Legal Adviser and Democratic Services Officer will remain present during the decision making process. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

39. Unless expressly stated by the Sub-Committee in the hearing, the Sub-Committee will not invite the parties back into the committee room or return to the public online meeting to announce their decision. The Sub-Committee will provide an outline of their decision in writing to the Applicant and Representors on the day of the hearing concluding, unless further time is required to deliberate. The decision will then be

communicated in full, in writing, including the reasons for the Sub-Committee's decision, to the Applicant and Representors, usually within 5 working days of the hearing concluding. The full decision letter will include information about the rights of appeal against the determination made.

40. In the event that the Sub-Committee do return to the public online meeting to announce their decision, the Sub-Committee will only announce an outline of their decision. There can be no further questions or statements from any party. The decision will then be communicated in full, in writing, including the reasons for the Sub-Committee's decision, to the Applicant and Representors, usually within 5 working days of the hearing concluding. The full decision letter will include information about the rights of appeal against the determination made.

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## Appendix 9 - Approval of Budget and Policy Work

1 In this section:

- a) “Executive” and “Executive Leader” have the same meaning as in Part II of the Local Government Act 2000; and
- b) “plan or strategy” and “working day” have the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001.

2 Where the Executive of the authority has submitted a draft plan or strategy to the authority for its consideration and, following consideration of that draft plan or strategy, the authority has any objections to it, the authority must take the action set out in paragraph 3 below.

3 Before the authority –

- a) amends the draft plan or strategy;
- b) approves, for the purpose of its submission to the Secretary of State or any Minister of the Crown for their 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
- c) adopts (with or without modification) the plan or strategy,

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

4 Where the authority gives instructions in accordance with paragraph 3, it must specify a period of at least five working days beginning on the day after the date on which the Executive Leader receives the

instructions on behalf of the Executive within which the Executive Leader may –

- a) submit a revision of the draft plan or strategy as amended by the Executive (the “revised draft plan or strategy”), with the Executive’s reasons for any amendments made to the draft plan or strategy, to the authority for the authority’s consideration; or
- b) inform the authority of any disagreement that the Executive has with any of the authority’s objections and the Executive’s reasons for any such disagreement.

5 When the period specified by the authority, referred to in paragraph 4, has expired, the authority must, when –

- a) amending the draft plan or strategy or, if there is one, the revised draft plan or strategy;
- b) approving, for the purpose of its submission to the Secretary of State or any Minister of the Crown for their 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
- c) 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 Executive’s reasons for those amendments, any disagreement that the Executive has with any of the authority’s objections and the Executive’s reasons for that disagreement, which the Executive Leader submitted to the authority, or informed the authority of, within the period specified.

6 Subject to paragraph 10 below, where, before 8<sup>th</sup> February in any financial year, the authority’s Executive submits to the authority for its consideration in relation to the following financial year –

- a) 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;
- b) estimates of other amounts to be used for the purposes of such a calculation;
- c) estimates of such a calculation; or
- d) amounts required to be stated in a precept under Chapter IV or Part I of the Local Government Finance Act 1992

and following consideration of those estimates or amounts the authority has any objections to them, it must take the action set out in paragraph 7 below.

- 7 Before the authority makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph 4(a), or issues a precept under Chapter IV of Part I of the Local Government Finance Act 1992, it must inform the Executive Leader of any objections which it has to the Executive's estimates or amounts and must give to them instructions requiring the Executive to reconsider, in the light of those objections, those estimates and amounts in accordance with the authority's requirements.
- 8 Where the authority gives instructions in accordance with paragraph 7, it must specify a period of at least five working days beginning on the day after the date on which the Executive Leader receives the instructions on behalf of the Executive within which the Executive Leader may –
  - a) submit a revision of the estimates or amounts as amended by the Executive ("revised estimates or amounts"), which have been reconsidered in accordance with the authority's requirements, with the Executive's reasons for any

amendments made to the estimates or amounts, to the authority for the authority's consideration; or

- b) inform the authority of any disagreement that the Executive has with any of the authority's objections and the Executive's reasons for any such disagreement.

9 When the period specified by the authority, referred to in paragraph 8, has expired, the authority must, when making calculations (whether originally or by way of substitute) in accordance with the sections referred to in paragraph 7, or issuing a precept under Chapter IV of Part I of the Local Government Finance Act 1992, take into account –

- a) any amendments to the estimates or amounts that are included in any revised estimates or amounts;
- b) the Executive's reasons for those amendments;
- c) any disagreement that the Executive has with any of the authority's objections; and
- d) the Executive's reasons for that disagreement,

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

10 Paragraphs 6 to 9 shall not apply in relation to –

- a) calculations or substitute calculations which an authority is required to make in accordance with section 51I, 52J, 52T or 52U of the Local Government Finance Act 1992; and
- b) 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.

## Appendix 10 - Financial Procedure Rules

### 1 Introduction

- 1.1 These Financial Regulations (Regulations) provide the governance framework for managing the Council's financial affairs. They apply to every Member and Officer of the Council and to anyone acting on its behalf.

### 2 Observing these regulations

- 2.1 These Regulations apply across all parts of the whole organisation, including all Member fora and Directorate services, as well as all arms length organisations, agencies and partnerships with whom the Council does business and for whom the Council is the relevant accounting body. Where the Council is not the relevant accounting body, but is a responsible partner, officers must ensure that the accounting body has in place adequate Regulations and proper schemes of delegation. Schools are bound by these Regulations unless the School Standards and Framework Act 1988 (SSFA98) specifically exempts them from any particular provisions set out herein (e.g. financial thresholds, if the Framework provides differently).
- 2.2 All Council members and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control and for ensuring that the use of these resources is legal, properly authorised, provides value for money (VFM) and achieves best value (notwithstanding the delegated authorities of any given committee or officer). In doing so, proper consideration must be given at all times to matters of probity and propriety in managing the assets, income and expenditure of the Council.

### 3 Maintaining these regulations

- 3.1 The Council operates a system of managerial and financial control whereby the Chief Finance Officer (CFO) has overall responsibility for the proper management of the finances of the Council as a whole and is responsible for issuing advice and guidance to underpin the Regulations that Members, Officers and others acting on behalf of the Council are required to follow.

The responsibility for the day-to-day financial control and administration in each Directorate is devolved to the Corporate Director. Corporate Directors are responsible for ensuring that all staff in their departments are aware of the existence and content of the Authority's financial regulations and that they comply with them.

- 3.2 The overall responsibilities of the CFO in respect of these regulations are therefore to:
- a) maintain these Regulations and submit any additions or changes necessary to Full Council for approval in consultation with the Monitoring Officer (MO);
  - b) issue explanatory advice and guidance to underpin these Regulations as necessary. Where such advice and guidance is issued, members, officers and others acting on behalf of the Council are required to comply with it in accordance with the general provisions of these Regulations;
  - c) require any officer to take any action deemed necessary (as is proportionate and appropriate) to ensure proper compliance with these Regulations;
  - d) report, where appropriate, any breaches of these Regulations to Members;

- 3.3 These regulations have been drafted with a view to avoiding any uncertainty or ambiguity as to the principles, standards and procedures to be observed. Should any uncertainty or dispute arise pursuant to these Regulations, the matter must be referred to the CFO for interpretation and/or arbitration.

#### **4 Sanctions & remedies for non-compliance**

- 4.1 Compliance with these Regulations is mandatory. Those with responsibility for fulfilling their duties in line with the Regulations are required to maintain ongoing knowledge and awareness to ensure compliance. It will be the responsibility of officers to address non-compliance promptly and in the most appropriate way according to the circumstances. Concerns can also be raised anonymously in line with the Council's whistleblowing procedure. Failure to comply with any part of these Regulations may constitute misconduct and lead to formal disciplinary action.

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## CITY OF YORK COUNCIL

# Financial Regulations

Version 13 – January 2022

## City of York council Financial Regulations

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## **Status of Financial Procedure Rules**

### **Introduction**

- 1 These Financial Regulations (Regulations) provide the governance framework for managing the Council's financial affairs. They apply to every Member and Officer of the Council and to anyone acting on its behalf.

### **Observing these regulations**

- 2 These Regulations apply across all parts of the whole organisation, including all Member fora and directorate services, as well as all arms length organisations, agencies and partnerships with whom the Council does business and for whom the Council is the relevant accounting body. Where the Council is not the relevant accounting body, but is a responsible partner, officers must ensure that the accounting body has in place adequate Regulations and proper schemes of delegation. Schools are bound by these Regulations unless the School Standards and Framework Act 1988 (SSFA98) specifically exempts them from any particular provisions set out herein (e.g. financial thresholds, if the Framework provides differently).
- 3 All Council Members and Officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control and for ensuring that the use of these resources is legal, properly authorised, provides value for money (VFM) and achieves best value (notwithstanding the delegated authorities of any given committee or officer). In doing so, proper consideration must be given at all times to matters of probity and propriety in managing the assets, income and expenditure of the Council.

### **Maintaining these regulations**

- 4 The Council operates a system of managerial and financial control whereby the Chief Finance Officer (CFO) has overall responsibility for the proper management of the finances of the Council as a whole but the responsibility for the day-to-day financial control and administration in each directorate is devolved to the Corporate Director.
- 5 The overall responsibilities of the CFO in respect of these regulations are therefore to:
  - a) maintain these Regulations and submit any additions or changes necessary to Full Council for approval in consultation with the Monitoring Officer (MO);
  - b) issue explanatory advice and guidance to underpin these Regulations as necessary. Where such advice and guidance is issued, Members, Officers and others acting on behalf of the Council are required to comply with it in accordance with the general provisions of these Regulations;
  - c) require any officer to take any action deemed necessary (as is proportionate and appropriate) to ensure proper compliance with these Regulations;
  - d) report, where appropriate, any breaches of these Regulations to Members;

- 6 These regulations have been drafted with a view to avoiding any uncertainty or ambiguity as to the principles, standards and procedures to be observed. Should any uncertainty or dispute arise pursuant to these Regulations, the matter must be referred to the CFO for interpretation and/or arbitration.

**Sanctions & remedies for non-compliance**

- 7 Failure to comply with any part of these Regulations may constitute misconduct and lead to formal disciplinary action.

## Part A

### Financial Management Standards

#### Introduction

- 1 This Part of the Regulations set out the overall framework of financial management responsibilities at the Council, including the accounting policies, standards, record keeping and financial statements the organisation is required to maintain in managing its finances and financial affairs.
2. All Members and Officer have a common duty to abide by the highest standards of probity and propriety when making decisions about the use of public monies. It is important for the way in which this is done to be transparent, properly accounted for in respect of the correct accounting year and reported in accordance with recognised accounting standards, conventions and policies

#### Member roles & responsibilities

3. Member responsibilities for the overall management of the Council's financial affairs are exercised through:
  - **Full Council**, which is responsible for the Council's overall Policy Framework and for setting the Budget within which the Executive will operate (See Constitution Appendix 9).
  - **The Executive**, which is responsible for proposing policy and the Budget to the Full Council.
  - **The Audit & Governance Committee**, which is responsible for approving the statement of accounts.

## **The Chief Finance Officer (CFO)**

4. The functions and responsibilities of the CFO are directed in the first instance by legislation that imposes statutory duties on the CFO for the proper management, financial administration and stewardship of Council assets and the fiduciary interests of local tax payers. These statutory responsibilities cannot be overridden and arise from:
  - Section 151 of the Local Government Act 1972;
  - The Local Government Acts 2000 & 2003;
  - The Local Government Finance Act 1988;
  - The Local Government and Housing Act 1989;
  - The Accounts and Audit Regulations 2003, as amended by the Accounts & Audit (Amendment) (England) Regulation 2006
  
5. These responsibilities include:
  - a) the preparation of the Council's annual statement of accounts and the compilation and retention of all supporting accounting records and working papers, in accordance with the proper professional practices and set out in the format required by the Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice - the SORP (CIPFA/LASAAC). The financial year observed by the Council runs from 1 April to the following 31 March;

- b) the proper administration of the Council's financial affairs, systems and procedures;
- c) setting and monitoring compliance with financial management standards and controls;
- d) ensuring proper professional practices are adhered to in acting as the head of profession in relation to the standards, performance and development of all finance Officers across the organisation;
- e) providing advice on the key strategic controls necessary to secure sound financial management (including the operation of an effective internal audit function);
- f) ensuring that financial information is available to enable accurate and timely monitoring and reporting;
- g) determining the contents of all financial procedure manuals and ensuring compliance with the requirements of the Financial Regulations;
- h) ensuring a Local Council Tax Support scheme is maintained;
- i) in the event of a disaster or other civil emergency affecting the City then subject to overall council funding limits the CFO has the power to authorise all necessary expenditure required to support the Chief Operating Officer in exercising their lawful power. The CFO can also delegate this authority to any Chief Officer acting as their nominated deputy with a limit of £50K. The nominated deputy should at all times endeavour to seek

authorisation from the CFO where practical before committing expenditure.

6. The CFO can choose to delegate their day-to-day responsibilities in respect of their functions and responsibilities as defined by these Regulations in accordance with the Council's Schemes of Delegation. The CFO may delegate their responsibilities to an appropriate representative(s). Where this is the case the delegation and officer responsibilities must be clearly documented in the relevant scheme of delegation and be kept under regular review by the CFO further to these Regulations.

### **The Chief Internal Auditor (CIA)**

7. The CIA is designated by the CFO as part of their Directorate Scheme of Delegation further to Appendix 1 of this Constitution and plays a key role in providing assurance to the Members, the CFO, the Head of Paid Service and Corporate Management Team about the practical deployment and effectiveness of financial management arrangements across the organisation.
8. The CIA has rights of access to information and data held by Officers or Members of the Council at all reasonable times and is responsible for the overall management and deployment of internal audit resources at the Council. They also have the right to report on any relevant matter of concern to senior management and Members of the Council outside normal line management arrangements should they deem this necessary in protecting the interests of the Council and/or local tax payers.

### **Corporate Directors**

- 9 Whilst the CFO has overall responsibility for the finances of the Council, Corporate Directors and directors are responsible for the day-to-day management of their directorate's finances. Their responsibilities in relation to financial management include:
- a) promoting and ensuring compliance with the financial management standards and practices set by the CFO in their directorates;
  - b) consulting with the CFO on any matter which is liable to materially affect the resources of the Council. This must be done before any commitment is incurred, or a report made to an Executive Member or to a committee for decision;
  - c) ensuring that Executive Members are advised of the financial implications of all proposals and that these have been agreed by the CFO or their nominated representative;
  - d) signing contracts on behalf of the Council in accordance with the contract procedure rules set out in Part D of these Regulations;
  - e) reporting suspected fraud and irregularities to the CIA for investigation and referral to the police as necessary;
  - f) ensuring that the common officer delegations relating to financial management and administration as set out in the Council's scheme of delegation within their directorates are exercised with due regard to the detailed requirements of these Regulations;

- g) implementing the management recommendations of the internal audit provider and external auditors agreed with the Corporate Director and/or the relevant Chief Officers and heads of service.

## **Part B**

### **Financial planning & budgeting**

#### **Introduction**

- 1 The purpose of financial planning is to set out and communicate the organisations objectives, resource allocations and related performance targets and to provide an agreed basis for subsequent management control, accountability and reporting.
- 2 The Council's budget sets agreed parameters around the annual activities and functions of directorates and their services. The Council's Financial Strategy represents a financial plan to address those issues which have medium to long term financial implications for the organisation.

#### **Budget Planning**

- 3 The revenue budget must be constructed so as to ensure that it properly reflects the priorities of the Council and service plan considerations. Budgets are needed so that the Council can plan, authorise, monitor and control the way money is allocated and spent. It is illegal for the Council to budget for a deficit.
- 4 The budget process must ensure that resources are:
  - required in accordance with the law and properly authorised;
  - used only for the purpose intended to achieve approved policies, objectives and service priorities;
  - held securely for use when required;
  - used with the minimum level of waste, inefficiency or loss.

- 5 The CFO in consultation with each corporate director is responsible for:
- a) ensuring that an annual revenue budget is prepared in the context of a medium term financial strategy for consideration by the Executive and its recommendation to Full Council.
  - b) maintaining a resource allocation process that properly reflects all due consideration of the Council's policy framework, ambitions and priorities;
  - c) advising the Executive on the format of the budget for approval by Full Council;
  - d) allocating central budgets for example inflation and superannuation;
  - e) providing advice and guidance to the Executive further to its responsibility for issuing guidance on budget preparation to take all due account of:
    - legal requirements;
    - medium term planning prospects and known issues;
    - the Council Plan;
    - available resources
    - spending pressures;
    - government initiatives and public policy requirements;
    - internal policy directives;
    - cross cutting issues and Council priorities.
  - f) determining the detailed form of revenue estimates consistent with the budget approved by Full Council after consultation with the Executive and corporate directors;

- g) reporting to the Executive on the aggregate spending plans of directorates and on the resources available to fund them, identifying any implications for council tax levies;
- h) advising on the medium term implications of spending decisions and funding options;
- i) encouraging the best use of resources and value for money by working with corporate directors and other Chief Officers to identify opportunities to improve economy, efficiency and effectiveness and by encouraging good practice in conducting financial appraisals of growth or savings and developing the financial aspects of effective service planning;
- j) where relevant and appropriate seeking to recover the cost of the service overheads when 'trading' with other organisations;
- k) advising the Full Council on the Executive's budget proposals in accordance with their responsibilities under S151 of the Local Government Act.

6 Corporate directors and directors are responsible for ensuring:

- a) budget estimates of income and expenditure are a realistic reflection of agreed corporate and service priorities, and that they are submitted to the Executive as part of the overall budget setting process. These estimates must be consistent with any relevant cash limits, the annual budget cycle and prepared in line with guidance issued by the Executive on the advice of the CFO. In drawing up draft budget plans corporate directors and directors must have regard to;
  - spending patterns and pressures revealed through the budget monitoring process;

- legal requirements;
  - policy requirements as defined by Full Council and set out in the policy framework;
  - initiatives already under way.
- b) effective budgetary control within their directorates, establishing detailed budgets for each service area in advance of the financial year and requiring such budgets to be properly managed by responsible named budget holders;
- c) financial and budget plans are integrated into service planning.
- d) If corporate directors or directors are unable to keep within their agreed budget limits they must consult with the CFO, who has a statutory duty to report any significant issues to Members.

### **Budget monitoring and control**

- 7 The Council budget sets an annual cash limit. To ensure the Council does not exceed its budget, each service area is required to manage its own income and expenditure within the cash limited budgets allocated to them to be spent on agreed service activities and functions.
- 8 The CFO is responsible for establishing a robust framework of budgetary management and control that ensures that:
- a) budget management is exercised within annual cash limits;
  - b) appropriate and timely financial information is available to Chief Officers and budget holders that

enables budgets to be monitored and controlled effectively;

- c) expenditure is committed only against approved budget heads and associated structure of detailed cost centres;
- d) all officers responsible for committing expenditure comply with these Regulations;
- e) each cost centre is delegated to a named budget holder to be determined by the relevant Chief Officer (budget responsibilities should be aligned as closely as possible with those making day to day decisions to commit expenditure);
- f) significant variances from budget are investigated and reported by budget holders on a regular basis.

9 The CFO must monitor and control the level of income and expenditure against budget allocations overall. They must ensure that monitoring reports are provided through the finance and performance monitoring framework for Members to consider on a regular basis throughout the financial year (to be determined and advised by the CFO) and a report after the year end setting out the revenue outturn. Budget monitoring reports must include:

- a) explanations of all variations to service budgets where deemed appropriate by the CFO;
- b) explanations of financial implications and material considerations such as:
  - part and/or full year consequences of variances;
  - one off and/or recurring costs and income;

- total scheme costs and sources of funding;
  - asset rental costs or leasing effects;
  - costs associated with staffing matters including the costs of redundancy and effects on the pension fund;
  - service plan implications and impact on service delivery (both within the service plan area and across other services or portfolios as appropriate).
- 10 Reports containing budget monitoring information must be reviewed by the CFO, or by their nominated representative(s) (where not otherwise prepared by their nominated representative in directorates) at least 5 working days in advance of the relevant committee distribution date.
- 11 Any overspending on service estimates in total on budgets under the control of a director must be reported by the CFO to the Executive. Where overspending is such that it appears the overall budget will be exceeded, and there is a need for an additional call on the council reserves the CFO must report the issue to full council.
- 12 Schools' balances will be available for carry forward to support the necessary expenditure of the school concerned. Where an unplanned deficit occurs, the governing body shall prepare a detailed financial recovery plan for consideration by the corporate director for people and the Executive Member concerned in consultation with the CFO.
- 13 Schools must prepare a plan to recover the deficit within a defined period. In exceptional circumstances schools may seek to incur expenditure to be financed by anticipating future year budgets. Any such arrangement must be approved by the relevant Executive Member and proposals to do so accompanied by a detailed plan setting out how the arrangement is to be

accommodated as a first call on their future budget share.

- 14 The CFO is also responsible for:
- a) reporting to the Executive and Full Council in consultation with the relevant Corporate Director if they are unable to balance expenditure and resources within their existing budgets and a supplementary estimate is required;
  - b) reporting to the Executive regarding virements which are in excess of £500,000 (either as individual items in-year or when taken in aggregate across the same category of budgeted income or expenditure in a particular service plan in any one financial year);
  - c) reporting regularly to the Executive (as determined and advised by the CFO) on the overall revenue budget position and the Council's available contingencies, balances and reserves.
- 15 It is the responsibility of Corporate Directors and Directors to:
- a) ensure effective budgetary control arrangements exist and are observed within their own directorates in accordance with these Regulations;
  - b) ensure spending remains within the relevant cash limits by controlling income and expenditure within their directorate, monitoring performance and taking corrective action where significant variations from budget are forecast, taking account of any financial information and/or advice provided by the CFO or their nominated representative(s).
  - c) regularly report performance and variances within their own areas and take action to avoid

exceeding their budget allocation, alerting the CFO to any known or expected budget problems;

- d) report to the Executive and Full Council as necessary the financial implications of any new in-year proposal or amendment that will:
- create financial commitments in future years;
  - change existing policies, initiate new policies or result in existing policies ceasing to operate;
  - materially extend or reduce the Council's services.

- 16 Further guidance is available in the Budget manager guidelines which form part of the supplementary guidance to these regulations:

### **Medium term financial planning**

- 17 Medium term financial planning allows the Council to think beyond the constraints of any given financial year and annual budget and prepare for future events. The CFO is delegated as part of the final accounts process to make proper provision for known future commitments, and approve carry forward of budgets, which are consistent with agreed budgetary and/or policy framework.
- 18 The CFO is responsible for reporting a financial strategy to the Executive for recommendation to Full Council. This will set out the overall medium term financial issues facing the Council, and consider the actions the council may need to take.

### **Schemes of virement**

- 19 The term virement refers to transfers of resources between or within approved cost centres for both revenue and capital purposes. A virement does not create additional budgetary liabilities. Instead the virement mechanism exists to enable the Executive, Chief Officers and their Officers to manage their budgets with a degree of flexibility within the overall policy framework and budget set by Full Council, thereby optimising the use of resources throughout the financial year. The virement schemes for revenue and capital do not exist as a means of remedying poor budgetary control or financial planning for known commitments and service priorities, or otherwise excuse Chief Officers and budget holders from the need to manage their budgets prudently and responsibly. Nor may virements be effected after the year end to retrospectively fund over or under spends unless approved in advance by the CFO.
- 20 It is important that the scheme is carefully controlled within guidelines established by Full Council and administered by the CFO. Any variation from those guidelines must be approved by Full Council. All virements must:
- not commit the Council to any on-going additional expenditure in future years unless virements are permanent redirections of resources;
  - be notified in writing to the CFO or their nominated representative;
  - be reported in budget monitoring reports to the Executive in accordance with the scheme of virement operated by the Council
  - be recorded in the Council's financial systems.
- 21 The scheme of revenue virement and agreed thresholds for delegated decision making purposes is set out below. Further guidance is available for Finance Teams

within the Virement Policy which forms part of the supplementary guidance to the financial regulations.

Scheme of revenue virement delegations

<b>Decision maker</b>	<b>Delegated powers &amp; authority</b>	<b>Thresholds</b>
The Executive	To approve virements between Service Plans in excess of £500k (either individually or in aggregate for the financial year)	Over £500k up to the cash limits set by the Budget
	To approve allocations of resources from approved contingencies and reserves	As set by the annual Budget
	To make recommendations to Full Council for the release of budget resources in excess of the approved contingencies and reserves	As set by the annual Budget
	To approve virements from within existing Service Plans or between Service Plans into new or otherwise unplanned functions and activities if savings are available to be re-directed into the new activity	Over £500k
Corporate Directors	To approve virements within or between Service Plans within their Directorates in excess of £100k and up to £500k (either individually or in aggregate for the financial year) in consultation with the relevant Executive Member. Any virement	Over £100k and up to £500k in consultation with the relevant

	that affects the council's policy framework will be referred to full council.	Executive Member
	To approve virements from within existing Service Plans or between Service Plans within their Directorates into new or otherwise unplanned functions and activities if savings are available to vire into the new activity. Any virement that affects the council's policy framework will be referred to full council.	Over £100K and Up to £500k in consultation with the relevant Executive Member
	CFO to approve virements between directorates in consultation with the relevant Chief Officers	Up to and including £500K in consultation with the relevant Executive Member
Other Chief Officers	To approve virements within their Service Plans up to £100k (either individually or in aggregate for the financial year)	Up to £100k

## The Capital Programme

- 22 The capital programme is a plan that sets out the resource allocations to be made to capital schemes that have the approval of Full Council. Capital expenditure involves acquiring or enhancing fixed assets with a long term value to the organisation, such as land, buildings, major items of plant, equipment or vehicles

- 23 The Regulations and standards relating to budgetary management and control of the revenue budget apply equally to capital expenditure and any changes to revenue budgets arising out of changes to the capital programme must be dealt with accordingly. All capital expenditure is incurred or committed on a scheme by scheme basis. Capital expenditure must be reported gross of any funding and controlled at that level.
- 24 No expenditure may be incurred on a project unless it has been approved as part of the capital programme. Equally, no scheme requiring Government sanction or funding either in full or in part may begin until the sanction and/or funding has been officially confirmed. All credit agreements must be referred to the CFO for approval prior to schemes being included in the programme.
- 25 All capital expenditure must be incurred by 31 March of the financial year for which it is approved, although approvals can be slipped provided the position is reported to the Executive, unless there is an external requirement to spend within any given year. Where schemes are part of a rolling programme or span a number of years, approval is required for each year's expenditure when the scheme is approved for inclusion in the Programme.
- 26 As with the revenue budget, it is possible to vire between schemes within the approved capital programme where known funding shortages and/or underspends have arisen. The same rules and principles set out in paragraphs 19-21 above for revenue virement apply to the capital programme. If shortfalls in funding or overspends cannot be met by transferring resources between schemes within the agreed capital programme, requests of additional funding from reserves must be prepared by the relevant Corporate Director in consultation with the CFO for approval by the Executive. The scheme of capital virement and thresholds for delegated decision making purposes is set out in the table below.

## Scheme of capital virement delegations

<b>Decision maker</b>	<b>Delegated powers &amp; authority</b>	<b>Thresholds</b>
The Executive	To approve individual virements between schemes in excess of £500k	Over £500k
	To re-phase approved scheme expenditure between years in excess of £500k for each scheme	Over £500k
Corporate Directors	To approve individual virements between schemes in excess of £100K up to a maximum of £500k in consultation with the relevant Executive Member. Any virement that affects the council's policy framework will be referred to full council	Over £100K and Up to and including £500k
	To approve individual virements between schemes up to a maximum of £100k	Up to and including £100k

27 In relation to the capital programme the CFO is responsible for:

- a) ensuring that an annual capital programme is prepared for consideration by the Executive for recommendation to Full Council;

- b) reporting to the Executive on income, expenditure and resources compared with approved estimates;
- c) issuing guidance on capital schemes and controls and defining what will be regarded as capital having proper regard to Government regulations and accounting conventions;
- d) ensuring that all schemes relying on the use of prudential borrowing powers for funding purposes are properly appraised on the basis of a robust business case as part of the capital budget process.
- e) managing the capital budget process;
- f) maintaining a record of the current capital budget and expenditure on the Council's financial systems.

28 In relation to the capital programme Corporate Directors and directors are responsible for:

- a) complying with the guidance issued by the CFO regarding capital schemes and controls;
- b) ensuring that all capital schemes put forward for consideration in the CRAM process have been properly appraised and that each scheme and estimate includes a proper project plan, progress targets and sets out the sources of funding for the scheme including all associated revenue expenditure;
- c) preparing regular reports reviewing the capital programme provisions for their services;
- d) ensuring adequate records and audit trails are maintained in respect of all capital contracts;

- e) monitoring capital expenditure and receipts against approved capital budgets on a scheme by scheme basis and reporting to the relevant Executive Member on a regular basis in accordance with the standard revenue budget monitoring arrangements set out above;
- f) reporting to the Executive if proposed sources of funding are not secured (if planned funding from linked assets sales or external grants and contributions cannot be realised, corporate funding support must be sought).

### **Reserves & balances**

- 29 Financial reserves and balances are maintained as a matter of prudence against unforeseen events and future contingencies. The CFO is responsible for advising the Executive and Full Council on prudent levels of reserves and balances for the Council as part of the annual budget setting process based on a reasoned assessment of risk.
- 30 The Council must decide the level of its general reserves in determining the level of council tax. The purpose, usage and basis of transactions must be clearly set out in respect of each of the reserves and balances held by the Council.

### **The Venture Fund**

- 31 The Council maintains a venture fund as part of its reserves designed to provide some capacity to support one-off 'invest to save' type initiatives that might otherwise struggle to secure funding in the annual budget setting process.
- 32 Officers are able to bid for venture fund monies with a view to any advances from the venture fund being repaid within a 7 year period at an internal borrowing rate fixed in relation to the councils consolidated rate of interest to be determined by the CFO. All bids to the Venture Fund must be made in the form of a business

case setting out the nature and purpose of the proposal, forecast income and expenditure and payback period.

- 33 CFO has delegated authority to approve bids up to £100,000 from the venture fund, in consultation with the leader. Delegated decisions will be advised to the Executive as part of the budget monitoring and reporting process. Bids in excess of £100,000 must be referred to the Executive for approval.

### **Prudential Borrowing**

- 34 In addition to the venture fund, in accordance with Local Government Act 2003 and the Prudential Code, departments can put forward business cases for prudential borrowing. This is for schemes of a capital nature only and would normally be approved as part of the annual capital programme budget process. However, there will be opportunities that arise during the year where a capital scheme can be approved using prudential borrowing outside of this process.
- 35 All bids are referred to the Executive for approval. The required interest rate is the consolidated rate of interest of the loans portfolio. The length of the prudential borrowing will be supported by the business case, taking into consideration the life of the asset.
- 36 The CFO has delegated authority to approve the length of the repayment period for all borrowing to ensure that borrowing matches the asset life. This will ensure value for money allowing prudential borrowing repayment periods to alter as asset life changes.

## Part C

### Audit & Risk Management

#### Audit & inspection

- 1 Audit is a key management tool that Members and Chief Officers should rely on to provide an independent and objective assessment of the probity, legality and value for money of Council arrangements. It examines, evaluates and reports on the adequacy of internal systems of control in the proper, economic, efficient and effective use of resources. Legislation requires that the Council provides for the function of both internal and external audit services.
- 2 The statutory requirement for the Council to maintain "*an adequate and effective system of internal audit*" is set out in Regulation 5 of the Accounts and Audit Regulations Act 2003, as amended by the Accounts & Audit (Amendment) (England) Regulation 2006 and further to S151 of the Local Government Act 1972.
- 3 In summary, the service exists to:
  - a) provide assurance to Members, Chief Officers and the general public on the effective operation of governance arrangements and the internal control environment operating at the Council;
  - b) objectively examine, evaluate and report on the probity, legality and VFM of Council arrangements for managing all items of income, expenditure and safe-guarding assets;
  - c) review arrangements for ensuring proper accounting controls, systems and administration are maintained and make recommendations for action and improvement;
  - d) help to secure the effective operation of proper controls to minimise the risk of loss, the inefficient

use of resources and the potential for fraud and other wrongdoing;

- e) act as a means of deterring all fraudulent activity, corruption and other wrongdoing, conducting investigations into any matter referred to it for investigation by management or officers and members of the public and reporting its findings to Corporate Directors and Members as appropriate for action;
- f) undertake the prioritised investigation of all instances of alleged housing benefit fraud and prosecute those cases where fraud has been identified to protect the Council and fiduciary interests of the community and the public purse;
- g) conduct investigations into suspected fraudulent activity and improper conduct as reported by Members, governors and employees referred to it further to the Council's whistle-blowing policy;
- h) report all known breaches of these regulations and Council standing orders and any other action leading to expenditure incurred ultra vires, identifying any areas of poor financial probity and stewardship problems for action by Chief Officers and Members as appropriate;
- i) advise the CFO and MO as to any necessary intervention in decision making if it is likely that any proposed action will lead to unbudgeted or unlawful expenditure or activity;
- j) review the Council's arrangements for ensuring the income and expenditure of the organisation is properly and regularly monitored in line with the budget setting, monitoring and reporting requirements set out in these Regulations;
- k) advise Officers and Members of value for money issues and/or the poor or inappropriate use of

Council resources and make recommendations for improvement;

- l) review the optimisation of income generation opportunities from grants and subsidies monies available from Government;
  - m) advise the CFO of any appropriate action necessary to safeguard the fiduciary interests of the Council and current and future council tax payers.
- 4 The council's audit & fraud provider is a wholly local authority owned company (Veritau) in which the council has two director appointments (CFO & a member of the Executive).
- 5 The internal audit & fraud provider and the external auditors must be allowed to act independently and objectively in their planning and operation without undue influence by either Directors or Members.
- 6. The CIA is designated by the CFO. They, or their nominated representative(s), has rights of direct access and reporting to the CFO, the client officer for the audit & fraud provider (nominated by the CFO), all Corporate Directors and Members. CIA staff have rights of access to all Council buildings and properties, information and data at all reasonable times.
- 7. The Public Sector Audit Appointments Ltd (PSAA) is responsible for appointing external auditors to Councils, an appointing person under provisions of the Local Audit and Accountability Act 2014, which also sets out the duties of the external auditor. These variously include rights of access and the right to report publicly on their findings and recommendations. The external auditors must comply with the provisions of a Code of Audit Practice in planning and conducting their work. This includes the audit of the Council's financial statements, the financial aspects of corporate governance and performance management. The work

of the council's auditors is reported to the Executive and Full Council in their annual audit letter.

8. The Council may also be subject to audit, inspection or investigation by external bodies such as HM Revenues & Customs, and various other Inspectors of service at any time.

### **Preventing fraud & corruption**

9. The Council will not tolerate fraud or corruption in the administration of its responsibilities, whether perpetrated by Members, Officers, customers of its services, third party organisations contracting with it to provide goods and/or services, or other agencies with which it has any business dealings. There is a basic expectation that Members and all Officers will act with integrity and with due regard to matters of probity and propriety, the requirement to act lawfully and comply with all rules, procedures and practices set out in legislation, the Constitution, the Council's policy framework and all relevant professional and other codes of practice. To that end the Council has adopted an anti-fraud and corruption strategy, fraud prosecution policy, anti-money laundering policy and whistle-blowing policy along with codes of conduct governing the behaviour of Members and Officers.
10. All Officers and Members of the Council must inform the CIA immediately if they suspect or know of any impropriety, financial irregularity, fraud or corrupt practice. The CIA is responsible for determining the nature of any investigation work required in respect of any allegation of wrong doing, and/or any other action required and may refer matters to the police or other appropriate external body as they see fit in consultation with the contract client officer (as nominated by the CFO)
11. The internal audit & fraud providers are required to investigate all referrals of fraud at the direction of the CIA and client manager and in doing so have:

- a) rights of access to all Council premises and property, all data, records, documents, and correspondence relating to any financial matter or any other activity of the Council;
- b) the right to require any Officer or Member to provide any information or explanation needed in the course of their investigations;
- c) the right to prosecute cases of benefit related fraud in the courts;
- d) the right to refer investigations to the police in consultation with the relevant Chief Officer(s), client manager and CFO.

12. In addition, the CIA should to:

- a) refer cases directly to the police if they believe that normal consultation practices would compromise the integrity of the investigation against the interests of the Council or the general public;
- b) notify the council's auditors of any matter that they would rightly expect to be informed of in order to support the function of an effective and robust external audit service;
- c) require any Officer or Member to:
  - make available such documents relating to the accounting and other records of the Council that are necessary for the purpose of the audit;
  - supply any information or explanation considered necessary for that purpose.

## **Managing risk**

13. Risk management is inherent to good management practice and essentially; it is concerned with identifying potential events (risks), establishing what could go wrong (threats) and the potential for success (opportunities) with the aim of trying to achieve the right balance between the two. The outcome from proper risk consideration ensures that managed controls are in place and the effective prioritisation and allocation of potentially scarce resources to the most appropriate area (high risk), to ensure service continuity and performance improvement.
14. It is essential that robust, integrated systems are developed and maintained for identifying, evaluating and managing all significant strategic, project and operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services
15. The CFO is responsible for preparing the Council's risk management policy & strategy and for promoting it throughout the Council.
16. 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 risk management service and other specialist officers (e.g. health and safety).
31. Full details of the way that the Council manages its risks are set out in the risk management policy and strategy and form part of the supplementary guidance to these regulations.

### **Insurance**

18. The Chief Finance Officer is responsible for:
  - effecting all relevant insurances and dealing with all claims;

- operating an internal insurance account(s) for some risks or elements of risk not covered by external insurance policies and is authorised to charge the various Council service budgets with the cost of contributions to this account;
  - reviewing, at least annually, all insurances.
19. It is the responsibility of Chief Officers to:
- advise the CFO 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;
  - notify the CFO 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 CFO or the Council's insurers;
  - 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.

## **Part D**

### **Systems & procedures**

#### **Introduction**

1 Good systems and procedures are essential to the effective management and administration of the Council's financial affairs. This section covers:

- Accounting systems
- Income
- Expenditure
- Banking arrangements
- Treasury management
- Taxation
- Stock & stores
- Trading accounts

#### **Accounting systems**

2 The Council relies on a variety of different financial and accounting systems in controlling and administering the finances of the organisation. It is vital that these systems ensure information is recorded accurately, completely and in a timely manner and that all necessary controls are in place to ensure that all transactions are properly processed and any errors detected promptly and rectified.

3 The CFO is responsible for:

- determining the Council's main accounting system for the preparation of the Council's accounts and for monitoring all income and expenditure. The main accounting and budgeting system used at the Council is known as the financial management system (FMS);
- determining any other key financial systems which may sit outside the FMS;

- ensuring that all financial systems are sound and properly integrated and interfaced;
  - issuing advice, guidance and procedure notes on the use and maintenance of FMS and related financial systems and for ensuring that all finance Officers are trained and competent in the using of financial systems.
- 4 Corporate Directors have devolved responsibility for the finances of their directorates and must ensure that proper accounting and financial systems exist and incorporate adequate internal controls to safeguard against waste, loss or fraud. They must also ensure that officers in their Directorates are aware of and have access to copies of these Regulations and any supplementary advice and guidance issued by the CFO.
- 5 Further to this, Corporate Directors are specifically responsible for:
- a) ensuring all accounting records are properly maintained and held securely, including any supporting vouchers, documents, contracts etc with financial implications;
  - b) ensuring FMS is used as the prime means of monitoring expenditure and income in their departments and for comparing spend against budgets, except and unless the CFO advises or agrees that alternative arrangements may be made;
  - c) ensuring that FMS is used to accurately record the financial transactions of their departments in accordance with the advice and guidance given by the CFO and in a way that ensures compliance with all legal requirements, proper accounting practice and enables returns to be made to central government, taxation authorities and other

relevant bodies and provides a complete audit trail;

- d) the effective operation of financial systems within their own directorate to the extent that they are operated and controlled within their directorate;
- e) ensuring regular reconciliations between other departmental systems of financial administration with the Council's financial management systems (FMS);
- f) reporting systems failure to the CFO and consulting with them about any changes or new developments;
- g) ensuring there is a documented and tested disaster recovery plan as part of an agreed business continuity strategy for financial administration;
- h) ensuring that systems are documented and all Officers have been properly trained in their use.

## **Income**

- 6 Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. It is preferable to obtain income in advance of supplying goods or services as this improves the Council's cash flow in line with the Councils income policy that forms supplementary guidance to these regulations.
- 7 The council has moved away from accepting cash except where this is unavoidable any cash received must be acknowledged by the issue of an official receipt and all monies then accounted for and paid directly into an approved bank account. Details of all cash receipted on a local basis must be forwarded to the CFO for allocation to the correct accounts.

- 8 Income must never be used to directly fund expenditure (i.e. all transactions must be shown separately in the ledger, both income and expenditure). Officers are directly responsible for the safe custody of any money received until it has been paid into the bank or handed over to another officer. Receipts should be given and retained in such circumstances.
  
9. Procedures for writing off debts shall be as follows. Further guidance is available in the Corporate Debt Policy which forms part of the supplementary guidance to these regulations:

<b>Decision maker</b>	<b>Delegated powers &amp; authority</b>	<b>Thresholds</b>
The Executive	Amounts exceeding £200,000 may only be written off on the authority of the Executive. The CFO shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery.	Over £200k
Executive Member	Amounts over £100,000 and not exceeding £200,000 on the authority of the Executive Member (Corporate Services) in consultation with the CFO. The CFO shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery	Over £100k and up to and including £200K
CFO	Amounts up to and not exceeding £100,000 on the authority of the CFO The CFO shall maintain a record of all such write-offs showing	up to and including £100k

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	attempted recovery action taken and the justification for non-recovery.	
Chief Officers	Amounts up to and not exceeding £5000 may be written off by any Chief Officer in consultation with the CFO, who shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery.	up to and including £5k

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- 10 The CFO has the power to award discretionary rate relief up to the subsidy control regime limit in consultation with Executive. In the case of urgency the decision can be made by the CFO in consultation with the relevant Executive Member. The fully Government funded business rate relief awards announced at regular intervals can be awarded by the CFO or their nominated officer.
  11. The CFO is responsible for making arrangements for the collection of all income due to the Council and approving the procedures, systems and documentation used in its collection in line with the corporate debt management policy. Regularly reviewing all fees and charges levied by services and ensuring they are set with due regard to comparable market rates, the legal responsibilities of the organisation, the income policy and any relevant social or economic policy objectives set out in the Council's policy framework
  12. Corporate Directors and Directors are responsible for:
    - a) collecting income for which there is budget provision within the budgets for which they are responsible;

- b) using the systems for the collection and recording of cash and credit income provided by the CFO unless they have the approval of the CFO to make alternative arrangements;
- c) the proper separation of duties between Officers raising accounts and those responsible for income collection;
- d) collecting all income and initiating all appropriate recovery action for debts that are not paid promptly where local arrangements for doing so have been agreed with the CFO;
- e) requiring at least two Officers to be present when post is opened to ensure any money received in that way is properly identified, recorded and safeguarded;
- f) issuing official receipts as necessary and maintaining all other documentation for income collection purposes and ensuring controlled stationery is securely stored;
- g) keeping all income received in secure storage and ensuring cash holdings do not exceed insurance limits;
- h) ensuring all income is paid fully and promptly into approved bank accounts in the form in which it is received and that all details are properly recorded on paying in slips which are retained for audit trail purposes. Money collected and deposited must be reconciled to the bank account on a regular basis;
- i) ensuring income is not used to cash personal cheques or used to make other payments;
- j) supplying the CFO with all details relating to works done, services supplied or other amounts due to be raised through the corporate invoicing system;

- k) using the councils charging policy for the supply of goods and services levied by their directorate's services and ensuring all fees and charges are set with due regard to income policy, the legal responsibilities of the organisation and any relevant social or economic policy objectives set out in the Council's policy framework;
  - l) assisting in the collection of debts originating from their directorates by providing information and taking any recovery action necessary on a local basis with the agreement of the CFO;
  - m) recommending to the CFO all debts to be written off and maintaining records of all sums written off. Once raised on the accounting system, no bona fide debt can be cancelled except by full payment or by being formally written off in the accounts. Credit notes can only be issued to correct a factual inaccuracy or administrative error in the calculation and/or billing of the original debt and must not be used for any other purpose;
  - n) notifying the CFO of any outstanding income due in relation to the previous financial year as soon as possible in line with the annual timetable for the closedown of the accounts determined by the CFO.
13. All officers are responsible for the safe custody of any money received until it has been paid into the bank or handed over to another officer.
14. Full details of the way that the Council manages its income is set out in the Income Policy which forms part of the supplementary guidance to these regulations.

### **Expenditure**

15. Expenditure may be incurred provided there is funding available through normal ordering and invoicing processes, entering into a contract arrangement,

through the payment of salaries, wages and allowances, purchase cards or in exceptional circumstances through raising a payment requisition. Corporate Directors, or their nominated representatives, are authorised to incur expenditure on works, goods and services where there is an approved budget for which they are responsible, provided such expenditure is legally incurred and within the policy framework. All foreign travel to be approved by the CFO, except for: - where it is a director of the council (Chief Operating Officer to determine) or where it is the Chief Operating Officer (leader of the Council to determine). The decision should consider the total cost, including the extent of external funding where applicable, and the overall anticipated benefits from the trip. Expenditure must be shown separately to income and expenditure proposals that attract amounts of income must be shown gross in the accounts. The determination of any financial thresholds or bandings referred to by these Regulations must therefore be done with reference to the gross amount.

#### Ordering works, goods and services

16. Corporate Directors must use the FMS system except in the case of emergencies or if approval has been given by the CFO to an alternative arrangement.
17. Official purchase orders must be issued for all purchases including those under contract except:
  - where the supplier is on the official list of suppliers exempt from using official purchase orders;
  - purchases made through petty cash;
  - those allowed under the councils Government Procurement Card (GPC) Policy;
  - those made using a council prepaid card.

18. Official orders electronic or otherwise must be in an approved form as determined by the CFO. They may only be authorised by signatories up to the limits of their delegation as set out in the relevant directorate schemes of delegation. This record must be accurate, complete and kept up to date. If it is necessary for an oral order to be placed for any good reason, it must be followed up by an official order as soon as it is possible to do so. Orders must be clear and specific (i.e. they should state quantity, price, and nature of the goods or service etc. so that meaningful comparison between what was ordered and what has been received can be made and the invoice can be matched to the order). Official orders may not be raised for personal or private purchases. Schools have their own ordering procedures and must abide by the regulations set out in the local management of schools scheme.

Payments for works, goods and services

19. Payments for works, goods and services must only be made:
- on receipt of an invoice or contract certificate which satisfies VAT regulations, or;
  - where the liability for payment is clearly established and evidenced;
  - in accordance with contractual commitments;
  - in accordance with the council's policy of "no purchase order, no payment".
20. All Corporate Directors must use the FMS system unless they have the approval of the CFO to make alternative arrangements. Officers must ensure payments for works, goods and services are not made unless:

- they are supplied in accordance with an official order, or contract, and the invoice amount/contract certificate is correct;
  - payment is in respect of a periodic account or for a service regularly supplied and the amount invoiced is properly payable;
  - a valid exception to the no purchase order no payment policy has been approved and quoted by the supplier.
21. Council purchase cards can be used for procuring goods, works and services when approved through the GPC policy. The individual transaction limit and aggregate spend limit must be approved by the CFO or their delegated representative. All transactions must be entered onto the councils FMS systems and proper separation of duties between officers ordering and/or procuring and those authorising must be maintained. The individual transaction limit must not exceed that set out under the financial scheme of delegation unless agreed by the CFO or their delegated representative.
22. Payments in advance must be avoided except where this is the accepted practice for the type of expenditure involved (e.g. leasing payments, training, travel or conference facility fees) or where use of a council purchase card has been authorised. Advance payments in excess of £5,000 can only be made with the approval of the CFO. All sums below this amount, which are not accepted practice, can be approved by the relevant director. Where interim or part payments form part of a contract, interim certificates or part invoices must be authorised for payment only after the value of the work done or goods or services received has been confirmed.
23. A proper separation of duties must be maintained between Officer responsible for requisitioning or creating contractual commitments for works, goods and services and those authorising the commitment. Officers that authorise a requisition through the councils

purchasing system (FMS) must not be responsible for receiving and checking works, services and goods (GRN) where this is required. Directors must agree alternative arrangements with the CFO if it is not practically possible to maintain an adequate separation of duties for any reason.

24. All invoices and receipts must be original documents which comply with VAT regulations (invoices and receipts scanned through the Councils EDRMS system are accepted as original documents). Invoice coding slips for use in exceptional circumstances must be properly completed detailing the correct VAT code, finance ledger codes, sufficient narrative description to allow invoices to be matched and properly described in the ledger and all necessary signatures electronic or otherwise for authorisation and payment.
25. The CFO must ensure that payments are made in an appropriate timescale that will not unduly disadvantage the Council's cash flow, result in the Council incurring late payment penalties or prejudice the financial position of those to whom the payment is to be made. The performance standard for the payment of invoices is 30 days. This is a local performance Indicator that is monitored by CMT and reported to Executive.

#### Contracting for works, goods and services

26. The contract procedure rules are issued as a supplementary guidance document to these regulations and set out the specific procurement rules and procedures to be observed in contracting for the provision of works, goods and services.

#### Payments of salaries, wages & allowances

27. Officer costs form the largest item of expenditure made by the Council. It is important that payments are accurate, complete, timely and made in accordance with what is due consistent with the individual conditions of employment and/or the terms of any Officer or Member

allowance scheme and that such payments are fully recorded and accounted for in the accounting system.

28. The CFO is responsible for providing a corporate payroll system for recording all payroll data and generating payments to employees and Members. The system must allow for the proper calculation of all pay and allowances, national insurance and pension contributions, Income Tax and all other deductions. Corporate Directors must use the corporate payroll system for all payments to employees and are responsible for ensuring that all information relating to an employee's entitlement to pay and/or the payment of allowances are forwarded to the payroll team within agreed timescales. All supporting evidence of entitlement must be provided to payroll at the same time (i.e. signed timesheets, appointment forms, changes in pay scales, approval for responsibility payments etc). Schools are permitted to make their own payroll arrangements but if they choose to do so they must provide the CFO with all necessary information to provide assurance to the auditors that any alternative system is well controlled, managed and resulting in the correct payments being made to the correct Officer.
29. All posts that are designated in legislation as being officers of the council e.g. adoption panel Members **must** be paid through payroll as the council is legally liable for tax and national insurance contributions.

#### Petty cash and disbursements

30. The CFO will provide petty cash floats only in exceptional circumstances to a maximum amount agreed with Corporate Directors for the purpose of meeting minor expenses where there is no alternative method of payment. Corporate Directors are responsible for ensuring all petty cash monies are securely stored and are only used for the purposes intended. VAT receipts must be provided with requests for reimbursements. All receipts and vouchers must be retained and regular reconciliations carried out and

recorded by the Officer responsible for managing petty cash floats.

31. Full details of the way that the Council manages its petty cash, electronic card payments and other payments is set out in the petty cash and payments procedures, the processing electronic card payments security policy and the cash handling procedures which form part of the supplementary guidance to these regulations.

### **Banking arrangements**

32. It is the responsibility of the Executive to approve the banking arrangements of the Council and for the CFO to manage the banking contract on a day to day basis. Council payments must be made by BACS or other instrument drawn on the Council's bank account by the CFO. Schools may operate local bank accounts. . Detailed advice on the use and operation of school bank accounts is given in the Council's "Local Management of Schools" finance manual.
33. The CFO is responsible for ensuring regular reconciliations are carried out on at least a quarterly basis for all the main bank accounts to the financial records of the Council. All withdrawals or transfers with an individual value in excess of £50,000 must be counter-signed by another authorised signatory to the bank account.

### **Treasury Management**

34. The Council has adopted the recommendations set out in the CIPFA Code of Practice on Treasury Management (the Code) which have been observed in setting out the Council's Treasury Management Strategy and policy statements.
35. The CFO is responsible for:
  - a) preparing a treasury management strategy setting out the objectives, policies, working practices and

controls to be observed in the Council's treasury management activities for approval by the Executive;

- b) ensuring the implementation of the strategy and its periodic review, reporting progress and any necessary changes to meetings with the Executive Member for Corporate Services on a regular basis;
- c) ensuring that the Audit & Governance Committee scrutinise the treasury management strategy and monitoring reports;
- d) all investment, borrowing and credit agreements entered into on behalf of the Council, credit cards, hire purchase arrangements and finance leases will not be approved for use except in very special circumstances;
- e) approving the set up of any company, joint companies, joint ventures, partnerships or investments;
- f) the custody of all financial securities which are the property of the Council, or are held in its name;
- g) the registration of all Council owned stocks, bonds, mortgages and loans;
- h) effecting all loans in the Council's name to meet its needs on the most economic terms available.
- i) approving any loans or guarantees given to third parties and interests acquired in companies, joint ventures or other enterprises with the approval of Full Council following
- j) arranging for all trust funds to be held in the name of the Council wherever possible and ensuring that trust funds operate within the law and the specific requirements for each trust. All officers acting as trustees by virtue of the position with the Council shall deposit securities relating to the trust

to the custody of the CFO unless the deeds specifically require otherwise;

- k) arranging the secure administration of funds held on behalf of third parties and partnerships ensuring that the systems and controls for administering such funds are approved by the CFO and subject to regular audit.

### **Leasing**

- 37. All contracts that contain a 'Right of Use' asset that the Council has entered into up to 31 March of the financial year for which they are approved, (such as contracts that have the formal status of a lease arrangement and service contracts that contain an asset that the Council has use and control of throughout the contractual period) need to be reported to the CFO. This is to enable a register of such assets to be maintained to ensure that the correct accounting treatment is applied. All 'Right of Use' assets will count towards the Council's Capital Financing Requirement (CFR) and have the same implications for the Council as the addition of capital assets financed by prudential borrowing.
- 38. Where contracts above the £10,000.00 capital limit are entered into that contain a 'Right of Use' asset, Officers and Budget Managers with delegated responsibility for signing such contracts will be required to report these to the CFO to gain approval before they are signed off and entered into.

### **Taxation**

- 39. The CFO is responsible for ensuring:
  - a) the completion of all inland revenue returns regarding PAYE;
  - b) the completion of a monthly return of VAT inputs and outputs to HM Revenues & Customs;

- c) the provision of details to the Inland Revenue regarding the construction industry tax deduction scheme;
  - d) the provision and maintenance of up to date guidance for Council employees on taxation issues in relevant accounting and taxation manuals and through advice provided by the corporate finance team.
  - e) the correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HM Revenues & Customs;
  - f) where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry scheme (CIS) deduction requirements;
  - g) all persons employed by the Council are added to the Council's payroll and tax deducted from any payments made to them (with approved exceptions agreed by the CFO where the individuals concerned are bona fide self-employed or are employed by a recognised agency);
40. Corporate Directors are responsible for ensuring that:
- a) all advice and guidance on taxation issued by the CFO is followed and adhered to by Officers in their own Directorates.

### **Stocks & stores**

41. Directors may hold reasonable levels of stocks and stores of consumable items, materials, equipment and goods for resale. They are responsible for the receipt and custody of stock items and for writing off any items of stock. Directors must take VFM considerations into account in holding stocks and stores and ensure

unnecessarily high levels of stocks are not allowed to accumulate. The value of stocks and stores held at the year-end must be certified by and authorised officers and forwarded to the CFO.

42. Procedures for the disposal of redundant stocks and equipment are set out in the guide to the disposal of assets which forms supplementary guidance to these regulations.

### **Inventories & asset management**

43. The Council holds tangible assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It also makes use of other non-tangible assets such as intellectual property. It is essential to the financial health and wellbeing of the Council that these assets are safeguarded and used efficiently and effectively in supporting the delivery of Council services. All Officers are responsible for safeguarding the assets and information used in their day to day activities and must ensure they are aware of their responsibilities in respect of the Data Protection Act, software copyright legislation, and the security of the Council's information systems. These responsibilities are laid out fully in the IT regulations and E-communications policy that form part of the Constitution.
44. The CFO is responsible for:
  - a) ensuring that an asset register is maintained in accordance with good practice for all fixed assets valued in excess of £10,000 and that asset valuations are made in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting: A Statement of Recommended Practice (the SORP);
  - b) arranging for all insurances and requiring directors to ensure all assets are kept securely and used efficiently and effectively;

- c) ensuring compliance with the rules in relation to contractual commitments for the acquisition and disposal of assets as follows:
  - i) the disposal of surplus assets, land and buildings up to the value of £500,000 on behalf of the Council in consultation with, the relevant director(s) and executive member for corporate services, except where the disposal is not to the highest bidder or there is a significant discrepancy between the estimated sales value and the actual sales figure. All disposals must comply with the rules in relation to contractual commitments set out in the guide to managing financial risks. All disposals valued in excess of £500,000 must be referred to the Executive for decision;
  - ii) the acquisition of all land and buildings on behalf of the Council having due regard to the provisions of the asset management strategy, capital programme, capital strategy and financial strategy subject to the appropriate budgetary provisions having already been agreed by the Council.
- d) ensuring advice on the VAT implications of proposed land & building acquisitions and sales is sought at the planning stage;
- e) ensuring that all asset acquisitions and disposals are properly recorded within asset records and comply with the disposal policy which forms supplementary guidance to these regulations.
- f) maintaining up to date records of all land and buildings, including valuations in the form of a corporate asset register for the Council and these records must as a minimum be reviewed on an annual basis;

- g) ensuring all rents, charges, fees etc due in respect of properties and land are raised and all income is collected and accounted for in the Council's accounting systems;
- h) ensuring all lessees and other prospective occupiers of Council land and buildings are not allowed to take possession or enter the property until a lease or agreement in a form approved by the CFO has been made;
- i) to act as custodian for all title deeds for the Council;

45. In addition, Corporate Directors are responsible for:

- a) providing the CFO or their delegated deputy with information and all relevant documentation regarding all assets owned or used in relation to services provided by the directorate(s) for the purposes of maintaining an up to date and complete asset management register;
- b) ensuring the proper security and safe custody of all assets under their day to day operational control and consult with the CFO or their delegated deputy in any case where security concerns exist or if it is considered that special security arrangements are required;
- c) to record all disposals or part exchange of non-land and building assets, in line with the disposal policy which forms supplementary guidance to these regulations ;
- d) to maintain local inventories recording adequate descriptions of all furniture, fittings, equipment, plant & machinery above £500 and record items of a lower value where the risk is considered to be significant;

- e) reporting all assets that are lost, stolen or destroyed to the insurance manager for recording purposes and where necessary the CIA in compliance with the asset disposal policy;
  - f) making sure property is only used in the course of the Council's business, unless specific permission has been given by the Corporate Director to do otherwise.
46. Full details of the way that the Council manages its asset disposals is set out in the Asset Disposal Policy which forms part of the supplementary guidance to these regulations.

## **Part E**

### **External arrangements**

#### **Introduction**

- 1 The Council exercises an important community leadership role, helping to orchestrate the contributions of various stakeholders in discharging its statutory responsibilities for promoting and improving the economic, social and environmental well-being of the area.

#### **Partnerships, joint working & grant funding**

2. A grant can be defined as a contribution or subsidy (in cash or in kind) given by the Council to another organisation for a specified purpose. Grants must be conditional upon the delivery of specified standards or outputs and be subject to the production of regular monitoring reports and the delivery of agreed outcomes.
- 3 The CFO must satisfy themselves that the accounting arrangements for all partnerships and joint ventures are proper and appropriate, including all audit and inspection requirements. They must also consider overall corporate governance arrangements and any legal and taxation issues when partnerships are arranged with external bodies. They must ensure all known risks are appraised before entering into agreements with external bodies and seek to ensure VFM is obtained.
- 4 The CFO is also be responsible for advising on the funding and financing of a project including:
  - a) financial viability in current and future years;
  - b) risk appraisal and risk management arrangements;

- c) resourcing and taxation;
- d) audit, security and control requirements;
- e) carry forward arrangements.

5 Corporate Directors are responsible for:

- a) maintaining local registers of partnerships and entered into with external bodies in accordance with procedures specified by the CFO and providing information about those to the Head of Paid Service as required;
- b) ensuring that a risk management assessment has been carried out before entering into agreements with external bodies;
- c) ensuring that such agreements and arrangements do not impact adversely upon the services provided by the Council;
- d) ensuring that all agreements and arrangements are properly documented;
- e) providing appropriate information to the CFO to enable relevant entries to be made in the council's statement of accounts concerning material items;
- f) ensuring that the appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.
- g) ensuring that for all instances of grant/loan funding there is:
  - i) proper consideration of the relevant interest rate payable agreed and approved by the CFO;

- ii) an appropriate 'state aid' de minimis declaration made by the recipient organisation;
- iii) in respect of loans a process of monitoring on at least a six monthly basis providing an update to the relevant lead officer ( $\leq$ £100K), all loans above £100K will be reviewed as part of the finance monitoring reports to Executive, to ensure delivery of outcomes and value for money
- iv) a service level agreement in place to protect the Council. (Separate guidance is available on the mandatory format, content and review of this service level agreement).

h) all grants/loans:

- i) must have prior budgetary approval, typically through the budget process;
- ii) over £100k must be approved by the Executive & CFO and must have a legally binding grant funding agreement (GFA) rather than an SLA;
- iii) must be raised using the prescribed financial ledger codes;
- iv) must use the relevant charge code and recovery route (in respect of loans);
- v) below £100,000 must be notified to the CFO who will determine whether there is existing delegation that provides authority to award the grant, or if it requires Executive approval. Where the grant is an annual grant, approval as part of the budget process will be sufficient;

### **External funding**

- 6 External funding can prove a very important source of additional income to an authority, but funding conditions

need to be carefully examined before entering into any agreement to ensure they are compatible with the aims and objectives of the Council. Councils are being encouraged to provide seamless service delivery by working closely with other agencies and service providers (both public and private). Funds from external agencies such as the National Lottery can provide additional resources for services. However, whilst the scope for funding has increased, it is usually linked to increasingly tight specifications and may not be flexible enough to meet the aims and objectives of the Council ambitions and plans.

- 7 The CFO is responsible for:
  - a) ensuring that all external funding is received and properly recorded in the Council's accounts;
  - b) match funding requirements are considered prior to entering into any agreement and that future revenue budgets reflect these requirements;
  - c) ensuring all audit requirements are met.
  - d) Provision of standard application documentation for discretionary grants.
  
- 8 Corporate Directors are responsible for ensuring that:
  - a) all claims for funds are made by the due date;
  - b) the project progresses in accordance with the agreed project plan and all expenditure is properly incurred and recorded.
  
- 9 Full details of the way that the Council manages its external funding and grants is set out in the external funding and grants policy which form part of the supplementary guidance to these regulations.

### **Work for third parties**

- 10 Current legislation enables the Council to provide a range of services to other bodies. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements must be put in place to ensure that any risks associated with undertaking such work is minimised and that the work is done intra vires. All work should be properly costed in accordance with the advice and guidance of the CFO and done on the basis of a proper contract according to the contract procedure rules set out as supplementary guidance to these Regulations.
- 11 The relevant Executive Member(s) are responsible for approving the contractual arrangements for work undertaken on behalf of a third party or external bodies. The CFO is responsible for issuing guidance with regard to the financial aspects of any third party contracts and the maintenance of the contracts register. Corporate Directors are responsible for:
- a) ensuring that appropriate insurance arrangements have been made;
  - b) ensuring that the Council is not put at risk from any bad debts;
  - e) ensuring that no contract will be subsidised by the Council;
  - f) ensuring that the service has the appropriate expertise to undertake the contract;
  - g) ensuring that such contracts do not impact adversely upon the services provided to the Council;
  - h) providing appropriate information to the CFO to allow entries to be made in the council's final statement of accounts.

- i) ensuring that there is no conflict of interest with any third party provider

**Annex A**

**Summary of Delegation & Reporting**

**Revenue Virements**

<b>Decision maker</b>	<b>Delegated powers &amp; authority</b>	<b>Thresholds</b>
The Executive	To approve virements between Service Plans* in excess of £500k (either individually or in aggregate for the financial year)	Over £500k up to the cash limits set by the Budget
	To approve allocations of resources from approved contingencies and reserves	As set by the annual Budget
	To make recommendations to Full Council for the release of budget resources in excess of the approved contingencies and reserves	As set by the annual Budget
	To approve virements from within existing Service Plans or between Service Plans into new or otherwise unplanned functions and activities if savings are available to be re-directed into the new activity	Over £500k
Corporate Directors	To approve virements within or between Service Plans within their Directorates in excess of £100k and up to £500k (either individually or in aggregate for the financial year) in consultation with the relevant Executive Member	Over £100k and up to £500k

	To approve virements from within existing Service Plans or between Service Plans within their Directorates into new or otherwise unplanned functions and activities if savings are available to vire into the new activity	Over £100K and Up to £500k in consultation with the relevant Executive Member
	To approve virements between directorates in consultation with the relevant directors	Up to and including £500K in consultation with the relevant Executive Member
Other Chief Officers	To approve virements within their Service Plans up to £100k (either individually or in aggregate for the financial year)	Up to £100k

\*service plan refers to Director or Assistant Director responsibilities

### **Capital Virements**

<b>Decision maker</b>	<b>Delegated powers &amp; authority</b>	<b>Thresholds</b>
The Executive	To approve individual virements between schemes in excess of £500k	Over £500k

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	To re-phase approved scheme expenditure between years in excess of £500k for each scheme	Over £500k
Corporate Directors	To approve individual virements between schemes in excess of £100K up to a maximum of £500k in consultation with the relevant Executive Member	Over £100K and Up to and including £500k
	To approve individual virements between schemes up to a maximum of £100k	Up to and including £100k

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### **Venture Fund Bids**

Up to and including £100K	CFO & Leader of Council
Over £100K	Executive

### **Payment in Advance**

Up to and including £5K	Relevant Corporate Director
Over £5K	CFO

### **Disposal of Surplus Assets (Land & Buildings)**

Up to and including £500K	CFO (Para 44)
Over £500K	Executive

### **Acquisition of Assets (Land & Buildings)**

All acquisitions	Executive
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## **Debt Write-Off**

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<b>Decision maker</b>	<b>Delegated powers &amp; authority</b>	<b>Thresholds</b>
The Executive	Amounts exceeding £200,000 may only be written off on the authority of the Executive. The CFO shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery.	Over £200k
Executive Member	Amounts over £100,000 and not exceeding £200,000 on the authority of the Executive Member (Corporate Services) in consultation with the CFO. The CFO shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery	Over £100k and up to and including £200K
CFO	Amounts up to and not exceeding £100,000 on the authority of the CFO). The CFO shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery.	up to and including £100k
Chief Officers	Amounts up to and not exceeding £5000 may be written off by any Chief Officer in consultation with the CFO, who shall maintain a record of all such write-offs showing attempted recovery action taken and the justification for non-recovery.	up to and including £5k

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**Annex B**

**List of Supplementary Guidance**

Asset Disposal Policy  
External Funding and Grants  
Petty Cash and Payment Procedures  
Risk Management Policy and Strategy  
Income Policy  
Contract Procedure Rules  
Corporate Debt Policy  
Budget Manager Guidelines  
Cash handling Procedures  
Anti-money laundering procedures  
Processing electronic card payments security policy  
Anti-fraud and corruption Strategy  
Fraud Prosecution Strategy  
Whistle blowing Policy  
Virement Policy

## Glossary of terms

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### Common terms

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<b>Budget</b>	<i>A plan expressed in financial terms</i>
<b>Cost centre</b>	<i>A budgeting level which usually reflects a whole service area, or main sub-category of a service. It encompasses a number of standard 'subjective' coding areas such as those used for staffing related costs, supplies &amp; services, income etc</i>
<b>Capital</b>	<i>The organisation's total assets less its liabilities</i>
<b>Capital expenditure</b>	<i>Expenditure to acquire fixed assets that will be of use for more than the year in which they are acquired and which adds to the Council's tangible assets rather than simply maintaining existing ones</i>
<b>Revenue</b>	<i>Income or expenditure, arising from or spent on, day to day activities and short lived commodities or consumables</i>
<b>Service plan</b>	<i>A plan setting out the priorities and service ambitions</i>

**Virement**                      *A transfer of resources between or within approved cost centres for both revenue and capital purposes*

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Acronyms

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**CFO**                              *The Chief Finance Officer*

**CIA**                              *The Chief Internal Auditor*

**CL**                                *Corporate Landlord*

**FMS**                            *The principal budgeting and financial information management system used at the Council*

**ITT**                              *Invitation to tender*

**MEAT**                         *Most Economically Advantageous Tender*

**MO**                              *The Monitoring Officer*

**NI(C)**                         *National Insurance (contributions)*

**PAYE**                         *Pay as you earn*

**VFM**                            *Value for Money*

**VAT**                             *Value Added Tax*

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Organisations

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**CIPFA**                         *The Chartered Institute of Public Finance Accountancy*

**SOLACE**                     *Society of Local Authority Chief Executives*

**Public Sector Audit Appointments (PSAA)**                      *Non-governmental body responsible for the appointment of independent auditor for Local Government bodies who have opted into the scheme*

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**The External Auditor**

*Independently appointed person responsible for the external audit of the Council. The council's auditors have various statutory powers and responsibilities for public reporting of the audit*

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**CITY OF YORK COUNCIL**

**CONTRACT PROCEDURE RULES**

DRAFT

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## **Contract Procedure Rules**

These Contract Procedure Rules (CPRs) set out the key responsibilities and actions that Officers and Directors must follow when undertaking procurements.

All procurements and contracting arrangements made by or on behalf of the Council must be carried out in accordance with these CPRs. Rule 25 sets out the only circumstances in which the other Rules are specifically excluded or may be waived. Appendix A contains a series of definitions. Any term which is defined is shown in the CPRs beginning with a capital letter.

### **Maintained Schools**

Where Maintained Schools enter into Contracts, they do so as agents of the Council. Accordingly Maintained Schools must follow these CPRs in addition to the York Scheme for Financing Schools (the **Scheme**), except where specifically stated otherwise. Where any conflict exists between these CPRs and the Scheme, the rules of the Scheme shall prevail.

Specific governance thresholds for Maintained Schools are set out in Appendix B. These are to be used in place of the thresholds contained at Rule 8.

For the purposes of these CPRs, the Authorised Officer for a Maintained School shall be the Head Teacher and the Chief Officer and/or Director shall be the Governing Body.

### **1. Basic Principles and Compliance**

All procurement procedures and every Contract entered into by the Council must:

- 1.1 realise value for money by achieving the optimum combination of whole life costs, and quality of outcome;
- 1.2 be consistent with the highest standards of integrity;
- 1.3 operate in a transparent manner;
- 1.4 ensure fairness in allocating public contracts;

- 1.5 comply with all legal requirements including the Procurement Regulations and any other applicable international treaty principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment;
- 1.6 comply with the Council's Constitution, these CPRs and the Council's Financial Regulations;
- 1.7 comply with the Council's strategic objectives and policies, including the Council's Procurement Strategy and the Council's Employee and Member Codes of Conduct; and
- 1.8 comply with the guidance set out in the Procurement Toolkit which should be read in conjunction with these CPRs;

These CPRs are applicable to the contracting activities of any Strategic Partnership for which the Council is the Accountable Body unless the Council expressly agrees otherwise.

## **2. Officer Responsibilities**

### **2.1. Authorised Officers**

2.1.1 Authorised Officers must comply with these CPRs, the Council's Constitution and all UK and applicable international legal requirements. Authorised Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply with these requirements.

2.1.2 Authorised Officers must:

- (i) ensure, in relation to any proposed procurement, that the proposed procurement expenditure is contained in a Forward Procurement Plan and contained within a approved budget secured prior to commencement of the procurement in accordance with the Financial Regulations;
- (ii) keep the records required by Rule 5 of these CPRs;
- (iii) take all necessary procurement, legal, risk & insurance, financial, data protection and

- professional advice, taking into account the requirements of these CPRs;
- (iv) prior to carrying out a procurement process or letting a Contract on behalf of the Council, check whether:
    - (A) the Council already has an appropriate Contract in place in the Contracts Register; or
    - (B) an appropriate national, regional or other collaborative contract is already in place.
  - (v) ensure that if the Council already has an appropriate Contract in place, that it is used, (unless it can be established that the Contract does not fully meet the Council's specific requirements (to be determined on a case by case basis)), following consultation with Commercial Procurement and Legal Services;
  - (vi) ensure that if an appropriate national, regional or collaborative contract is available, consideration is given to using this, provided the contract offers Best Value. Authorised Officers must consult with Commercial Procurement to discuss;
  - (vii) ensure that when any employee, either of the Council or of a Supplier, may be affected by any transfer arrangement, then any TUPE issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise;
  - (viii) consult with all relevant stakeholders including Members, trade unions and service users where TUPE may apply to identify and assess all options to ensure the Council's required outcomes are achieved;
  - (ix) in consultation with Commercial Procurement establish a written specification and evaluation

criteria (where competition is involved) and procurement methodology which must be formally approved at the relevant governance thresholds outlined in Rule 8 - Powers and Key Decisions (note the relevant decision making body as identified in the governance thresholds may give Authorised Officers written delegated authority to define the specification and evaluation criteria themselves);

- (x) consult and seek advice from Commercial Procurement and Legal Services prior to beginning a procurement where:
  - (A) TUPE applies; and/or
  - (B) the procurement exceeds £100,000 in aggregate for the whole contract period (including any extensions).
- (xi) register all completed procurements with a value of £5,000 or more on the E-Sourcing System.

2.1.3 Failure to comply with any of the provisions of these CPRs, the Council's Constitution, UK law or other applicable international legal requirements will be brought to the attention of the Monitoring Officer, Head of Internal Audit, or relevant Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

## 2.2 Chief Officers

Chief Officers must:

- 2.2.1 ensure their service area complies fully with the requirements of these CPRs;
- 2.2.2 ensure contracts are recorded in the Contracts Register as held and maintained by Commercial Procurement;
- 2.2.3 work with Commercial Procurement to identify the total expenditure relating to a particular category of spend by developing a Category Plan;

- 2.2.4 ensure that their service area provides the requisite information to allow Commercial Procurement to maintain and update the Forward Procurement Plan;
- 2.2.5 ensure all procurement activity is undertaken by suitably skilled and experienced staff;
- 2.2.6 report any breaches of these CPRs to the Monitoring Officer and Chief Finance Officer.

### **3. Relevant Contracts**

3.1 All Relevant Contracts must comply with these CPRs. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works or the provision of supplies or services. These include arrangements for:

- 3.1.1 the supply or disposal of goods;
- 3.1.2 the carrying out of building or engineering works
- 3.1.3 the hire, rental or lease of goods or equipment;
- 3.1.4 the delivery of services, including (but not limited to) those related to:
  - (i) the recruitment of staff;
  - (ii) land and property transactions;
  - (iii) financial and consultancy services.

3.2 The following will not be classed as Relevant Contracts:

- 3.2.1 contracts of employment which make an individual a direct employee of the authority;
- 3.2.2 subject to Rule 3.3, agreements relating solely to the acquisition, disposal, or transfer of land (to which the Financial Regulations apply);
- 3.2.3 subject to Rule 4, the payment of grants to third parties;  
or

3.2.4 those contracts/arrangements which are specifically excluded in accordance with Rule 25.9 below.

3.3 Any acquisition, disposal, or transfer of land which involves elements requiring the supply of works, goods and/or services to or on behalf of the Council will be treated as Relevant Contract and these CPRs apply to all aspects of the procurement of those works, goods and/or services. Officers must ensure that they consult with Legal Services as appropriate to ensure compliance with this Rule 3.3.

#### **4. Grants**

4.1 Where the Council is required to carry out works or deliver goods or services, the Council cannot elect to award a Grant where the sole purpose for doing so would be to avoid conducting a competitive tender process in accordance with these CPRs.

4.2 Taking into account Rule 4.1 above, Directors shall consider when procuring the provision of services, supplies or works whether a Grant would be a preferable means to achieving its objectives rather than following a competitive bid process.

4.3 A Grant may only be awarded in circumstances where:

4.3.1 there is the legal power to make a Grant for the purpose envisaged; and

4.3.2 the making of the Grant does not contravene UK, EU or any other applicable international rules on state aid.

4.4 Where the value of a Grant is less than [£175,000] over 3 years, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.

4.5 Where the value of the Grant exceeds [£175,000] over 3 years but is less than the relevant Procurement Threshold a competitive grants process must be completed. The opportunity must be advertised on the E-Sourcing System.

- 4.6 Where the value of a Grant exceeds the relevant Procurement Threshold, a competitive process must be completed and the opportunity must be advertised on the E-Sourcing System.
- 4.7 The Authorised Officer shall take all such steps as are appropriate to monitor and review the performance of the Grant agreement, having regard to its value, nature, duration and subject matter. As part of the Grant monitoring and review process the Authorised Officer shall maintain adequate records of performance and details of review meetings with the Grant recipient.

## **5. Records**

- 5.1 The Procurement Regulations require Contracting Authorities to maintain the following comprehensive records of procurement activities:
  - 5.1.1 contract details including value;
  - 5.1.2 selection decision;
  - 5.1.3 justification for use of the selected procedure;
  - 5.1.4 names of bidding organisations, both successful and unsuccessful;
  - 5.1.5 reasons for selection and rejection;
  - 5.1.6 reasons for abandoning a procedure;
  - 5.1.7 details of sub-contractors;
  - 5.1.8 conflicts of interest identified and action taken.
- 5.2 The outcome of any competitive procurement process must be recorded in electronic format on the E-Sourcing System. Information from the E-Sourcing System will also be used for the tracking of procurement savings, sustainability benefits, and other data.
- 5.3 Commercial Procurement maintains the Contract Register which records key details of all Contracts (including contract reference numbers) with an aggregate value of £5,000 or more.

- 5.4 Where a Contract has not been awarded using the E-Sourcing System, Officers must ensure full details of that Contract are passed to the Chief Procurement Officer for inclusion in the Contract Register where the aggregate value of the Contract is £5,000 or more. Decisions as to why the E-Sourcing System was not used must be recorded in writing and sent to Commercial Procurement.
- 5.5 Full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a Contract must be kept by Commercial Procurement for the duration of the Contract and a minimum of six years after the Contract has expired or twelve years after the Contract has expired where it is executed under common seal as a deed.
- 5.6 It is the responsibility of Chief Officers to ensure that all Contracts are properly entered into, administered and controlled to safeguard the Council's interests, secure Best Value and minimise the risk of theft, fraud and corruption.
- 5.7 Officers must comply with any Council requirements to record decisions on the Officer Decision Log.

## **6. Risk Assessment**

- 6.1 All procurements which require an Invitation to Tender and/or Requests for Quotation (see Rule 11 below), must be supported by a risk assessment (where appropriate). This risk assessment must be carried out at the start of the procurement process and, where appropriate, will include a Financial Appraisal in accordance with Rule 17.2.
- 6.2 The risk assessment process will identify where further specialist advice should be sought.
- 6.3 The approved risk log and matrix are available from Commercial Procurement.

## **7. Advertising**

- 7.1 Officers must liaise with Commercial Procurement to ensure that the minimum advertising requirements are met in line with the

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Procurement Regulations when conducting any procurement process (including Framework Agreements or Dynamic Purchasing Systems). Officers should refer to the further guidance in the Procurement Toolkit.

7.2 Where Contracts with a value of £25,000 and above are advertised **anywhere**, they must also be advertised on Contracts Finder. This applies to Contracts that otherwise fall outside the scope of the Procurement Regulations.

7.3 Where Contracts have a value above the Procurement Threshold they must also be advertised on Find a Tender.

## **8. Powers and Key Decisions**

8.1 This Rule does not apply to Maintained Schools, who must consult the governance thresholds contained at Appendix B.

8.2 In consultation with the Monitoring Officer, Directors must ensure that the Council has the legal power to enter into any Contract.

8.3 Directors must ensure that they have delegated powers to enter into any Contract or to grant another Officer authority to do so.

8.4 No Contract will be entered into unless an adequate budget is in place.

8.5 Rules 8.5 to 8.10 outline the governance thresholds required for all aspects of governing a procurement process.

8.6 Where a decision has already been made by Executive or an Executive Member and the budget is in place to permit a course of action then further approval is not required to award Contracts necessary to implement that decision.

8.7 Where schemes are included in the Capital Programme this has already been approved and further Executive approval is therefore not required. However, a copy of the relevant report must be sent to Commercial Procurement for audit purposes.

8.8 It is recommended that any approval sought includes a specific delegation to the Authorised Officer to award the Contract at the conclusion of the procurement. In other circumstances the procedure set out in Rules 8.9 to 8.11 below must be followed.

- 8.9 Where the aggregate contract value (including any extension) is £250,000 or less Directors may agree or authorise another Officer to enter a Contract under their delegated powers.
- 8.10 Where the aggregate contract value (including any extension) is between £250,000 and £500,000 then the decision to enter the contract requires the approval of an Executive Member or the Executive unless the procurement is treated as Routine as defined in Rules 8.12 and 8.13 below.
- 8.11 Where the aggregate contract value (including any extension) exceeds £500,000 the decision will be regarded as a Key Decision unless the Chief Finance Officer acting in consultation with the Monitoring Officer has approved the procurement as Routine in accordance with Rules 8.12 to 8.13 below.
- 8.12 A Routine procurement is any arrangement that represents a low commercial and legal risk to the Council and involves the procurement of goods, services or works with a clearly defined specification that clearly relate to the day to day operation of the Council.
- 8.13 Routine procurements will be limited to items such as utilities, insurance or stationery, without which the Council would be unable to operate. A procurement which relates to the carrying out of a statutory function of the Council shall not be considered Routine.
- 8.14 Where Officers consider a procurement process may be Routine, they must liaise with Commercial Procurement who will advise on the relevant paperwork to be submitted to the Chief Finance Officer. Authorisation to treat a procurement as Routine must be sought before the procurement process commences.
- 8.15 A Director may enter into a Contract where the procurement has been treated as Routine.
- 8.16 A register of Routine procurements will be maintained and reported to the Executive Member for Finance and Performance.
- 8.17 In relation to all Key Decisions, Authorised Officers must ensure that all authorisations are in place before the procurement process begins.

8.18 Notice of every Key Decision must be published on the Council's Forward Plan.

8.19 The Executive scheme of delegation requires that all Key Decisions (are reserved to the Executive unless specifically delegated to an Executive Member or an Officer or where the Leader and Chief Executive are acting in case of urgency.

8.20 This Rule 8 applies to all Relevant Contracts and all call-offs from Framework Agreements or Dynamic Purchasing Systems.

**9. Pre-Tender Market Testing, Consultation and Deciding on the appropriate Procurement Route**

9.1 The Council may consult potential Suppliers, prior to the issue of the Invitation to Tender or Request for Quotation, in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any other potential Supplier.

9.2 When engaging with potential Suppliers, the Council must not seek or accept technical advice from them on the preparation of an Invitation to Tender or Request for Quotation where this may prejudice the equal treatment of all potential Suppliers or otherwise distort competition.

9.3 In the case of the re-procurement of an existing Contract sufficient care must be taken to ensure that the process is fair and is seen to be fair. The objective is to ensure a level playing field for all potential Suppliers, whilst acknowledging that any incumbent Supplier has an inherent advantage due to having previously worked for the Council. Advice must be sought from Commercial Procurement to ensure the specification is clear and unambiguous.

9.4 In undertaking any market testing activities or consultation with potential Suppliers, the Authorised Officer responsible should refer to any guidance contained in the Procurement Toolkit.

9.5 Guidance on choosing the appropriate procurement route can be found in the Procurement Toolkit.

## **10. Framework Agreements**

- 10.1 A list of available, appropriate Framework Agreements and Dynamic Purchasing Systems (including those established by other public sector bodies to which the Council has access) for certain requirements can be obtained from Commercial Procurement along with guidance on how these Framework Agreements and Dynamic Purchasing Systems are to be used.
- 10.2 Call-off contracts or orders made under Framework Agreements or Dynamic Purchasing Systems must be operated in accordance with these CPRs and/or the requirements of the Framework Agreement or Dynamic Purchasing System themselves. **Further advice must be sought from Commercial Procurement or Legal Services.**
- 10.3 Where a Framework Agreement provides an option for a direct call-off to one Supplier, this can only be done if all the following conditions are met:
- 10.3.1 The Framework Agreement's process for doing so is followed;
  - 10.3.2 The aggregate Contract value (including any extension) is less than £500,000;
  - 10.3.3 Where the aggregate Contract value (including any extension) exceeds £50,000, the relevant Chief Officer has approved the direct call-off method after advice from the Authorised Officer and Commercial Procurement; and
  - 10.3.4 The Authorised Officer believes that it represents Best Value for the direct call-off method to be used.

### **Establishment of Framework Agreements and Dynamic Purchasing Systems**

- 10.4 Authorised Officers (in conjunction with Commercial Procurement and Legal Services) may establish a Framework Agreement or Dynamic Purchasing System. The Chief Procurement Officer and relevant Assistant Director must agree to the establishment of any Framework Agreement or Dynamic

Purchasing System prior to any selection or procurement processes being undertaken. The Framework Agreement or Dynamic Purchasing System is otherwise treated as any other procurement and will follow the same levels and process as required by the value and object of the Framework Agreement or Dynamic Purchasing System. Note, there are additional requirements under the Procurement Regulations for the establishment and further use of a Framework Agreement or Dynamic Purchasing System, and advice must be sought from Commercial Procurement and Legal Services to ensure the Procurement Regulations are adhered to.

10.5 A Framework Agreement or Dynamic Purchasing System can be established jointly with other Contracting Authorities.

10.6 Any future call off from the established Framework Agreement or Dynamic Purchasing System requires authorisation in accordance with the governance thresholds set out in Rules 8.9 to 8.11.

10.7 Where a Framework Agreement has been established by the Council, any extension or termination thereto shall be governed by Rules 20 and 21 below in addition to the Procurement Regulations.

## **11. Procurement Competition Requirements**

### **11.1 Competition Requirements**

11.1.1 The Authorised Officer must establish the total value of any Contract, including whole life costs, annual cost and incorporating any potential extension periods which may be awarded. The value of the Contract must be considered as the sum of all payments made to the Supplier during the whole life of the Contract, including extensions. The Authorised Officer must have particular regard to the rules relating to aggregation contained within the Procurement Regulations (further details on which can be found in the Procurement Toolkit).

11.1.2 Authorised Officers must ensure that values are not split in an attempt to avoid the applicability of these CPRs or the Procurement Regulations.

11.1.3 Based on the value of the Contract, quotations or tenders must then be invited in line with the following financial thresholds:

- (i) Up to and including £5,000 – Best Value
- (ii) Over £5,000 and up to and including £100,000 – at least **three** written quotations (this threshold may be lower where Officers deem there is additional risk associated with the project; in such cases advice must be sought from Commercial Procurement.)
- (iii) Over £100,000 – Invitation to Tender. At least four written tenders with completed Form of Tender and Declaration of Non-Collusive Tendering.

11.1.4 Where the estimated Contract value meets the appropriate Procurement Threshold (details of which can be obtained from Commercial Procurement), the Authorised Officer must consult Commercial Procurement at the outset to determine the correct procedure for conducting the procurement exercise. In these instances, the Procurement Regulations will apply in addition to these CPRs.

11.1.5 These rules are subject to the overriding requirement that a Contract of any value which is likely to have ‘cross border’ interest (ie to be of interest to contractors outside the UK) must be advertised.

## 11.2 Contract value up to and including £5,000

11.2.1 All purchasing up to and including £5,000 must be procured using an Internal Service Provider or through an existing Contract arrangement or via a suitable approved Framework Agreement or Dynamic Purchasing System where they exist.

11.2.2 It is the responsibility of the relevant Authorised Officer to check whether a suitable Internal Service Provider, existing Contract, Framework Agreement or Dynamic Purchasing System exists or not. Where no appropriate Internal Service Provider, existing Contract, Framework

Agreement or Dynamic Purchasing System exists, and the estimated value of a Contract is up to and including £5,000 the invitation of quotations is not mandatory but should be invited where appropriate.

11.2.3 If the Authorised Officer believes that it represents Best Value for the Council to make a direct appointment without the need for competition, they may do so providing a written record of the decision (including reasons) is kept by them.

11.3 Contract value over £5,000 and up to and including £100,000

11.3.1 In relation to all Contracts with a value between £5,000 up to and including £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract, Framework Agreement or Dynamic Purchasing System which can be used.

11.3.2 Where no appropriate Internal Service Provider, existing Contract or approved Framework Agreement or Dynamic Purchasing System exists, if the estimated value of a Contract exceeds £5,000 but does not exceed £100,000 a minimum of three written quotations must be invited from suitable potential Suppliers. Efforts should be made to ensure that a diverse group of Suppliers are asked to quote using the following principles:

- (a) Where possible, ensuring Small and Medium Enterprises (SMEs) are invited to quote;
- (b) Where possible, ensuring local Suppliers are invited to quote;
- (c) Where possible, not just inviting the same group of Suppliers who have previously quoted for this or previous similar work;
- (d) Where possible, looking for novel or new Suppliers.

11.3.3 The written quotations must be obtained and documented in accordance with proper record keeping set out in Rule 5 and in accordance with the requirements of Rule 13.

11.3.4 All potential Suppliers invited to submit quotations will be provided in all instances with identical information and instructions.

11.3.5 The evaluation of the quotations will be carried out by Authorised Officers.

#### 11.4 Contract value over £100,000

11.4.1 In relation to all Contracts with a value in excess of £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract or Framework Agreement or Dynamic Purchasing System which can be used.

11.4.2 Where no appropriate Internal Service Provider, existing Contract, approved Framework Agreement or Dynamic Purchasing System exists, competition is required for Contract with a value over £100,000.

11.4.3 Where there are sufficient numbers of potential Suppliers, at least four written tenders must be invited. Efforts should be made to ensure that a diverse group of potential Suppliers are asked to tender using the following principles:

- (a) Where possible, ensuring Small and Medium Enterprises (SMEs) are invited to quote;
- (b) Where possible, ensuring local Suppliers are invited to quote;
- (c) Where possible, not just inviting the same group of Suppliers who have previously quoted for this or previous similar work;
- (d) Where possible, looking for novel or new Suppliers.

11.4.4 The tendering process must be conducted in accordance with the Council's detailed procedure rules set out in the Procurement Toolkit. Authorised Officers must consult with Commercial Procurement to establish the most appropriate tendering process/procurement route which will be determined on a case by case basis (depending on a number of factors including but not limited to the scope, value and technical requirements of the procurement).

#### 11.5 Contract value over the Procurement Threshold

11.5.1 Where the estimated Contract value reaches the relevant Procurement Threshold, Officers are required to procure the Contract in accordance with the Procurement Regulations and these CPRs. In all such circumstances appropriate advice must be sought from Commercial Procurement.

11.5.2 The current Procurement Thresholds are available from Commercial Procurement.

#### 11.6 Assets for Disposal

Assets for disposal must be dealt with in accordance with the Financial Regulations.

#### 11.7 Concession Contracts

11.7.1 Concession Contracts may be established by Authorised Officers in conjunction with Commercial Procurement. Generally, Concession Contracts will result in an income to the Council. The thresholds set out in Rule 8 will also apply to Concession Contracts.

11.7.2 For the purpose of Rule 8 the value of a Concession Contract is defined in the Concession Contracts Regulations. That is the value shall be the total turnover of the concessionaire generated over the duration of the Contract, net of Value Added Tax, as estimated by the Council, in consideration for the works and/or services which are the object of the Concession Contract and for the supplies incidental to such works and services.

11.7.3 Contracts below the relevant thresholds defined in the Concession Contracts Regulations may be let using a three quotation process as outlined in Rule 11.3. Contracts above the relevant thresholds must be let in accordance with the process outlined in the Concession Contracts Regulations. Commercial Procurement will advise on the appropriate route and process to follow when letting Concession Contracts.

## **12. Evaluation Criteria and Standards**

### **12.1 Evaluation Criteria**

12.1.1 In any procurement exercise (regardless of overall Contract value) the successful tender must be the one which offers either:

- (i) the most economically advantageous tender based on “price or cost” using a cost effectiveness approach, such as, life cycle costing; or
- (ii) the most economically advantageous tender balanced between quality and price.

In the latter case, the Council will use criteria linked to the subject matter of the Contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, environmental & sustainability characteristics, social value (including but not limited to compliance with wider Council obligations such as membership of the Living Wage Foundation and sourcing fair trade where appropriate), running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion. The price element of the evaluation will always be 40% or greater unless a waiver has been given for alternative weightings (in accordance with Rule 26.3) or, if using a Framework Agreement or Dynamic Purchasing System, an alternative weighting system is provided for under that Framework or Dynamic Purchasing System.

12.1.2 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate tenders provided that such criteria relates to the subject matter of the Contract and is objectively quantifiable and non-discriminatory. The criteria can include, for example, sustainability considerations, support for the local economy or the use of sub-contractors. The potential Suppliers' approaches to continuous improvement and setting targets for service improvement or future savings could also be included.

12.1.3 The procurement documentation must clearly explain the basis of the evaluation decision to potential Suppliers, making it clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

12.1.4 There is no scope to change the evaluation criteria once quotations or tenders have been received. If quotations or tenders received mean the original evaluation criteria are no longer able to achieve the most economically advantageous tender then the procurement process must be abandoned and treated as market engagement before a new procurement exercise is established with new evaluation criteria. In such a case, no award will be made from the original procurement exercise and Commercial Procurement and Legal Services must be consulted.

## 12.2 Standards

Relevant British, EU and International standards which apply to the subject matter of the Contract and which are necessary to properly describe the required quality must be included within the procurement documentation, the specification, and the Contract. Officers should refer to further guidance set out in the Procurement Toolkit.

## **13. Invitation to Tender / Request for Quotation**

13.1 Invitations to Tender/Requests for Quotation must be issued in accordance with the requirements of these CPRs.

13.2 All procurement documentation must be issued electronically. All procurements with a value over £25,000 must be conducted through the E-Sourcing System.

13.3 Where the E-Sourcing System is used, all communications with Suppliers must be undertaken exclusively through the E-Sourcing System. This includes any clarification questions asked by the potential Suppliers and responses provided by the Council.

13.4 In exceptional cases, where specific circumstances mean that a procurement process cannot be carried out electronically or, for example, where there is a failure of the E-Sourcing System, permission to conduct a procurement process by alternative means must be obtained from the Chief Procurement Officer.

#### **14. Submission, Receipt and Opening of Tenders / Quotations**

##### 14.1 Opening of Tenders and Quotations

14.1.1 Tenders and Quotations, except those which have been approved as exempt from electronic tendering in accordance with Rule 13.4, must be submitted electronically via the E-Sourcing System. Tenders submitted by any other means must not be accepted.

14.1.2 Detailed procedure notes on tendering requirements and protocols are set out in the Procurement Toolkit.

##### 14.2 Hard Copy Arrangements

14.2.1 In the event that approval to conduct a tender process outside the E-Sourcing System has been obtained in accordance with Rule 13.4 and “hard copy” tenders are to be accepted, these must be submitted, sealed, in the envelope provided with the procurement documents and addressed to the Chief Procurement Officer without any mark revealing the bidding organisation’s identity.

14.2.2 All hard copy tenders will be held by the Chief Procurement Officer until the tender opening date/time has been reached.

14.2.3 All hard copy tenders for the same Contract will be opened at the same time by a representative of the Chief Officer who invited the tenders and a representative from Commercial Procurement. A register of tenders received will be kept by Commercial Procurement and will be initialled on each occasion by the Authorised Officers who are present at the opening of the tenders.

14.2.4 In the event that approval to conduct a quotation process outside the E-Sourcing System has been obtained in accordance with Rule 13.4 and hard copy quotations are to be accepted these must be submitted in a plain envelope marked "Quotation for ..." followed by a description of the goods, works or services being procured.

14.2.5 All hard copy quotations must be opened together once the official return date/time has been passed.

## **15. E-auctions**

15.1 Where a tender is to be carried out by way of a collaborative e-auction process the following procedures will apply:

15.1.1 approval for this approach must be sought in advance of the auction from the relevant Chief Officer and Chief Procurement Officer;

15.1.2 the auction must be provided through a recognised managed service provider approved by the Chief Procurement Officer;

15.1.3 the process for selecting potential Suppliers must be agreed in advance with the Chief Procurement Officer;

15.1.4 the tender evaluation process must be agreed in advance with the Chief Procurement Officer;

15.1.5 the time limit for the auction must be set in advance, clearly notified and be appropriate to the nature of the auction;

15.1.6 a minimum of two Authorised Officers must be in attendance at the managed service provider's viewing

room to ensure the process is conducted fairly and in accordance with the Procurement Regulations. One of the Authorised Officers must be an independent observer and have had no involvement with the exercise. They should not leave the room during the auction.

15.1.7 prior to start of the auction, Officers attending must satisfy themselves that the correct quality weightings (if applicable) have been loaded into the software and that the software is working correctly;

15.1.8 the final scoring of all the bidders needs to be documented and counter signed by each Officer immediately after the close of the auction;

15.1.9 the e-auction summary report which is normally produced by the e-auction provider (within a week of the auction) must be cross referenced to the Officers own records and both must be kept on file;

15.1.10 a signed copy of both these records must be passed to Chief Procurement Officer and copied to the Monitoring Officer;

15.1.11 if the lowest price bidder is not successful approval for the award of a Contract must be sought in line with these CPRs.

15.2 The application of these e-auction procedures exempts the tender from the opening rules set out at Rule 14. It does not exclude compliance with any other regulations as set out elsewhere in these CPRs.

15.3 The Council will arrange for award notices to be sent to the successful Supplier (following a 10 day Standstill Period) and brief the losing Providers. A copy of the award notice must be kept on file.

15.4 The Council must ensure that a discrete Contract complying with the Council's standard terms and conditions is put in place with each successful Supplier.

## **16. Clarification Procedures**

16.1 The Council can ask bidding organisations for clarification of any details submitted as part of their bid. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission.

16.2 When requesting clarification, the Authorised Officer must follow any guidance contained in the Procurement Toolkit. It must not be used to negotiate or re-negotiate Contract terms. Authorised Officers are required to take all necessary procurement and/or other relevant professional advice if they are in any way unsure of what may or may not constitute a 'clarification' under the Procurement Regulations.

## **17. Evaluation, Financial Appraisal, Award of Contract and Debriefing of Organisations**

### **17.1 Evaluation**

The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the relevant procurement documents (see Rule 12 above) provided to bidding organisations, and in line with any guidance detailed in the Procurement Toolkit.

### **17.2 Financial Appraisals**

Financial Appraisals must be completed in respect of all third parties submitting bids for Contracts in excess of £100,000. It is the responsibility of the Authorised Officer in consultation with the relevant Finance Manager to take all steps reasonably necessary (having regard to the subject matter, value and duration of the Contract and any other relevant factors) to complete a risk assessment of the potential Supplier's financial stability and to ensure this is done to a standard required by the Finance Manager.

### **17.3 Award of Contract**

17.3.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.

17.3.2 Where procurement is subject to the Procurement Regulations (see Rule 11.5 above), a Standstill Period must be included in the procurement timetable and observed before the Contract can be awarded. Authorised Officers should refer to the guidance in the Procurement Toolkit and must consult with Commercial Procurement and, where appropriate, Legal Services in relation to the Standstill Period requirements and associated documentation to be issued to bidders. Where a Standstill Period applies, successful and unsuccessful bidders will be sent a Contract award letter containing all the debrief information required under the Procurement Regulations. A copy of the Contract award letter must be kept on file. Following successful completion of the Standstill Period the successful bidder(s) will be issued with their Contract to sign.

17.3.3 Provided the winning bid:

- (i) is the most economically advantageous;
- (ii) is within the financial budget made for it;
- (iii) complies with the Council's proposed terms and conditions; and
- (iv) meets the Contract specification,

it may be accepted by the relevant Authorised Officer.

17.3.4 Where a tender is not:

- (i) the most economically advantageous (if payment is to be made by the Council); or
- (ii) the highest tender (if payment is to be received by the Council),

the award of the Contract must be passed to the Chief Finance Officer for decision clearly setting out the reasons why this is required.

17.3.5 Once approved, all proposed Contract awards over £100,000 must be recorded in the Officer decision log on the mod.gov system.

17.3.6 The approval of the relevant Executive Member and Chief Finance Officer must be given if a tender received as part of a capital scheme results in the scheme or project exceeding the approved financial budget by 10% or £50,000 (whichever is the lower) and this cannot be accommodated within the original financial budget.

#### 17.4 Debriefing

The Authorised Officer will, as part of good practice, offer feedback to all tenderers who submitted a bid about the characteristics and relative advantages of the successful bid. This will usually include:

17.4.1 how the award criteria were applied;

17.4.2 the prices or ranges of prices submitted, but not in either case correlated to the tenderers; and

17.4.3 the names of their competitors and whether there were three or more competitors taking part in the tendering exercise.

**Authorised Officers must refer to the guidance set out in the Procurement Toolkit and consult with Commercial Procurement prior to issuing any feedback to bidders.**

#### **18. Post Tender Negotiation**

18.1 Post tender negotiations must not be undertaken where the value of the Contract exceeds the relevant Procurement Threshold.

18.2 Post tender negotiations with selected Suppliers, where the value of the Contract is below the relevant Procurement Threshold, may be carried out where:

18.2.1 permitted by law; and

18.2.2 the Director in consultation with Commercial Procurement and Legal Services considers that added value may be obtained; and

18.2.3 the post tender negotiations are conducted by a team of suitably experienced officers approved by the Director and who have been trained in post tender negotiations. Commercial Procurement and Legal Services must be invited to attend any negotiation; and

18.2.4 a comprehensive, written record of the negotiations is kept by the Council; and

18.2.5 a clear record of the added value to be obtained as a result of the post tender negotiations is incorporated into the Contract with the successful Supplier.

## **19. Contract Documents**

### **19.1 Form of Procurement Documents**

The Council's standard procurement documents will be used wherever possible and appropriate. Where there is any deviation from these, the documents to be used must be reviewed by Legal Services before being issued. These documents are available from Commercial Procurement.

### **19.2 Form of Contract**

19.2.1 Contractual commitments can only be made by Officers who are formally authorised to do so in the relevant directorate scheme of delegated authority. An up to date record of delegated authorities across the Council is kept by Commercial Procurement.

19.2.2 All Contracts made on behalf of the Council must be evidenced in writing in an appropriate format approved by Legal Services.

19.2.3 Every Contract must be made by either:

- (i) the issue of a purchase order and accompanying standard terms and conditions for the purchase or supply of goods, services and/or works with an

aggregate Contract value (including any extensions) of not more than £100,000.

- (ii) the preparation of formal written contracts for the purchase or supply of goods, services and/or works with an aggregate Contract value (including any extensions) of £100,000 and above or lower where the nature of the Contract requires a formal written contract.

### 19.3 Deeds

#### All Contracts:

- 19.3.1 in excess of £500,000; or
- 19.3.2 where the subject matter warrants an extended period of twelve years' protection; or
- 19.3.3 for nil consideration; or
- 19.3.4 which novate, assign, vary or extend an existing Contract; or
- 19.3.5 where there is a legal requirement for the Contract to be executed as a deed;

must be executed as a deed under common seal by Legal Services in accordance with Article 24: Finance, Contracts and Legal Matters, except where indicated in Appendix B.

### 19.4 Contract Signature/Sealing

#### 19.4.1 Contracts must:

- (i) where the Contract is in the form of a deed, be made under the Council's seal and attested as required by the Constitution; or
- (ii) where the Contract is in the form of an agreement it will be signed by a Chief Officer authorised as required by the Constitution.

19.4.2 When submitted to Legal Services for signing or sealing, all Contracts must be accompanied by an Authorisation to Sign or Seal Form setting out the decision-making process and authority. This form can be obtained from Legal Services.

#### 19.5 Legal Services Review of Tenders and Contracts

19.5.1 To ensure the integrity of the procurement process:

- (i) all proposed Invitations to Tender, where they are not in compliance with the Council's standard documentation, must be reviewed by Legal Services;
- (ii) any proposed Invitations to Tender which are subject to the Procurement Regulations, or which are deemed to be of high risk, must be reviewed by Legal Services;
- (iii) all proposed Contracts, where they are not in compliance with the Council's standard documentation, must be reviewed by Legal Services
- (iv) any proposed Contracts which are subject to the Procurement Regulations, or which are deemed to be of high risk, must be reviewed by Legal Services.

19.5.2 Officers must consult with Legal Services as appropriate to ensure compliance with this Rule 19.5.

#### 19.6 Bonds and Liquidated & Ascertained Damages

19.6.1 Chief Officers (in consultation with Commercial Procurement and Legal Services) will consider whether to include provision for payment of liquidated & ascertained damages by a Supplier for delay or breach of contract where appropriate, taking into account the subject matter and risk associated with the Contract. Such consideration will be recorded in writing.

19.6.2 When considered appropriate by a Chief Officer the Supplier will be required to provide a performance bond to secure the performance of the Contract. Such performance bonds should provide for a sum of not less

than 10% of the total value of the Contract or such other sum as the Authorised Officer (in consultation with a Finance Manager) considers appropriate.

## **20. Contract Extension and Variation**

### **20.1 Extensions**

- 20.1.1 Commercial Procurement and Legal Services must be consulted in relation to any proposed Contract extension.
- 20.1.2 Contract extensions shall only be permitted if they are put in place before the Contract expiry date and where the proposed extension is in accordance with the contract terms.
- 20.1.3 Where the terms of a Contract do not expressly permit an extension, Legal Services shall advise whether it is possible to otherwise agree an extension by way of variation to the Contract. Any variations shall be carried out in accordance with Rule 20.2 below.
- 20.1.4 Approval for the extension must be given by an Officer with the appropriate level of delegated authority. This process must be recorded in writing.
- 20.1.5 Prior to seeking approval from the relevant Chief Officer to take up a contract extension the Authorised Officer must establish whether the extension will deliver Best Value.
- 20.1.6 Before taking an extension, the Authorised Officer must check the original spending authorisation decision (obtained in accordance with Rule 8) to confirm that authorisation to extend the Contract is in place. Where the original decision does not contain authorisation for an extension of the Contract, further authorisation may be sought under Rule 8. The value of the decision used to determine the authorisation requirement shall be the original Contract value plus the value of the proposed extension.

20.1.7 All extensions to any Council contracts must be in writing and reported to the Chief Procurement Officer in order that the E-Sourcing System can be updated.

## 20.2 Variations

20.2.1 Variations will be dealt with in accordance with these CPRs and the Procurement Regulations. Further guidance must be sought from Legal Services.

20.2.2 All Contract variations must be carried out:

- (i) within the scope of the original Contract. Contract variations that materially affect or change the scope of the original Contract are not permitted; and
- (ii) following consideration as part of the Category planning process.

20.2.3 All Contract variations must be in writing (in the form specified by the Contract where applicable) and signed or sealed by both the Council and the Supplier. Approval for the Contract variation must be given by the by the Monitoring Officer and Chief Procurement Officer or their delegated officers.

20.2.4 Where appropriate (taking into account any change in contract value, contract term, range of services provided etc), Contract variations must be reported to the Chief Procurement Officer in order that the E-Sourcing System can be updated.

20.2.5 A new procurement will be required in case of material change where one or more of the following conditions are met:

- (i) the variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of Suppliers other than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;

- (ii) the variation increases the value of the Contract or the Framework Agreement substantially in favour of the Supplier in a manner which was not provided for in the original Contract or Framework Agreement;
- (iii) the variation extends the scope of the Contract or Framework Agreement considerably.

Further guidance must be sought from Legal Services where the Chief Officer considers there is any possibility that the proposed variation might fall under this Rule 20.2.5.

## **21. Termination of Contract**

**21.1 Prior to terminating any Contract, Officers must consult Legal Services.** It will only be possible for Contracts to be terminated early, where provided for within the Contract and if this action is authorised by the relevant Chief Officer through a Delegated Decision. A copy of the report and decision for termination of any Contract exceeding £100,000 in aggregate for the whole of the contract period (including any extensions) must be sent to the Chief Procurement Officer for monitoring purposes. All termination letters under this Rule must be drafted and issued via Legal Services in conjunction with the Authorised Officer.

## **22. Prevention of Corruption**

22.1 Rules and regulations pertaining to the prevention of corruption are outlined in the Financial Regulations and must be adhered to at all times.

## **23. Declaration of Interests**

23.1 To ensure that persons involved in the procurement process are aware of and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest and Confidentiality Undertaking Declaration form is required to be completed for all procurement processes which identifies actual and potential conflicts of interest. This must be completed by all Officers involved in the procurement process prior to commencement of the procurement process. If an actual or

potential conflict of interest arises during the procurement process a new Conflict of Interest and Confidentiality Undertaking Declaration form shall be immediately completed and submitted by the Officer concerned and the Monitoring Officer and the S151 Officer shall be notified in accordance with Rule 23.2.

23.2 If it comes to the attention of a Member, Authorised Officer or other Officer that a Contract in which they have an interest (determined in accordance with the Members' and/or Officers' Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, they shall immediately give written notice to the Monitoring Officer and the S151 Officer.

## **24. Contract Management / Monitoring**

24.1 All Contracts must have an appointed contract manager for the entirety of the Contract. The responsible Chief Officer must ensure a contract manager is designated prior to contract award.

24.2 Contract management, monitoring, evaluation and review must be conducted in line with guidance detailed in the Procurement Toolkit.

## **25. External Body Grant Funding**

25.1 Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, the Authorised Officer must consult with Legal Services to ensure that any rules or conditions imposed by the funding body are adhered to in addition to the requirements of these CPRs.

25.2 Where there is any conflict between these CPRs and the rules or conditions imposed by the funding body, the stricter requirement should be followed.

## **26. Waiver and Exemptions**

### **Waivers**

26.1 Except where the Procurement Regulations apply, the Executive has the power to waive any requirements within these CPRs for specific projects upon request.

26.2 Additionally, except where the Procurement Regulations apply, these CPRs may be waived where the circumstances are certified by the Chief Finance Officer or their deputy advised as appropriate by the Monitoring Officer and Chief Procurement Officer as meeting any of the following criteria:

26.2.1 for works, supplies or services which are of such special character that it is not possible to obtain competitive prices;

26.2.2 for supplies purchased or sold in a public market or auction;

26.2.3 for the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills;

26.2.4 with an organisation which has won a Contract for an earlier phase of work via a competitive process and where the work forms part of a serial programme and has previously been identified as such;

26.2.5 with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the Contract to cover this additional requirement, without exposing the Council to unacceptable risk;

26.2.6 for works, supplies or services which are only available from one organisation (due to their specialised nature);

26.2.7 involving such urgency that it is not possible to comply with the CPRs;

26.2.8 for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement;

26.2.9 in relation to time limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;

- 26.2.10 in relation to external grant funding that has been awarded on the condition that a specific Supplier be appointed by the Council;
- 26.2.11 where relevant UK or other applicable international legislation not otherwise referred to in these CPRs prevents the usual procurement process from being followed;
- 26.2.12 In relation to the price quality ratio (Rule 12.1.1) where, after consultation with Commercial Procurement, the client team wishes to use a price percentage lower than 40%; or
- 26.2.13 where there is a significant risk to the statutory functions of the Council, or to its governance, audit or finances, a significant safeguarding risk, or a significant risk of failure in the case of an immediate statutory inspection, if the Supplier is not engaged (such confirmation in all cases to be confirmed in writing by the relevant Chief Officer.
- 26.3 If a waiver of these CPRs is required, the Authorised Officer will complete and submit a waiver form, using a template document obtained from Commercial Procurement. The waiver form must set out the detail of the specific Rule(s) being waived and confirmation of the Rule within 26.2 under which the waiver is being sought along with the financial, legal, risk and equality implications of the waiver sought.
- 26.4 The process to be followed in respect of waivers is set out in the Procurement Toolkit.
- 26.5 In relation to Maintained Schools, the Governing Body shall have the power to waive any requirement of these CPRs where the Head Teacher has submitted a waiver form in accordance with Rule 26.3 confirming that any of the criteria listed at Rule 26.2 apply.
- 26.6 If the waiver is approved the Authorised Officer can then proceed with the waiver to these CPRs. Officers are only authorised to incur expenditure up to the amount included in the final agreed waiver. Should any additional expenditure or further service be required a new waiver must be requested.

- 26.7 With the exception of those relating to Maintained Schools, every waiver form will be recorded on a master register maintained by Commercial Procurement. Each Maintained School must maintain their own master register of waiver forms.
- 26.8 Where a waiver is being requested, Authorised Officers are required to seek waivers at the outset of any procurement process or, where relevant, at such time during a procurement process that it becomes apparent that it is not possible to comply in full with the competition procedures outlined in Rules 11.3 and 11.4. No Contract resulting from a waiver being requested will be entered into without a waiver authorisation being in place.
- 26.9 Authorised Officers are not required to seek waivers in the case of an Emergency or as a result of an Emergency where there is danger to the safety of persons or serious risk of loss or damage to the Council's assets or interests, or the interests of another party. In such circumstances, the Authorised Officer may enter into such Contracts as necessary by means that are reasonable under the circumstances.

#### Exemptions

- 26.10 These CPRs do not apply to Contracts:
- 26.10.1 for the execution of mandatory works by statutory undertakers;
  - 26.10.2 for legal services in respect of specific matters which are in contemplation of:
    - (a) Arbitration conciliation;
    - (b) Judicial proceedings before the courts;
  - 26.10.3 for the provision of legal advice given in preparation for any of the proceedings referred to in Rule 26.10.2(a) or (b) above, or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings.
  - 26.10.4 which have been procured on the Council's behalf:

- (i) through collaboration with other local authorities or other public bodies, where a competitive process which complies with the CPRs of the leading organisation has been carried out; or
- (ii) by a national or regional contracting authority where the process followed is in line with the Procurement Regulations.

26.10.5 to cover urgent special educational needs, urgent social care needs or urgent operational needs, if in the opinion of the relevant Director (in consultation with the Chief Procurement Officer) the exemption is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this exemption by the relevant Director must be preceded by a written report under Rule 26.3 using the waiver form, setting out the reason for such urgency, how it complies with relevant legislation and represents Best Value.

26.10.6 for the renewal of licences or contracts for goods or services where:

- a) the supply is restricted to either the original Supplier or their selected re-sellers; and
- b) competition does not affect the price paid owing to the way the market operates and/or the need for compatibility; and
- c) the value of three years' aggregated renewals has not exceeded, or will not exceed, £150,000; and
- d) the relevant Chief Officer has agreed to the renewal.

26.11 The use of e-procurement does not negate the requirement to comply with all elements of these CPRs.

## **27. Breaches of CPRs**

27.1 Breaches of the CPRs are extremely serious matters and will be fully investigated and reported on following referral or discovery. All Directors are responsible for reporting all known or discovered breaches of these CPRs to the Chief Finance Officer and

Monitoring Officer as soon as they become aware of it in practice. Any Director can be called to Audit & Governance Committee to explain any breach. Breaches identified are reported to the Governance, Risk & Assurance Group to identify where improvements need to be made and to ensure training is provided where necessary.

## **28. Data Protection**

- 28.1 Where a Contract involves data processing by the Supplier on behalf of the Council then sufficient due diligence must be undertaken to ensure that the Council only uses Suppliers who provide guarantees to implement appropriate technical and organisational measures in such a manner as to meet the requirements of the General Data Protection Regulation and protect the rights of individuals.
- 28.2 Every written Contract that involves the processing of personal data by a Supplier on behalf of the Council must set out the subject matter and duration of the processing, the nature and purpose of the processing, the types of personal data and categories of data subjects and obligations and rights of the Council. In particular the Contract must contain clauses that meet the requirements of Article 28(3) of the General Data Protection Regulations.
- 28.3 Authorised Officers should consult with the Information Governance team to establish whether a Data Protection Impact Assessment is required in relation to any proposed Contract involving the processing of Personal Data.

**APPENDIX A - DEFINITIONS**

<b>“Accountable Body”</b>	means where the Council is held accountable by the Government for a particular sum of money which actually may not be managed by, or be in the control of, Council Officers;
<b>“Authorised Officer”</b>	means a person authorised by the relevant Chief Officer to act on the Council’s behalf;
<b>“Best Value”</b>	means the optimum combination of whole life costs, quality and benefits to meet the customer’s requirement;
<b>“Category”</b>	means each category identified in the category overview table which is set out in the Council’s Procurement Strategy;
<b>“Category Plan”</b>	means strategic planning of the category, at a category or sub-category level, including review of the current position, constraints and opportunities, desired outcomes, options and actions. The template plan should be used in all cases except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;
<b>“Chief Finance Officer”</b>	means the Council’s section 151 Officer currently the Chief Finance Officer or their nominated deputy;
<b>“Chief Officer”</b>	means the head of the procuring directorate and includes the Chief Executive, Deputy Chief Executive, Directors, Assistant Directors and officers with

	appropriate delegations and sub-delegations;
<b>“Chief Procurement Officer”</b>	means the Officer who is responsible for the procurement function on behalf of the Council, currently the Chief Finance Officer;
<b>City of York Scheme for Financing Schools</b>	means the scheme which sets out the financial relationship between the Council and Maintained Schools;
<b>Commercial Procurement</b>	means the Council’s Commercial Procurement team;
<b>Concession Contract</b>	has the meaning given in regulation 3 of the Concession Contracts Regulations;
<b>Concession Contracts Regulations</b>	means the Concession Contracts Regulations 2016 and any successor, amending or enabling legislation;
<b>“Constitution”</b>	the Council’s constitution which is available on the internet and sets out the rules that the Council and all Council employees and Members must follow;
<b>“Contract(s)”</b>	means an agreement between the Council and a Supplier made by formal agreement or by issue of a letter of acceptance or official order for goods, services and/or works;
<b>“Contracts Finder”</b>	means the web-based portal provided for the purposes of the Procurement Regulations by or on behalf of the Cabinet Office;

<b>“Contract Register”</b>	means the register of all Contracts maintained by Commercial Procurement;
<b>“Contracting Authorities”</b>	has the meaning given in the Procurement Regulations;
<b>“(The) Council”</b>	means City of York Council;
<b>“CPRs”</b>	means these Contract Procedure Rules;
<b>“Delegated Decision”</b>	means a formal decision taken in accordance with the Council’s Constitution and sub-delegation schemes. It is for the Officer seeking the Delegated Decision to decide which type of decision is required in accordance with the Constitution;
<b>“Director”</b>	means an Officer of the Council designated as a director;
<b>Dynamic Purchasing System</b>	means a completely electronic process for making commonly used purchases that meet the requirements of a Contracting Authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification and requirements of the relevant Contracting Authority;
<b>“Emergency”</b>	means an urgent situation or crisis created as a result of a natural disaster (such as flooding or an earthquake) or tragedy (such as an explosion or plane crash);

<b>“E-Sourcing System”</b>	means the Council’s chosen E-sourcing system (currently YORtender), an e-sourcing mandated for access to a specific framework or an approved alternative;
<b>Executive</b>	has the meaning given in the Council’s Constitution;
<b>Executive Member</b>	has the meaning given in the Council’s Constitution;
<b>“Financial Appraisals”</b>	means checking the financial status including the credit rating of a Supplier;
<b>“Finance Manager”</b>	means a manager from the Council’s internal finance team;
<b>“Financial Regulations”</b>	means the governance rules and regulations relating to the management of the Council’s financial affairs, set out in Appendix 10a of the Constitution;
<b>“Find a Tender”</b>	means the web-based portal provided for the purposes of the Procurement Regulations, for above Procurement Threshold processes, by or on behalf of the Cabinet Office;
<b>“Framework Agreement”</b>	means a framework agreement with one or more Contracting Authorities and one or more Suppliers which establishes an arrangement for: <ul style="list-style-type: none"> <li>i. Multiple orders to be placed with one economic operator (a single supplier framework); or</li> <li>ii. A framework of multiple economic operators to engage in further</li> </ul>

	<p>competitions or direct awards (a multiple supplier framework);</p> <p>that has been set up either by the Council or an organisation other than the Council and has been authorised by Commercial Procurement for use in Council procurements;</p>
<b>“Forward Procurement Plan”</b>	<p>means practical planning of the procurement, or group of similar procurements, including approach, resourcing and timetable. This involves identifying major projects within each category of spend to be maintained by the relevant Chief Officer. It also provides a basis for information for Commercial Procurement to meet the Council’s reporting obligations. The Forward Procurement Plan will be in such format as prescribed by the Chief Procurement Officer except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;</p>
<b>“Governing Body”</b>	<p>has the meaning given in the City of York Scheme for Financing Schools;</p>
<b>“Grant”</b>	<p>means funding awarded to a third party organisation for the purpose of helping deliver community cohesion or providing complementary activities to those carried out by the Council;</p>

<b>“Internal Service Provider”</b>	means any internal service area for example Building Services, Yorkcraft, Commercial Procurement, or Legal Services etc;
<b>“Invitation to Tender”</b>	means an invitation by the Council to a potential Supplier to tender for the provision of goods, services and/or works;
<b>“Key Decision”</b>	has the meaning set out in Rule 8.11 of the CPRs;
<b>“Leader”</b>	means the Leader of the Council;
<b>“Legal Services”</b>	means the Council’s internal legal team;
<b>Maintained Schools</b>	Means the schools maintained by the Council as set out in the City of York Scheme for Financing Schools;
<b>“Member(s)”</b>	means elected member(s) of the Council;
<b>“Monitoring Officer”</b>	means the Council’s principal solicitor currently the Director of Governance;
<b>“Officer(s)”</b>	means employee(s) of the Council;
<b>Officer Decision Log</b>	means the section of the Council’s website where decisions made by senior officers are recorded;
<b>“Participants”</b>	means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract;

<b>“Procurement Regulations”</b>	means the Public Contracts Regulations 2015 and any successor, amending or enabling legislation implemented to govern the award of public contracts;
<b>“Procurement Strategy”</b>	means the Council’s published procurement strategy setting out its ambition for procurement and confirming a category management and whole lifecycle approach to procurement;
<b>“Procurement Threshold”</b>	means the designated threshold above which the Procurement Regulations shall apply to a Contract;
<b>“Procurement Toolkit”</b>	means the manual that accompanies these CPRs which provides detailed guidance on procurement techniques, considerations and the effect of these CPRs;
<b>“Relevant Contract”</b>	has the meaning set out in Rule 3 of these CPRs;
<b>“Request for Quotation”</b>	means a request by the Council to a potential Supplier for a quotation for the provision of goods, services and/or works;
<b>“Routine”</b>	has the meaning set out in Rules 8.11 and 8.12;
<b>“Rule(s)”</b>	means any rule contained in these CPRs;
<b>“Standstill Period”</b>	means a 10 day standstill period before a Contract can be awarded to the successful bidder to allow an unsuccessful bidding organisation an opportunity to

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	challenge the proposed contract award;
<b>“Strategic Partnership”</b>	means a partnership with an organisation that the Council has a long term arrangement with for the provision of goods, works and / or services;
<b>“Supplier(s)”</b>	means the person or entity with whom the Council has a Contract;
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any successor, amending or enabling legislation;

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**APPENDIX B - ARRANGEMENTS FOR SCHOOLS**

Maintained Schools must use the following governance thresholds instead of those found in Rule 8.

<b>Contract Value</b>	<b>Authorisation Required By</b>
£500,000 and above	Council Executive (decision)
£250,000 up to £499,999.99	Governing Body (minute or decision)
£50,000 up to £249,999.99	Chair of Governing Body or relevant governing committee (written instruction)
£1 up to £49,999.99	Head-teacher  OR  The Governing Body in conjunction with the Head-teacher may decide upon a scheme of delegation appropriate to each school and staffing arrangements.

## Appendix 12 – Officer Employment Procedure Rules

*To note: all staffing issues are a non-executive function and arrangements or any committees required must be done so by Council and not the Executive and or Leader of the Council.*

### 1 Recruitment and Appointment of Officers

#### Declarations

- 1.1 The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are related to any Councillor or Council Officer or if they have a substantial relationship with any Councillor or Council Officer. Such a relationship would include parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of a Councillor or an Officer of the Council; or of the partner of such persons. No candidate related to a Councillor or an Officer will be appointed without the authority of the relevant Chief Officer or an Officer nominated by them.

#### Seeking support for appointment

- 1.2 The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. No Councillor will seek support for any person for any appointment with the Council.
- 1.3 This does not preclude a Councillor from giving a reference for a candidate for submission with an application for appointment.

#### Appointments

- 1.4 Subject to the paragraphs below and the exceptions detailed therein, the appointment of Officers is the responsibility of the Head of Paid Service as delegated to Chief Officers or Officers nominated by the Head of Paid Service for their service area under the Officer Scheme of Delegations at Appendix 1, and such appointments must not be

made by Councillors. This provision does not apply to the appointment of the Chief Operating Officer (Head of Paid Service), Chief Officers, or Assistants to Political Groups.

## **2 Appointment of Assistants to Political Groups**

2.1 A Group qualifies for an Assistant if:

- a. The Membership of that Group comprises of at least one tenth of the membership of the Council;
- b. No more than 2 other groups on the Council are larger, or if more than 2 Groups are larger or the same size as the Group, the Council have decided that a post should be allocated to the Group.

2.2 No appointment to a post of Assistant to a Political Group on the Council will be made until such posts have been allocated to each Group which qualifies. No more than 3 such posts shall be created. No Group shall be allocated more than 1 such post and no such post shall be allocated to a Group which does not qualify for one.

2.3 An Assistant to a Political Group may not have delegated to them any of the powers of the Council or of the Executive.

2.4 Appointment of an Assistant to a Political Group shall be made in accordance with the wishes of that Political Group.

2.5 The appointment of Assistants to Political Groups is a fixed term appointment up to the Annual Meeting following an election.

## **3 Appointment of the Director of Public Health**

3.1 A Panel comprising the following will appoint the Director of Public Health:

- a. A Councillor as determined by the Head of HR;

- b. the Chief Operating Officer or an Officer nominated by them;
- c. an externally facilitated assessor appointed following consultation with the Faculty of Public Health and agreed by Public Health England;
- d. The Regional Director of Public Health or their nominated deputy;
- e. A senior NHS representative to be determined by the Corporate Director of People.

3.2 An offer of employment regarding the Director of Public Health appointment shall only be made where no well-founded objection from any Member of the Executive has been received.

#### **4 Recruitment and Appointment of Chief Operating Officer (Head of Paid Service)**

4.1 Where the Council proposes to appoint a Chief Operating Officer, whether by way of permanent or temporary appointment, and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will draw up a statement specifying:

- a. the duties of the Officer concerned; and
- b. any qualifications or qualities to be sought in the person to be appointed

4.2 The Council will 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 will make arrangements for a copy of the statement set out above to be sent to any person on request.

4.3 This procedure at para 4.1 and 4.2 above does not apply where it is proposed that the appointment be made exclusively from among the Council's existing officers. In this instance the Council's internal

recruitment policy and procedures will be followed in terms of advertisement of the role

- 4.4 A Chief Officer Appointments Sub Committee will either interview all qualified applicants for the post or select a shortlist of such applicants and interview those included on the shortlist.
- 4.5 The Chief Officer Appointments Sub Committee must include at least one Member of the Executive and the composition of the Panel will be undertaken in consultation with the Head of HR.
- 4.6 Where no qualified person has applied, or the Chief Officer Sub Committee determines that it has not identified a sufficient shortlist to proceed to interview, the Council will make further arrangements for advertisement of the post.

Offer of Appointment and Procedure for seeking objections

- 4.7 Any proposal to appoint the Head of Paid Service shall only be made where no well-founded objection from any Member of the Executive has been received. No offer of appointment must be made until:
  - a. The Panel proposing to appoint must notify the Head of HR of the name of the person to whom it is proposed the offer is made, together with any other relevant particulars;
  - b. The Head of HR must notify every Executive Member of the name of the person to whom it is proposed the offer of employment is made and any other relevant particulars;
  - c. The period of no more than 5 working days, within which any objection to the making of the offer of employment is to be made by the Leader, on behalf of Executive, to the Head of HR; and;
  - d. Either:
    - o The Leader has, within the period specified in the notice, notified the Panel appointing that neither he nor any other Executive Member has any objection to the making of the offer; or;

- The Head of HR has notified the Panel that no objection was received by them within that period from the Leader; or;
- The Panel appointing is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

4.8 Full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by The Chief Officer Appointments Sub Committee.

## **5 Recruitment and Appointment of Chief Officers including the statutory posts of Monitoring Officer and the Section 151 Officer**

5.1 Where the Council proposes to appoint to a Chief Officer (statutory and non-statutory), whether by way of permanent or temporary appointment, and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will draw up a statement specifying:

- a. the duties of the Officer concerned; and
- b. any qualifications or qualities to be sought in the person to be appointed

5.2 The Council will 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 will make arrangements for a copy of the statement set out above to be sent to any person on request.

5.3 This procedure at para 5.1 and 5.2 above does not apply where it is proposed that the appointment be made exclusively from among the Council's existing officers. In this instance the Council's internal recruitment policy and procedures will be followed in terms of advertisement of the role

- 5.4 A Chief Officer Appointments Sub Committee will either interview all qualified applicants for the post or select a shortlist of such applicants and interview those included on the shortlist.
- 5.5 The Chief Officer Appointments Sub Committee must include at least one Member of the Executive and the composition of the Panel will be undertaken in consultation with the Head of HR.
- 5.6 Where no qualified person has applied, or the Chief Officer Sub Committee determines that it has not identified a sufficient shortlist to proceed to interview, the Council will make further arrangements for advertisement of the post.

Offer of Appointment and Procedure for seeking objections

- 5.7 Any proposal to appoint a Chief Officer or Deputy Chief Officer shall only be made where no well-founded objection from any Member of the Executive has been received. No offer of appointment must be made until:
- a. The Panel proposing to appoint must notify the Head of HR of the name of the person to whom it is proposed the offer is made, together with any other relevant particulars;  
The Head of HR must notify every Executive Member of the name of the person to whom it is proposed the offer of employment is made and any other relevant particulars;  
The period of no more than 5 working days, within which any objection to the making of the offer of employment is to be made by the Leader, on behalf of Executive, to the Head of HR; and;
  - d Either:
    - o The Leader has, within the period specified in the notice, notified the Panel appointing that neither he nor any other Executive Member has any objection to the making of the offer; or;
    - o The Head of HR has notified the Panel that no objection was received by them within that period from the Leader; or;

- The Panel appointing is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

5.8 The appointment of Chief Officers (statutory and non- statutory) will be reported to Full council for noting only. The approval of Full council is not required other than for the post of Head of Paid Service.

5.9 Where the Head of HR is unable to act, the Chief Operating Officer will nominate another Chief Officer to act in their place.

## **6 Disciplinary Action and Dismissal**

6.1 Disciplinary action means any action occasioned by alleged misconduct which, if proved, would according to the usual practice of the authority be recorded on the Officer's personal file, and includes proposals for dismissal for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract.

## **7 Action against other Officers (other than Assistants to Political Groups)**

7.1 Any action against Officers (below those of Chief Officer level) (other than Assistants to Political Groups) is the responsibility of the Head of Paid Service as delegated to Chief Officers or Officers nominated by the Head of Paid Service for their service area under the Officer Scheme of Delegations at Appendix 1, and decisions regarding action against these Officers may not be made by Councillors.

## **8 Action of the Director of Public Health**

- 8.1 In considering any disciplinary or dismissal action against the Director of Public Health, the Council will have regard to the provisions of Health and Social Care legislation and any associated guidance issued by the Secretary of State.
- 8.2 Before terminating the appointment of a Director of Public Health, the Council will consult with the Secretary of State.

## **9 Statutory Chief Officers**

- 9.1 Annex 1 sets out the procedure relating to disciplinary action taken against the Head of Paid Service and the Statutory Chief Officers, namely, the Monitoring Officer and the Chief Finance Officer.

## **10 Non Statutory Chief Officers**

- 10.1 Annex 2 sets out the procedure relating to Non Statutory Chief Officers, which includes Deputy Chief Officers. The definition of all of these Officers can be found in Section 2 of the Local Government and Housing Act 1989.

## Annex 1

### Disciplinary Procedure for the Head of Paid Service (Chief Operating Officer) and Statutory Chief Officers: the Monitoring Officer and Chief Finance (s151) Officer (the Statutory Chief Officers)

#### 1 Scope of Procedure

- 1.1 This disciplinary procedure is based on that set out in the Joint Negotiating Committee for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook (the JNC Handbook) as updated on 13 October 2016. It applies to City of York Council's (the Council) Head of Paid Service (Chief Operating Officer), Monitoring Officer and Chief Finance Officer (the Statutory Chief Officers).
- 1.2 This procedure has been adopted by the Council for the purposes of dealing with disciplinary, capability and other substantial issues in relation to the Statutory Chief Officers. For the avoidance of doubt, this procedure also applies to a breakdown in trust and confidence between the Statutory Chief Officers and the Council.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this procedure is to:
  - a. Encourage Officers to achieve and maintain acceptable standards of behaviour;
  - b. Provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
  - c. Minimise disagreements about disciplinary matters; and
  - d. Reduce the need for disciplinary action and dismissals.

- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Statutory Chief Officer, the steps set out in this procedure should be followed. The parties recognize that it may be necessary to depart from the procedure, from time to time, according to the particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the procedure accordingly.
- 1.6 This procedure does not form part of a Statutory Chief Officer's contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders)(England) Regulations 2001 (as amended).
- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

## **2 Initial Filter Stage**

- 2.1 If an allegation of potential misconduct against a Statutory Chief Officer is made, the Head of HR in conjunction with the Head of Paid Service (or the Monitoring Officer and Leader if the allegation is against the Head of Paid Service) will conduct a filter process of the allegations.
- 2.2 The Head of Paid Service with the Head of HR (or Head of HR, Monitoring Officer and Leader, where the allegation is against the Head of Paid Service) will determine whether the allegations should be filtered out of the process on the basis that they are clearly unfounded, trivial, can be dealt with informally or can best be dealt with under some other procedure.
- 2.3 The Head of Paid Service with the Head of HR (or Head of HR, Monitoring Officer and Leader, where the allegation is against the Head of Paid Service) shall also consider whether early informal resolution of the issues with the Statutory Chief Officer is appropriate, any final

decision as to early resolution of the issues will be made by the Head of Paid Service in conjunction with the Head of HR.

- 2.4 Head of Paid Service with the Head of HR (or Head of HR, Monitoring Officer and Leader, where the allegation is against the Head of Paid Service) will conduct an initial review of the allegation, which includes speaking with the Statutory Officer about whom the allegation is made.
- 2.5 This review will be considered by the Head of Paid Service with the Head of HR (or Head of HR, Monitoring Officer and Leader, where the allegation is against the Head of Paid Service), where this can be resolved informally a meeting will be held with the statutory officer to agree the resolution.
- 2.6 Where an informal resolution is not appropriate, the draft filter report will be shared with the Head of HR and the Chair of the Investigating and Disciplinary Committee (IDC) for comment. The Head of Paid Service (or Monitoring Officer if the complaint is against the Head of Paid Service) will finalise the filter report and will take into consideration the views of the Head of HR and the Chair of the IDC, however, the filter decision is an officer decision for the Head of Paid Service (Monitoring Officer where its against the Head of Paid Service) to determine.
- 2.7 If the Head of Paid Service (or Monitoring Officer is the compliant is against the Head of Paid Service) decides that the allegations should be filtered out of the process, this shall be the end of the procedure and the Statutory Chief Officer will be sent a letter informing him or her of the decision as soon as possible.
- 2.8 If the Head of Paid Service (or Monitoring Officer is the compliant is against the Head of Paid Service) decides that the allegations should be progressed, the filter report and evidence considered should be finalised and presented to the IDC.

### **3 Informal resolution**

- 3.1 In accordance with recommendations in the JNC Handbook the Council and the Statutory Chief Officer should seek an informal resolution before formal disciplinary proceedings are commenced. The Head of HR will be responsible for seeking an informal resolution with the Statutory Chief Officer. If informal resolution is not possible, the Head of Paid Service (with Head of HR or Monitoring Officer if its about the Head of Paid Service) will inform the Chair of the IDC of the complaint/allegation made against the Statutory Chief Officer and the failure to achieve an informal resolution.

### **4 Formal Resolution**

- 4.1 At all stages of the disciplinary process, the Council will refer the JNC Handbook for Chief Executives for procedural guidance.

### **5 Roles and Responsibilities**

- 5.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Relevant Officer, the matter will be referred to an Investigating and Disciplinary Committee for consideration at the earliest opportunity.

### **6 Investigating and Disciplinary Committee (IDC)**

- 6.1 The Investigating and Disciplinary Committee shall be responsible for conducting the preliminary investigation which is further referred to in paragraph 7 below.
- 6.2 The Investigating and Disciplinary Committee should:

- a. Include no fewer than five elected Members;

- b. Not include any Member with a direct personal involvement in the complaint;
- c. Be politically balanced;
- d. Include at least one Member of the Executive Member.

6.3 The Investigating and Disciplinary Committee shall appoint a Chair to oversee the function of the Committee.

6.4 The Investigating and Disciplinary Committee may have to:

- a. Meet at short notice;
- b. Ensure its members do not have a conflict of interest and therefore substitutes will be required to be appointed by Council

## **7 Appeals Committee**

7.1 The Council will be required to establish and Appeal Committee.

7.2 The purpose of the Appeals Committee is limited to:

- a. Hear appeals against action taken short of dismissal;  
and
- b. To take a decision either to confirm the action or to impose no sanction or a lesser sanction.

7.3 The Appeals Committee should:

- a. Include no fewer than five elected Members;
- b. Not include any Member with a direct personal involvement in the complaint;
- c. Be politically balanced;
- d. Include at least one Member of the Executive Member.

## **8 Independent Panel**

8.1 The council will appoint at least two Independent Persons who have been appointed by the Council or by another council for the purposes of the Council's Code of Conduct procedures pursuant to the Localism Act 2011. Membership of the Panel is in the following priority order:

- a. An independent person who has been appointed by the Council and who is a local government elector in York;
- b. Any other independent person who has been appointed by the Council; and
- c. An independent person who has been appointed by another council(s)

8.2 The Council will provide appropriate training for Independent panel members.

*NOTE: For the purposes of investigation of the statutory Chief Officers Independent Person will be referred to as the Independent Investigator and appointments will be sought from the approved panel held centrally by the JNC Joint Secretaries*

## **9 Timescale**

9.1 The procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this procedure. However, it is implicit that all stages of the procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

## **10 Suspension**

- 10.1 Suspension is not regarded as disciplinary action under this procedure but as a neutral act which may be implemented where it is envisaged that the Statutory Chief Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 10.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 10.3 The decision to suspend a Statutory Chief Officer will rest with the Investigating and Disciplinary Committee. Urgent or exceptional cases will include where the continuing presence of the Statutory Chief Officer could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the Council, in these cases the Chair of the IDC can suspend.
- 10.4 Save in urgent or exceptional cases, prior to imposing suspension in any case, Investigating and Disciplinary Committee shall inform the Statutory Chief Officer, in writing, of the reason for the proposed suspension and the Statutory Chief Officer shall have the opportunity to make representations before a decision is taken.
- 10.5 In urgent or exceptional cases, the Statutory Chief Officer shall be informed of such reasons in writing and may make representations to the Chair of the IDC.
- 10.6 The necessity for the Statutory Chief Officer to remain suspended should be reviewed at regular intervals and where possible, lengthy periods of suspension should be avoided. Further, specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Statutory Chief Officer's suspension, whilst avoiding any prejudice to the investigation or to the efficient exercise of the Council's functions.

- 10.7 Absence from duty during any period of suspension shall be on full pay.
- 10.8 Any suspension should not last longer than 2 months from the day on which it takes effect and only continued following consultation with the Independent Investigator after taking into account any representations made by the Chief Operating Officer.

## **11 Preliminary Investigation**

- 11.1 The Investigatory and Disciplinary Committee shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist which requires further consideration.
- 11.2 As soon as practicable, the Chair of the Investigating and Disciplinary Committee will inform the statutory Chief Officer in writing of the allegations and or issues under investigation and provide any evidence the Committee is to consider and of the right to present oral evidence.
- 11.3 The statutory Chief Officer will be invited to submit written representations and any evidence including witness evidence he or she wished the committee to consider. It is not anticipated that witnesses will be required at an initial hearing however the discretion to call witnesses lies solely with the Investigating and Disciplinary Committee.
- 11.4 Following very careful consideration of all of the material both relating to the allegations and the submissions by the statutory Chief Officer, the Committee will decide whether:
- a. The issue requires no further formal action under this procedure; OR
  - b. If the matter is not serious but there is some minor fault or error on the part of the statutory Chief Officer, then the Committee can issue an informal unrecorded warning; OR

c. The issue should be referred to an Independent Investigator.

11.5 The statutory Chief Officer will be informed of the decision without delay.

## **12 Appointment of an Independent Investigator**

12.1 The Investigating and Disciplinary Committee will be responsible for the appointment of an Independent Investigator and will be appointed from the list held centrally by the JNC Joint Secretaries.

12.2 The Independent Investigator will be provided with all necessary facilities, provision of all information and also be responsible for remuneration of the Independent person.

12.3 The statutory Chief Officer has up to 14 days to agree to the appointment of a selected Independent person and if fails to respond in the 14days, the Committee can go ahead with the selection of an Independent person.

12.3 The Investigating and Disciplinary Committee has responsibility for providing the Independent Investigator with

- a. Terms of reference for the investigation;
- b. Details of the precise allegations and or issues to be investigated;
- c. Provision of access to sources of information and people identified as relevant to the case;
- d. Clarity as to timescales and any other known factors which may hinder the investigation eg availability or not of individuals.

### **13 The Independent Investigation**

- 13.1 Once appointed the Independent Investigator has full responsibility for the conduct of the investigation and will ultimately prepare a detailed report stating whether in their opinion:
- a. Whether, and if so the extent to which, the evidence obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and
  - b. Recommending any disciplinary action (if any is appropriate) OR
  - c. Recommending a range of actions which appear to be appropriate for the authority to take against the statutory Chief Officer.

### **14 Receipt and Consideration of the Independent Investigators Report by the Investigating and Disciplinary committee**

- 14.1 The Investigating and Disciplinary Committee will receive the report and has authority from the council to take a decision on the outcome.
- 14.2 Unless the statutory Chief Officer is fully exonerated by the report then he or she will be given an opportunity to state their case before the Investigating and Disciplinary Committee makes a decision. There will also be the opportunity to question witnesses where relevant.
- 14.3 Having considered all of the material before it and the potential of any new evidence which may arise, the Investigating and Disciplinary Committee may:
- a. Take no further action;

- b. Recommend informal resolution or other appropriate procedures;
- c. Refer back to the Independent Investigator for further investigation and report;
- d. Take disciplinary action against the statutory Chief Officer short of dismissal
- e. Propose dismissal of the statutory Chief Officer

14.4 The statutory Chief Officer has a right of appeal against the decision of the Investigating and Disciplinary Committee.

**15 Circumstances where dismissal of the statutory Chief Officer is proposed**

15.1 Where the Investigatory and Disciplinary Committee has determined that dismissal (whether summary or on notice) is the appropriate action in the circumstances, the Council must approve that dismissal before notice of dismissal is given and notice of dismissal must not be issued until an opportunity has been given to Members of the Executive to object to the dismissal.

15.2 The Investigating and Disciplinary Committee will notify the Head of HR that it is proposing to the Council that the Statutory Chief Officer be dismissed and that the Executive objections procedure should commence in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001.

15.3 The Head of HR will notify all Members of the Executive of:

- a. The fact that the Investigating and Disciplinary Committee is proposing to the Council that it dismisses the Statutory Chief Officer;
- b. Any other particulars relevant to the dismissal;

- c. The period by which any objection to the dismissal is to be made by the Leader on behalf of the Executive, to the Head of HR.
  
- 15.4 At the end of the period of notification, the Head of HR will inform the Sub Committee that either:
  - a. The Leader has notified that neither they nor any Member of the Executive has any objection to the dismissal;
  - b. No objections have been received from the Leader in the period; or
  - c. An objection or objections have been received and provide details of the objections.
  
- 15.5 The Investigating and Disciplinary Committee shall consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are well founded, the Investigating and Disciplinary Committee will act accordingly which may include consideration of the impact of the Executive objections on the Investigation Report and relevance to the sanction or the commissioning of further investigation by the Independent Investigator.
  
- 15.6 Once the Investigating and Disciplinary Committee is satisfied that there are no material and well-founded objections to the proposal to dismiss, it will inform the Statutory Chief Officer of the decision and put that proposal to the Independent Panel along with the Independent Investigators report and any other necessary material or documentation it considers appropriate.

## **16 Appointment and role of the Independent Panel**

- 16.1 The Independent Panel must be appointed at least 20 days before the meeting of Council at which the recommendation for dismissal is to be considered.

- 16.2 The role of the Panel is to offer any advice, views or recommendations it may have to Council on the proposal for dismissal.
- 16.3 The Panel will receive all necessary material including the Independent Investigators report and the representations of the statutory Chief Officer and the Panel may ask the Independent Investigator and the statutory Chief Officer questions if required.
- 16.4 The Panel will then formulate advice, views and recommendations it wishes to present to Council. If the Panel is recommending an alternative course of action to dismissal then it should provide clear reasons.
- 17 Role of Full Council**
- 17.1 Council is required to approve the dismissal before a notice of dismissal is issued.
- 17.2 The statutory Chief Officer may attend council to put forward their views and may also be represented.
- 17.3 The Council is at liberty to reject the proposal to dismiss and may substitute a lesser sanction and in some circumstances may refer the matter back to the Investigating and Disciplinary Committee to determine the sanction.

**18 Appeals against dismissal**

- 18.1 Where the Investigating and Disciplinary Committee makes a proposal to dismiss a statutory Chief Officer, the hearing by Council will fulfil the appeal function.

**19 Appeals against action short of dismissal**

- 19.1 The Statutory Chief Officer shall have the right to appeal the Investigating and Disciplinary Committee's decision to the Appeal Committee. The Statutory Officer Appeals Committee will consider the report of the Independent Investigator and any other relevant information considered by the Investigating and Disciplinary Committee.
- 19.2 The process for appeal will be conducted in accordance with the Council's existing policies relating generally to all employees.
- a. The Statutory Officer Appeal Committee will give careful consideration to all of the material before it including the views of the statutory Chief Officers and may conduct any further investigation it considers necessary to reach a decision.
  - b. The decision of the Statutory Officer Appeals Committee is final.

## Annex 2

### Disciplinary Procedure for Non Statutory Chief Officers

#### **1 Scope of Procedure**

- 1.1 For all formal disciplinary related matters in respect of non-statutory Chief Officer, the Council's existing HR policies and procedures will apply.

#### **2 Initial Filter Stage**

- 2.1 If an allegation of potential misconduct against a non-statutory Chief Officer is made, the Head of Paid Service (or as delegated to their Chief Officer), in conjunction with the Head of HR, will conduct a filter process of the allegations.
- 2.2 The Head of Paid Service (or as delegated to their Chief Officer), will determine whether the allegations should be filtered out of the process on the basis that they are clearly unfounded, trivial or can best be dealt with under some other procedure.
- 2.3 The Head of Paid Service (or as delegated to their Chief Officer) shall also consider whether early informal resolution of the issues with the non-statutory Chief Officer is appropriate, any final decision as to early resolution of the issues will be made by the Head of HR.
- 2.4 If an informal resolution is not appropriate, the Head of Paid Service (or as delegated to their Chief Officer) will consider the evidence and, unless the matters are clearly unfounded or trivial, the Head of Paid Service (or as delegated to their Chief Officer) may contact the non-statutory Chief Officer informing him or her of the allegations and asking for his or her representations. A meeting may be arranged by the Head of Paid Service (or as delegated to their Chief Officer) with the non-statutory Chief Officer

to discuss the allegations.

- 2.5 Having discussed the non-statutory Chief Officer's views and evidence available, the Head of Paid Service (or as delegated to their Chief Officer will draft an initial filter report.
- 2.6 The draft filter report will be shared with the Head of HR for comment. The Head of Paid Service (or as delegated to their Chief Officer will finalise the filter report and will take into consideration the views of the Head of HR.
- 2.7 If the Head of Paid Service (or as delegated to their Chief Officer decides that the allegations should be filtered out of the process, this shall be the end of the procedure and the non-statutory Chief Officer will be sent a letter informing him or her of the decision as soon as possible.
- 2.8 If the Head of Paid Service (or as delegated to their Chief Officer) decides that the allegations should be progressed, the filter report and evidence should be finalised. This should include comments from Head of HR, and Head of Paid Service if this has been delegated to Chief Officers.
- 2.9 In the event that there is a case to answer, the procedures as detailed within the Council's existing HR policies will commence.

## Appendix 13 - Ethics Statement

- 1 City of York Council works with private, public and non-profit sectors to provide a range of services to the community. Accordingly, organisations, service providers, small businesses and individuals can expect high standards of ethical behaviour from Officers. Underpinning these expectations are our organisational values. They drive our behaviour and reflect how we conduct ourselves in our business.
- 2 This Statement provides guidance regarding the standards of ethical behaviour that organisations, service providers, small businesses and individuals can expect from Officers and that are expected of them, in their dealings with Council. Our values guide our actions in conducting business in a socially responsible and ethical manner.
- 3 As an organisation, and as individuals, we respect, apply and comply with the law, support human rights and equal opportunity, protect the environment, achieve operational excellence and work for the benefit of our communities. Officers will, at all times, act with honesty and integrity in an open and transparent manner, performing their roles efficiently, effectively and fairly, thereby attracting the highest level of confidence from our community.
- 4 The Council's Code of Conduct for Officers sets the requirements of conduct in carrying out their functions. The Code of Conduct has been developed to assist Officers to:
  - a) Understand the standards of conduct that are expected of them;
  - b) Enable them to fulfil their duty to act honestly and exercise a reasonable degree of care and diligence; and

- c) Act in a way that enhances public confidence in the integrity of local government.

## 5 Key Principles

5.1 This statement is based on a number of key principles and sets out standards of conduct that meet these principles and statutory provisions applicable to local government activities.

5.2 The key principles are:

- a) Integrity

We must not place ourselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence us in the performance of our duties.

- b) Leadership

We have a duty to promote and support the leadership of the Council in order to maintain and strengthen the public's trust and confidence in the integrity of the Council. By doing so we promote public duty to others in the Council and outside, by our own ethical behaviour.

- c) Selflessness

We have a duty to make decisions in the public interest and not act in order to gain financial or other benefits for ourselves, our family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker or someone associated with the decision maker.

- d) Impartiality

We should make decisions on merit and in accordance with our statutory obligations when carrying out public business. This includes the

making of appointments, awarding of contracts or recommending individuals for rewards or benefits. This means fairness to all, impartial assessment, merit selection in recruitment and in purchase and sale of Council's resources, considering only relevant matters.

e) Accountability

We are accountable to the public for our decisions and actions and should consider issues on their merits, taking into account the views of others. This means recording reasons for decisions, submitting to scrutiny, keeping proper records, establishing audit trails and conducting audits.

f) Openness

We have a duty to be as open as possible about our decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. This means recording, giving and revealing reasons for decisions, revealing other avenues available to the client or business, when authorised, offering all information, communicating clearly.

g) Honesty

We have a duty to act honestly. We must declare any private interests relating to our duties and take steps to resolve any conflicts arising in such a way that protects the public interest. This means obeying the law, following the letter and spirit of policies and procedures, observing the Council's Code of Conduct for Employees and exercising any delegated authority strictly for the purpose for which the authority was delegated.

h) Respect

We must treat others with respect at all times. This means not using derogatory terms towards others,

observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

- 5.3 In making our business decisions, we strive to obtain the best value for money. Depending on the circumstances, our decision-making takes into account many things including upfront costs, on-going costs, suitability, quality, reliability, availability, experience, reputation, safety, legal compliance, social value and environmental sustainability. While we strive to obtain the best price for goods and services, we do not necessarily buy at the cheapest price, nor sell at the highest price.
- 5.4 The Council is required to balance all relevant factors, including initial cost, whole-of-life costs, quality, reliability and timeliness in determining true value for money.
- 5.5 Although Council business dealings must be transparent and open to public scrutiny, there will be times when information on the Council's relationships with private sector suppliers of goods and services, cannot be made publicly available. However we will always act fairly in our decision-making. That means we are objective, reasonable and even-handed. It does not mean that we can satisfy everyone all of the time. We will publicly support our decisions unless we have to maintain confidentiality or protect privacy.

## **6 Reporting Unethical Behaviour**

- 6.1 The Council is committed to promoting ethical behaviour. Allegations of unethical behaviour can be made to the Council's Monitoring Officer.

## **Appendix 14 - Member Code of Conduct**

*Based on LGA Model Councillor Code of Conduct 2020*

### **Introduction**

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and Councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

### **Definitions**

For the purposes of this Code of Conduct, a “Councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who:

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority”

includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

## **Purpose of the Code of Conduct**

The purpose of this Code of Conduct is to assist you, as a Councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow Councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all Councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of Councillor and local government.

## **General principles of Councillor Conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, Councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of Councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of Councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

### **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a Councillor.

This Code of Conduct applies to you when you are acting in your capacity as a Councillor which may include when:

- you misuse your position as a Councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a Councillor.

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a Councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are

encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish Councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## **Standards of Councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a Councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

### **General Conduct**

#### **1. Respect**

##### **As a Councillor:**

- a. I treat other Councillors and members of the public with respect.
- b. I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in Councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local

authority, the relevant social media provider or the police. This also applies to fellow Councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's Councillor-officer protocol.

## **2. Bullying, harassment and discrimination as a Councillor:**

- a. I do not bully any person.
- b. I do not harass any person.
  
- c. I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and

strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **3. Impartiality of officers of the council**

#### **As a Councillor:**

- a. I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **4. Confidentiality and access to information**

#### **As a Councillor:**

- a. I do not disclose information:
  - a. given to me in confidence by anyone
  - b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:
    - i. I have received the consent of a person authorised to give it;
    - ii. I am required by law to do so;
    - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
    - iv. the disclosure is:
      1. reasonable and in the public interest; and
      2. made in good faith and in

compliance with the reasonable requirements of the local authority;  
and

3. I have consulted the Monitoring Officer prior to its release.
- b. I do not improperly use knowledge gained solely as a result of my role as a Councillor for the advancement of myself, my friends, my family members, my employer or my business interests.
- c. I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

#### **5. Disrepute as a Councillor:**

- a. I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other Councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow Councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## 6. Use of position

### As a Councillor:

- a. I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## 7. Use of local authority resources and facilities As a Councillor:

- a. I do not misuse council resources.
- b. I will, when using the resources of the local authority or authorising their use by others:
  - i. act in accordance with the local authority's requirements; and
  - ii. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a Councillor.

Examples include:

- office support
- stationery

- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a Councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **8. Complying with the Code of Conduct as a Councillor:**

- a. I undertake Code of Conduct training provided by my local authority.
- b. I cooperate with any Code of Conduct investigation and/or determination.
- c. I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.
- d. I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a Councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## **Protecting your reputation and the reputation of the local authority**

### **9. Interests**

#### **As a Councillor:**

- a. I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow Councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other Councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

**Appendix B sets** out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## **10. Gifts and hospitality**

### **As a Councillor:**

- a. I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.
- b. I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.
- c. I register with the Monitoring Officer any significant gift

or hospitality that I have been offered but have refused to accept. If I decline such a gift or hospitality, I will provide the details to the Monitoring Officer who will maintain an informal register.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Councillor. The presumption should always be not to accept significant gifts or hospitality.

However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a Councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a Councillor. If you are unsure, do contact your Monitoring Officer for guidance.

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## **Appendix A – The Seven Principles of Public Life**

The principles are:

### **Selflessness**

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

### **Integrity**

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

### **Objectivity**

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

### **Accountability**

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

### **Openness**

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

### **Honesty**

Holders of public office should be truthful.

## Leadership

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

## Appendix B Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

“**Partner**” means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the Councillor, or a person connected with the Councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

## Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

## Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which ***directly relates*** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak

on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which **affects** –
- a. your own financial interest or well-being;
  - b. a financial interest or well-being of a relative or close associate; or
  - c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) **affects** the financial interest or well- being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registrable Interest or Non-Registrable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by them in carrying out the duties as a councillor, or towards the r election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>

<b>Contracts</b>	Any contract made between the councillor or the r spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
<b>Land and Property</b>	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or the r spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.
<b>Licenses</b>	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer

<b>Corporate tenancies</b>	Any tenancy where (to the councillor's knowledge): <ul style="list-style-type: none"> <li>) the landlord is the council; and</li> <li>) the tenant is a body that the councillor, or the spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</li> </ul>
<b>Securities</b>	Any beneficial interest in securities* of a body where: (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either: <ul style="list-style-type: none"> <li>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.</li> </ul>

\* 'director' includes a member of the committee of management of an industrial and provident society.

\* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

**Table 2: Other Registrable Interests**

You must register as an Other Registrable Interest:

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body:
  - (i) exercising functions of a public nature
  - (ii) directed to charitable purposes or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)of which you are a member or in a position of general control or management

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## Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations.

These are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.***

## Appendix 15 - Officers' Code of Conduct

*"Officers will maintain conduct of the highest standard such that public confidence in their integrity is sustained."*

(National Joint Council Conditions of Service, Section 2.1)

### 1 Introduction

- 1.1 The Council recognises that Officers undertake their duties with integrity, probity and honesty. The public expect the highest standard of conduct from public servants.
- 1.2 The Council recognises that Officers do uphold the standards of this Code in their day to day work. However, the misconduct of any one Officer can affect us all as it can be very damaging to public perceptions. It is important to make clear that failure to observe the Code could render an Officer liable to disciplinary action.
- 1.3 The Code will not apply directly to schools but it will be adapted by the People Directorate, with the same principles being used for school based staff.
- 1.4 This Code of Conduct should be read together with the Protocols developed to support the decision making system in the Council. These Protocols cover issues such as Officer/Member relations, financial issues and contact with the media. The Code should also be read together with the Council's policy on Whistleblowing.

### 2 Standards

- 2.1 City of York Council Officers will give the highest possible standard of service to the public. Officers will provide advice to Members and fellow Officers with impartiality.

### **3 Disclosure of Information**

- 3.1 The Council actively seeks to promote openness in government. The law requires that certain types of information must be made available to members, auditors, government departments, service users and the public.
- 3.2 However there are certain categories of information which Officers must not disclose. Examples include sensitive information which could damage the interests of the Council or its customers. Officers should seek guidance from their line manager on information that cannot be disclosed.
- 3.3 Officers should avoid using information obtained through their job for personal gain or pass it on to others who might benefit from it.
- 3.4 Personal information received about a Member should not be disclosed without their approval except when it is required or sanctioned by law.
- 3.5 Officers should ensure that disclosure of personal data conforms to the principles of the Data Protection Act 2018, supplemented by the General Data Protection Regulations and any related guidance and codes of practice relating to the processing of personal data and privacy. Officers can disclose personal information if they have written authority from the individual concerned or if the Council is registered to do so under the Data Protection Act. If Officers are in any doubt as to whether information may be disclosed they should check with their line manager.

### **4 Raising concerns**

- 4.1 Officers should inform their line manager if they are aware of any problems with the service, impropriety or breach of procedures.
- 4.2 The Council has a separate Whistleblowing Policy that Officers can refer to if they have concerns they wish to raise.

## **5 Political Neutrality**

- 5.1 Officers work for the City of York Council and as such all Members are entitled to the same quality of advice and support. The individual rights of all Members should also be respected.
- 5.2 If Officers are required to attend political group meetings, they should receive clearance from their Chief Officer beforehand and should maintain their neutrality.
- 5.3 Officers should not allow their personal or political opinions to interfere with their work. Restrictions are placed on Officers in politically restricted posts, refer to Annex 1.
- 5.4 Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraphs 5.1 to 5.3 above.

## **6 Relationships**

### **6.1 With Members**

- (a) Mutual respect between Officers and Members is essential to good local government. Officers should be aware that close personal familiarity between Officers and Members going beyond the normal employer/employee relationship can be misinterpreted and should be treated with caution
- (b) Following the implementation of the Executive decision making system, a Protocol on Officer/Member Relations has been developed to provide guidance on issues such as dealing with scrutiny. This is available from Democratic Services.

### **6.2 With colleagues**

- (a) Mutual respect between fellow Officers is also essential to maintaining constructive working relationships and providing

a high quality service to the community. It is also a key part of the Council's Equalities statement.

### 6.3 With local people

- (a) Officers will seek to deliver a courteous, efficient and impartial service to the community and to treat all citizens and customers with respect. All members of the community should be treated fairly and with respect in accordance with the Council's Equalities statement. Officers will ensure that they are always fit to perform their duties effectively and will not allow standards to be impaired in any way (for example, by the use of drugs or alcohol).

### 6.4 With contractors, suppliers and partner organisations

- (a) Orders and contracts should be awarded on merit after fair competition with other tenders. No special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process.

## 7 Employment Matters

7.1 The Council wishes to employ talented people and thus it is important that recruitment and selection decisions are based on merit and the best person for the job appointed. It is unlawful to discriminate in recruitment on the grounds of age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, sex, race, religion or belief or disability. To avoid accusations of bias, Officers should avoid being involved in an appointment if they are related to, or the partner of, an applicant. Officers should consider the Recruitment and Selection Guidelines regarding avoiding discrimination.

7.2 Officers should also avoid being involved in decisions relating to discipline, promotion or pay for another Officer who is a relative or a close personal friend.

- 7.3 Full time Officers should not normally take outside employment as this may have a detrimental effect on their job performance and health and safety. All Officers graded above grade 7 or equivalent need Chief Officer approval to take outside employment. All requests should be discussed with the appropriate Chief Officer, or the Directorate Human Resources Manager.
- 7.4 The Council accepts that Officers may make minimal personal use of Council facilities such as telephone, internet and fax. Managers should make sure this is not abused. The use of these Council facilities should be exercised with integrity, for example it is acceptable for an Officer to use the Internet at their workstation during their lunch break but not during work hours or outside normal working hours.

## **8 Personal Interests**

- 8.1 It is important that Officers are protected from accusations of impropriety. In accordance with the Council's Declaration of Interests Policy, Officers should declare in writing (using the Declaration of Interest Form) to their Chief Officer any financial or non-financial interests which they consider could conflict with the interests of the Council or adversely affect the performance of their duties.
- 8.2 Officers should also declare to their Chief Officer membership of any secret societies. The definition of "secret society" is:
- "Any club, lodge, chapter, society, trust or regular gathering or meeting which:
- i. is not open to members of the public who are not members and;
  - ii. includes in the granting of membership a requirement of the member to make a commitment (whether by oath or otherwise) of allegiance and;

- iii. includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy in regard to rules, membership or conduct.”

8.3 For detailed guidance on financial and non-financial information that should be declared Officers should refer to the Declaration of Officer Interests policy.

## **9 Equality Issues**

9.1 All who come in to contact with the Council, whether Officer, customer or citizen should be treated fairly and with respect in accordance with the Council's Equalities Statement.

## **10 Relationships with contractors**

10.1 Officers who work with contractors and other organisations where the Council operates in partnership should maintain a professional working relationship. Officers who have both a client and contractor responsibility should be aware of the need for accountability and openness.

10.2 Officers should exercise fairness and impartiality when dealing with customers, suppliers, contractors, sub-contractors and partner organisations. No special favour should be shown to current or recent Officers, their partners, close relatives or friends in awarding contracts to businesses run by them or employing them in a senior position.

10.3 Officers will avoid disclosing confidential information on tenders or costs to any unauthorised party or organisation.

## **11 Use of Financial Resources**

11.1 Officers should use public funds in a responsible and lawful manner. They should strive to achieve value for money and to avoid legal challenge to the Council. Officers should refer to the Council leaflet *'How to Safeguard Public Money'* which includes details of a confidential reporting line.

- 11.2 Officers should, at all times, be honest when claiming money or other resources from the Council (such as Housing Benefits or student grants). Any fraudulent claims will be reported to the Officer's Chief Officer and will be treated as a disciplinary offence.
- 11.3 Managers should refer to the Audit Section's guidance manual on *'Managing Financial Risks'* to ensure adequate controls are in place to minimise risks to staff and resources. They should also refer to the Protocol on financial matters that supports the Executive decision making system. All Officers should comply with standing orders and financial regulations, as well as any other guidance and procedures issued within their own department.
- 12 Gifts and Hospitality**
- 12.1 Officers should act with caution when accepting or giving gifts or hospitality and always seek approval from their line manager. All gifts and hospitality received or given must be declared in the departmental register. Officers who corruptly receive gifts will face disciplinary action. Officers should read the guidance notes on Gifts & Hospitality, which are available in this section, on the intranet or can be obtained from your departmental Human Resources Team.
- 13 Sponsorship**
- 13.1 When an outside organisation wants to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply.
- 13.2 If the Council wants to sponsor an event or service, Officers, their partner, spouse or relatives should not benefit directly without full disclosure to the appropriate Chief Officer. Similarly, where the Council gives sponsorship to a community project via a grant, Officers should ensure there is no conflict of interest.

**14 Contact with press and media**

- 14.1 Officers should refer to the City of York Council Media protocol, which has been developed to support the Executive decision making system.

In the main, the Chief Operating Officer, Chief Officers, and the Corporate Communications Team will be responsible for dealing with the press and media. No Officer should give a view which is contrary to or critical of Council policy. Officers should seek authorisation from their Chief Officer prior to speaking to the media.

- 14.2 Outside working hours, an Officer is entitled to voice their opinion on issues affecting the local community e.g. at a neighbourhood forum meeting. However, Officers have a general duty of care to avoid a conflict of interest and should not criticise, damage or act in any way against the Council.

- 14.3 A trade union official or member may be asked to comment by the media on, for instance, an industrial dispute. Any opinion expressed should be clearly given in their capacity as a Trade Union official or member.

## **Annex 1 – Politically Restricted Posts**

The Local Government and Housing Act 1989 set certain restrictions on the political activity of designated post holders. Posts are politically restricted either because the particular post is listed in the legislation or because of the responsibilities of the post.

The specific posts which will always mean that the Officer is politically restricted are as follows:

- The Head of Paid Service;
- Statutory Chief Officers, namely the s151 Officer and the Monitoring Officer, Director of Children's Services, Director of Adult Social Services, Director of Public Health;
- Deputy Chief Officers;
- Assistants to political groups;
- Other Officers exercising delegated powers i.e. persons whose posts are for the time being specified by the Council in a list maintained.

The posts which are politically restricted because of the nature of the duties performed are posts which are not included in the list above are:

- Posts where the duties involve regularly giving advice (other than mere factual information) to the Council or a Committee, sub-Committee or Joint committee;
- Posts where the duties involve speaking on behalf of the council to journalists or broadcasters on a regular basis.

### **Effect of a post being politically restricted**

Politically restricted Officers will not be allowed to undertake the following activities:

- Stand as a candidate for election as a Member of (a) the House of Commons, or (b) the European Parliament, or (c) a Local Authority

- Act as an election agent or sub agent for a candidate for election as a member of (a), (b) or (c) above.
- Canvass on behalf of a political party or on behalf of a person who is or proposes to be a candidate as above.
- Hold office in a political party or branch of a political party if the post holder will be required to:
  1. take part in the general management of the party or branch; or
  2. act on their behalf of the party or branch in dealings with persons other than members of the party.
- Speak to the public with the intention of gaining support for a political party.
- Officers may not speak to the public or a section of the public with the intention of affecting public support for a political party.

However, mere membership of a political party is not affected.

Officers may not publish or cause, authorise or permit any other person to publish any artistic work of which they are the author, co-author or editor, if the work appears to intend to affect support for a political party.

For Political Assistants these last two provisions do not apply but the following apply instead:

- Political Assistants may not speak to the public at large or to a section of the public in circumstances or terms which are likely to create the impression that they are speaking as an authorised representative of a political party whether they are authorised to do so or not;
- Political Assistants may not publish or cause, authorise or permit any other person to publish any written or artistic work of which he is the author, co-author or editor in circumstances which are likely to create

the impression that the publication is authorised by a political party, whether or not it is so authorised.

These restrictions form part of the Officers' terms and conditions of employment.

## **Appeals**

There is no right of appeal against political restriction where the post is one of those specifically listed in the legislation. There is a right of appeal where the post is being treated as politically restricted because of the nature of the duties. Appeals are made to the Chief Operating Officer. To grant the appeal, the Chief Operating Officer must be satisfied that the post does not involve giving advice on a regular basis to Members or regularly speaking on behalf of the Council to journalists etc.

The Chief Operating Officer must consult with the Monitoring Officer before making any decision.

To check if a post is politically restricted, contact a member of the HR Team.

## Appendix 16 - Protocol on Officer/Member Relations

### 1 Introduction and Principles

- 1.1 The purpose of this protocol is to provide a set of principles to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 This Protocol should be read in conjunction with the Members' Code of Conduct, Officers' Code of Conduct, the Council's Constitution, Whistle-blowing Policy and any guidance issued by the Joint Standards Committee, Audit and Governance Committee and/or the Monitoring Officer.
- 1.3 Certain Officers, e.g. Head of Paid Service, Monitoring Officer, Chief Financial Officer (Section 151 Officer) and the statutory Chief Officers have responsibilities in law over and above their obligations to the Council and its Members that they must be allowed to discharge.

### 2 The Relationship: General Points

- 2.1 Both Members and Officers are servants of the public, and they are indispensable to one another however their roles and responsibilities are different.
- a) Members are responsible to the electorate and serve only so long as their term of office lasts. Members are representatives of the ward constituents and they also develop policies which will be implemented by the Officers.
  - b) Officers are responsible to the Council as a whole, they are employed by and ultimately responsible to the Chief Operating Officer as Head of Paid Service. Their job is to provide professional advice and support to relevant parts of the Council in developing and implementing the policies and decisions.

2.2 These are very different roles and this may in some circumstances give rise to tensions and, as such, it is essential that the working relationship between Officers and Members is business-like and founded upon mutual respect.

2.3 Member/Officer relationships should be conducted in a positive and constructive way. Therefore it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influences on the other party.

### **3 Expectations**

3.1 What can Members expect from Officers:

- a) Political neutrality;
- b) A commitment to act in the interests of the Council as a whole and not to any one political group;
- c) A professional approach to the working relationship;
- d) An understanding of their role and its pressures;
- e) Timely response to enquiries;
- f) Professional advice;
- g) Confidentiality where appropriate;
- h) Courtesy and respect;
- i) Compliance with the Officers' Code of Conduct.

3.2 What can Officers expect from Members:

- a) An understanding of the requirements of their roles and an appreciation of competing calls on their time;
- b) A partnership working approach;
- c) Courtesy and respect;
- d) Political leadership and direction;
- e) Not to be bullied, harassed or subjected to inappropriate pressure;
- f) Respect for their professional advice.
- g) Members shall act within the Code of Conduct at all times.

## 4 Specific Issues

- 4.1 Officer advice and preparation of reports: – The provision of advice and the preparation of reports are central to the roles of many Senior Officers and they are under a duty to give their best advice in the interests of the Council as a whole. When carrying out these duties it is essential that Officers feel able to give full and frank advice even where this may not be supportive of a particular policy or decision promoted by a Member. Members must not seek to unduly influence the content of any report or try to persuade an officer to change their professional advice when drafting their reports.
- 4.2 Social contact between Members and Officers:- Mutual respect between Officers and Members is essential to good local government. Close personal familiarity between Officers and Members that transcends the normal employer/employee relationship can potentially undermine Members' confidence in the political neutrality or even-handedness of an Officer, therefore, care should be exercised.

## 5 When Things Go Wrong

- 5.1 Procedure for Members: From time to time the relationship between a Member and an Officer may become strained for various reasons, including the tensions mentioned above. In such circumstances, it is essential that the Member should not raise such matters in a manner that is incompatible with the objectives of this protocol. An Officer has no means of responding to such criticisms in public. If a Member feels ~~he/she~~ has they have not been treated with proper respect, courtesy, or has any concerns about the conduct or capability of an Officer, ~~he/she~~ they should raise the matter with the respective Chief Officer. The Chief Officer will then look into the facts and report back to the Member. If the Member continues to have concerns then ~~he/she~~ they should report the facts to the Chief Operating Officer. Any action taken against an officer in respect of a

complaint will be in accordance with the provisions of the Council's Disciplinary Policy and Procedures.

- 5.2 Procedure for Officers: Where an Officer feels that ~~he/she~~ ~~has~~~~they~~ ~~have~~ not been properly treated with respect and courtesy by a Member, ~~he/she~~~~they~~ should raise the matter with ~~his/het~~~~their~~ Head of Service, Chief Officer or the Chief Operating Officer as appropriate, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances the Head of Service/ Chief Officer or the Chief Operating Officer will take appropriate action either by approaching the individual Member and/or Group Leader or by referring the matter to the Director of Governance for advice on how to proceed.
- 5.3 If the Officer continues to have concerns then ~~he/sh~~~~they~~~~e~~ may wish to make a complaint to the Council's Monitoring Officer, if the conduct falls within the remit of the Members Code of Conduct (see Appendix 14 of this Constitution).

## **6 Officer Support: Member and Party Groups**

- 6.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.

Party groups are a recognised part of the Council and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality.

- 6.2 In providing this support to party groups certain points must be understood by both Officers and Members:

- a) Officer support must be limited to providing information and advice in relation to matters of a Council business. Officers must not be involved in advising on matters of party business. It is recommended that Officers are not present at meetings or parts of meetings where matters of party business are to be discussed.
- b) Party group meetings, whilst they form part of the preliminaries to Council decision making, such meetings do not empower those attending to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- c) Where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.

6.3 Special care needs to be exercised whenever Officers are involved in providing information and advice to party groups or other meetings which include persons who are not Members of the Council or Elected Members. Such persons are not bound by the Members' Code of Conduct (in particular, the provisions concerning declarations of interest and confidentiality) and, for this and other reasons, Officers may not be able to provide the same level of information and advice as they would to a Member only meeting.

6.4 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group, but Officers must have regard to a Member's right of access to information and Council documents which are referred to in Section 9 below. However the confidentiality of information discussed in the presence of an officer cannot be guaranteed in all cases as it may be subject to the Freedom of Information Act.

6.5 In relation to budget proposals;

- a) The administration shall be entitled to confidential discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of the Executive /Council meetings, whichever is the earlier;
- b) The opposition groups shall be entitled to confidential discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Executive/Council meetings, whichever is the earlier.

6.6 Any particular difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Operating Officer who will discuss them with the relevant Group Leader(s).

## **7 Officer Support: The Executive**

7.1 It is important that there should be a close working relationship between Executive Members and the Officers who support and/or interact with them. However such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups.

7.2 Whilst Executive Members will be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. A Chief Officer will always be fully responsible for the contents of any report submitted in ~~his/her~~their name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report.

7.3 Under Executive arrangements, individual Members of the Executive may, in some situations, take decisions. The Council

has put in place mechanisms to ensure that the individual Executive Member seeks advice from relevant Members and Officers before making a decision with ~~his/her~~their delegated authority. This includes taking legal advice, financial advice and professional officer advice as well as consulting the Monitoring Officer where there is doubt about powers to act.

- 7.4 Officers will continue to work for and serve the Council as a whole. However, as the majority of functions will be the responsibility of the Executive it is likely that in practice many Officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the Officers. Officers must ensure that their political neutrality does not appear to be compromised.

## **8 Officer Support: Overview and Scrutiny**

- 8.1 It is not the role of scrutiny to act as a disciplinary tribunal in relation to the actions of Members or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a panel's behalf. This means:
- a) Overview & Scrutiny's questioning about the conduct of individuals should be in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, not to imply criticism or blame;
  - b) In these circumstances, it is for the Chief Operating Officer to institute a formal enquiry, and Overview & Scrutiny may ask (but not require) him to do so.
- 8.2 Overview & Scrutiny should not act as a "Court of Appeal" against decisions or to pursue complaints by individuals, as other procedures exist for this. These are internal, eg the Corporate Complaints Procedure, and external/statutory, eg Local Government Ombudsman or appeal to the Courts. However:

- a) Overview & Scrutiny may investigate the manner in which decisions are made but should not pass judgement on the merits of a decision in individual cases;
- b) They can comment on the merits of a particular policy affecting individuals.

8.3 Wherever possible Overview & Scrutiny should provide written questions or details of indicative topics to someone invited to appear before a panel to ensure they have adequate time to prepare for the meeting. In addition, invitees ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel has previously indicated.

## **9 Members' Access to Information and to Council Documents**

9.1 Members need to have access to information held by the Council in order to perform their roles but their rights to access are not absolute (as detailed within Appendix 7 of this Constitution. The starting point is that Members have the same rights as any other person and, as such, they are entitled to copies of any published information held by the Council. They can also make a request under the Freedom of Information Act 2000 if they wish.

9.2 Members also have additional legal rights to access information held by the Council which would not normally be made public. They are given these extra rights of access in order to enable them to undertake their roles as Members. However, care should be exercised in this regard as Members are only entitled to confidential information where they either, have a right under S.100 of the Local Government Act 1972 or, where they can show that they have a 'need to know' the information in order to conduct their council duties.

9.3 S.100(F) LGA 1972.

This provides that any document held by the Council containing material relating to any business to be transacted at any meeting of the Council, committee or sub-committee must be available for

inspection by any member of the Council unless it is deemed by the proper officer to fall within certain categories of 'exempt' information as defined by Schedule 12A to the Local Government Act 1972. This applies to all categories of exempt information except those under paragraph 3 (except to the extent that the information relates to proposed terms of a contract), and paragraph 6 of Schedule 12A.

#### 9.4 Need to Know

Even where the above statutory rights do not apply to the information in question the Member also has a common law right to inspect information which it is necessary for them to inspect in order to carry out their function as a Councillor. This will normally cover all the information

#### 9.5 In cases of doubt Members should approach the Director of Governance for assistance.

#### 9.6 The common law rights of Members are based on the principle that any Member has a right to inspect Council documents so far as his or her access to the documents is reasonably necessary to enable the Member properly to perform his or her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.

#### 9.7 The exercise of this common law right depends upon an individual Member being able to demonstrate that ~~he or she~~ they ~~has~~ have the necessary "need to know". In this respect a Member has no right to a "roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". This question must be determined by the particular Chief Officer with advice from the Director of Governance.

#### 9.8 In some circumstances the Member will be expected to justify the request to inspect a document. In addition there will be a range of documents, which, because of their nature are either not accessible to Members or are accessible only by the political

group forming the administration and not by the other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council's and/or the public interest.

- 9.9 Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports/briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied, i.e. to brief the Member.
- 9.10 The Members Code of Conduct also contains specific rules about confidential information held by the Council which prohibit Members from disclosing such information unless it can be shown that it is in the public interest to do so.

## **10 Correspondence**

- 10.1 Correspondence between an individual Member and an officer should not be copied (by the officer) to any other Member. Where exceptionally it is necessary to copy to another Member, this should be made clear to the original Member.
- 10.2 Official letters and electronic communications on behalf of the Council should be sent in the name of the appropriate officer, rather than in the name of the Member. It may be appropriate in certain limited circumstances (eg, representations to a Government Minister) for a letter to appear in the name of an Executive Member or the Leader, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

## **11 Communication of Officer Delegated Decisions**

- 11.1 Notwithstanding the rights of Members to information and to

Council documents set out in this protocol, Officers taking decisions under delegated authority from the Executive must ensure that relevant Members have prompt information regarding the decision, the reasons for the decision and the impact of the decision.

11.2 For the purposes of this protocol “relevant Member” will include:

- a) Members of any Ward upon which the decision is likely to impact.
- b) Members of the Executive where the decision falls within their portfolio area.
- c) Members of any relevant Committee where if it was not for delegation to Officers, the decision would be taken by that Committee.
- d) All Members of the Council where the decision is likely to have a corporate impact.

11.3 If any Member becomes aware that they have not been provided with the information in accordance with this protocol the matter should be raised with the appropriate Director and/or the Chief Operating Officer.

## 12 Media and Communications

12.1 The Council is accountable to their electorate. Accountability will be promoted by the Council, explaining its objectives and policies to the electors and customers. The Council will use publicity to keep the public informed and to encourage public participation.

12.2 Publicity is a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential to ensure that decisions on publicity are properly made in accordance with the Code of recommended Practice on Local Authority Publicity and the Council’s Media

Protocol which outlines the principles and processes governing communications with media outlets. The Protocol applies to all Members and Officers and has been produced to provide guidance and clarify good practice relating to the effective management of media relations at the Council. Press releases or other communications are not issued by the Council on behalf of political groups.

- 12.3 Every effort will be made to ensure that Members do not hear important information about the Council from other sources first. Members or Officers quoted or named in a news article will be provided with a copy before it is published, so that they are able to digest and consider the issue prior to any media enquiry.
- 12.4 The social media policies provide clear advice and guidance on the acceptable use of social media by Officers. Members should consult the Local Government Association's social media best practice guidelines and refer to the Members Code of Conduct. The Council's electronic communications policy applies to Officers and Members to ensure that all electronic forms of communication are used appropriately within the workplace, whether that be in a Council office or remotely.
- 12.5 Officers and/or Members should seek advice from the Council's Communications Department of the Director of Governance when making decisions on publicity, and particular care should be paid to any publicity used by the Council around the time of an election.

### **13 Involvement of Ward Members**

- 13.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified ~~in advance~~~~at the outset~~ of the exercise. In addition Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member

should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

**14 Monitoring and Review**

- 14.1 The application and implementation of this Protocol will be monitored and reviewed by the Council's Joint Standards Committee in consultation with the Council's Monitoring Officer.

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**Appendix 17 – Code of Good Practice for Councillors involved in the Planning Process**

**1 Summary**

1.1 One of the key purposes of the planning system is to balance private interests in the development and use of land against the wider public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable planning reasons. The aim of this Code of Good Practice is to promote public confidence in the planning decision making process.

1.2 If Members do not abide by this Code of Good Practice, they may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision, and;
- themselves at risk of being the subject of a standards complaint, or; if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

**2 When does this Code apply?**

2.1 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes both Planning Committee (i.e. Planning Major and Planning Minor) meetings, any meetings of the full Council when exercising the functions of the Planning Authority, and less formal occasions, such as meetings with officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications. Although much of the Code applies only to members (including substitute members) of the Planning Committees, some aspects affect any Member who becomes involved with a planning matter.

- 2.2 This Code of Practice supplements the Council's Code of Conduct for Members ("the Code of Conduct"), and gives detailed advice on dealing with planning issues.
- 2.3 If Members have any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer, and preferably well before any meeting takes place.

**Advice to Members:**

**Do** apply the rules in the Code of Conduct first.

**Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Code of Conduct for the purposes of planning control.

**Do** seek early advice if in doubt.

**3 Dealing with Interests under the Code of Conduct**

3.1 Members must always declare disclosable pecuniary interests other registerable interests and non-registerable interests on a matter in accordance with the Code of Conduct. All Members must follow these rules, not just members of the Planning Committees.

3.2 An Other Registerable Interest arises where the business directly relates to the financial interest or wellbeing of one of the Member's Other Registerable Interests as set out in Table 2 ("Other Registrable Interests") of the Code of Conduct.

3.3 A Non Registerable Interest arises where a matter directly relates to a Member's financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1 of the Code Of Conduct) or a financial interest or well-being of a relative or close associate.

- 3.4 If a Member has an Other Registerable Interest or a Non Registerable Interest the Member may register to speak on the matter but must not participate as a member of the committee and must not remain in the room unless granted a dispensation under the Code of Conduct.
- 3.5 Where a matter arises at a meeting which **affects** a Non Registrable interest you may be able to speak and vote on the matter if the test set out in paragraphs 8 & 9 of the Code of Conduct is satisfied.
- 3.6 A disclosable pecuniary interest arises when you have an interest, or your partner has an interest which falls within the descriptions set out in Table 1 (Disclosable Pecuniary Interests) of the Code of Conduct. It is a criminal offence to participate in a Council meeting if Members have such an interest and have not been granted a dispensation.

**Advice to Members:**

**Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Disclose your interest at the commencement of discussion on that particular matter. If in doubt, you should always seek advice from the Monitoring Officer in advance of the meeting.

**Where your interest is a disclosable pecuniary interest and you have not obtained a dispensation:-**

**Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.

**Don't** get involved in the processing of the application\*.

**Don't** use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so.

\*A Councillor who has a disclosable pecuniary interest in a matter is permitted to seek to persuade Planning Officers of the merit of the application in the same way as a member of the public but should be careful to avoid placing pressure on an Officer for a particular recommendation.

## **4 Keeping an open mind**

4.1 Councillors need to avoid bias or predetermination or any appearance of bias or predetermination before making a decision on a planning matter. Members of a Planning Committee must not make up their minds before they have all relevant material and arguments before them at a Planning Committee meeting. The use of a political whip is not permitted for decisions on planning applications.

4.2 Members of a Committee are entitled to feel predisposed towards a particular decision before it comes to Planning Committee, but must still be willing to consider and weigh all material planning considerations presented at the meeting before deciding on how to vote. Predetermination arises when Members' minds are closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. [Where such concerns arise, a Member will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Member has a closed mind. In such circumstances, there is a risk of the whole decision becoming vulnerable to legal challenge.](#) It also risks a public perception being created of unfairness in the planning process.

4.3 The Localism Act 2011 has built on clarification of the law provided by the Courts in a number of cases and Members can take some comfort that they will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. Nevertheless it remains the case that Members must not have closed their mind to possible alternative decisions and must be prepared to consider representations made and the advice of

Officers and listen to the debate before reaching a final view. A Member in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Member was predetermined or biased.

**Advice to Members:**

**Don't** make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the Officer's presentation and all the evidence and arguments at the Planning Committee when the matter will be considered. If you have predetermined your position or have given that impression, you should not take any part in the decision on that matter.

4.4 A member of a Planning Committee who is also a Parish Councillor may already have been consulted on a planning application at a Parish Council meeting. It is permissible to express a view at a Parish Council meeting on a matter and still participate at a Planning Committee so long as a Member has not closed their mind to reaching a different view. It is good practice in these cases for the Member to:

- make it clear during the discussion at the consultee body that their views are expressed on the limited information before them only,
- reserve judgement and the independence to make up their own mind when it comes before the Planning Committee [once they have considered](#) all of the relevant information,
- not in any way commit themselves as to how they or others may vote when the proposal comes before the Planning Committee, and
- disclose the [Other Registerable Interest](#) regarding their membership of the Parish Council when the Planning Committee comes to consider the proposal.

4.5 If a Member has already made up their mind they must not speak or vote on the business but they are not legally required to withdraw from the meeting (unless they also have an interest under the Code of Conduct which would preclude them from so doing). However, they may prefer to do so for the sake of appearances. If they decide to stay in the meeting they should explain that they do not intend to speak and vote because they have (or could reasonably be perceived as having) judged the matter elsewhere. Such statements may be recorded in the minutes.

4.6 Executive Members may have been involved in promoting a particular development in their role as Executive Members for the Service. Whilst a Member of a Planning Committee would not be required to withdraw simply because they are also an Executive Member, if an Executive Member also sits on Planning Committee it may be difficult for them to demonstrate objectivity in dealing with an application relating to that development. They must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias or pre-determination. Indeed, the Member may be seen as an advocate on behalf of the Council for the development in question. In those cases the best course of action would be for the Executive Member to withdraw from the Planning Committee for that matter.

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## 5 Contact with Applicants, Developers and Objectors

5.1 Members of a Planning Committee should discourage applicants or agents from approaching them in any way, should minimise social contacts with known developers and agents and should refrain altogether from such contacts when developments are contemplated or a planning application has been received.

5.2 All Members should refrain from involving themselves in discussions with developers or potential applicants at the pre-application stage of proposals unless such discussions are part of structured and recorded arrangements with Officers and comply

with this Code, [the Code of Conduct](#) and rules on bias and predetermination.

5.3. If an approach is received from an applicant/agent in relation to a particular planning application or a matter that may give rise to a planning application, the Member should:

- Refer the applicant or agent to the relevant Officers of the Council, and notify Officers of the approach.
- Avoid giving any commitment or impression of a commitment or that they hold any particular view about the development or the future of the site in question.
- Confine themselves to providing information on the Council's general planning policies or procedures only, where the Member is fully aware of these.
- If they do express an opinion they should make it clear that they have not committed themselves to vote in accordance with those views and will only be in a position to take a final decision after having heard all the relevant information and arguments at Committee.

5.4 When any Member speaks at a meeting of the Committee on the subject of a particular planning application, they should disclose the fact that they have been in contact with the applicant/agent, if this is the case. Members are able to articulate their own views on proposals, but should not speak on behalf of the applicant or the agent who will have their own opportunity to speak to Committee.

5.5 Any written information received by a Member of the relevant Committee from the applicant or agent, objectors or any other third party, should be passed or copied immediately to the relevant Planning Officer and declared at the start of the consideration of the particular application.

**Advice to Members:**

**Do** seek to minimise social contacts with known developers particularly when the developer is known to be contemplating development in the City.

**Do** refer an applicant, developer or objector who approaches you about a planning application to Officers, if they need planning, procedural or technical advice.

**6 Contact with neighbours, objectors, supporters, third parties or fellow Councillors**

- 6.1 In order for the planning system to work effectively public concerns must be adequately aired. It is an important part of a Member's role to listen to residents' views and put these views forward within the Council. However, it is important that Members of the Planning Committees make decisions based on the full facts having considered all representations made and all other relevant considerations. Members will usually need a report from Officers to help them to do this.
- 6.2 Members of a Planning Committee should not give the impression that they have made up their mind about a particular matter in advance of the meeting. Discretion is always advisable. A good approach is to say something like: "From what I know at the moment I support (or have reservations about) this application, but I won't make a final decision until I have all the facts before me at Planning Committee".
- 6.3 All Members should advise anyone lobbying them that the Committee can only effectively consider representations if they are made in writing to the Director of Environment, Highways & Transport. Members can also advise objectors of the rights they have for speaking at meetings. If there are technical issues or alternatives to be considered, then Members should either ask the applicant/objector to raise these matters with Officers or ask officers to consider such matters when reporting to Committee.

- 6.4 No Member should accept gifts or hospitality of any value from anyone who is involved or affected by a planning proposal. Members should inform the Monitoring Officer if they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 6.5 No Member should take part in negotiations with applicants or potential applicants regarding their proposals for development except where such negotiations are part of a structured arrangement with Officers.

**Advice to Members:**

If you are lobbied:

**Do** explain that you are not in position to express a firm intention to vote one way or the other.

**Do** explain how representations can be made formally.

**Don't** accept any gifts or hospitality.

**7 Lobbying by Members**

- 7.1 Members are quite entitled to join general interest groups which may have an interest in planning matters such as the Civic Society or the Victorian Society. If Members are present at a Committee meeting where a group to which they belong has adopted a view on a particular matter then they need to declare an Other Registerable interest when the matter is discussed.
- 7.2 There may be circumstances where a political group has a policy commitment to a particular development. It may have been contained within the party's manifesto. This alone does not prevent a Member participating in decision making so long as they have not closed their mind to considering the planning arguments and have the independence to make up their own mind on the planning proposal.

7.3 If a Councillor, whether or not a member of the Planning Committee, speaks on behalf of a lobby group at a Committee meeting they should withdraw from the meeting after the public speaking session.

## 8 Site Visits

8.1 Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However, care must be taken to ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting. Site visits should only be requested where there is a clear and substantial benefit in having one. Site visits will be virtual unless the Chair of the relevant committee considers it necessary for an in person site visit due to the complexity of a specific site. In person and virtual visits should focus precisely on the observation of site factors which are relevant to the decision. Members should ensure that they have seen all aspects of the site during the visit and should ask to see further aspects of the site should they require. Should there be a need for in person visits, Members should at all times visit the site as a single group. Additional information relating to site visits is contained in section 4 of the Protocol annexed to this Code.

8.2 While visiting sites Members must not accept any form of gift, hospitality or refreshment.

8.3 Members of a Planning Committee should not normally accept invitations to visit a site unless this is in the company of a planning officer. This does not prevent Members from going alone to view a site from public land.

8.4 Councillors have no rights to enter on private land. A Councillor might be invited to enter the site by the owner. It is not good practice for a member of a Planning Committee to do so as this may give the impression of bias. If a Member feels that they need

an explanation of the proposal then they should request a formal site visit by contacting the Case Officer at least 10 days before the Committee meeting.

**Advice to Members:**

**Don't** request a site visit unless you feel it is strictly necessary.

[Do ensure that you comply with the Protocol for site visits annexed to this Code.](#)

**Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

**Do** ask the Officers at the site visit questions or seek clarification from them on factual matters which are relevant to the site inspection.

**Don't** express opinions or views on the proposal to anyone.

**Don't** enter a site which is subject to a planning application unless you can comply with the good practice rules in this Code.

## 9 Decision Making

9.1 The Council's Constitution specifies that certain applications must be brought before the [relevant Planning](#) Committee and others may be determined by Officers. Members, including those who are not on the Committee, can request that a particular application should be brought to Committee rather than being determined by Officers under delegated powers.

9.2 Members should ensure that they only request that an application be brought to Committee in accordance with Constitutional requirements, and for proper planning reasons which are reported to the Committee.

- 9.3 In making decisions on planning applications, the law requires the application to be determined in accordance with the development plan and the requirement to comply with national planning guidance unless material considerations indicate otherwise. Adequate planning reasons must be given for any decision/conclusion. It is particularly important to ensure that these are fully articulated and recorded prior to the vote and must be recorded where a decision is made contrary to an officer recommendation or contrary to established policy. Where a decision is made contrary to policy it is the Members' responsibility to explain their reasons in full. Pressure should never be put on Officers to "go away and sort out the planning reasons".
- 9.4 Members must come to a decision after due consideration of all the information reasonably required, upon which to base a decision. Members should not participate in a vote if they have not been present for the [entire item including the Officer's presentation and any public speaking](#). [During the meeting](#). Members should not attempt to answer e-mails, monitor or contribute to social media discussions or engage in any other activity which may distract them from giving the proceedings their full attention.
- 9.5 Members should ensure that they have had sufficient time to digest any new material which has been presented. Members may need to ask for an adjournment to do so. Occasionally it may be necessary to defer an item to allow for proper consideration or for additional information to be obtained. However, the Council has a duty to process applications without undue delay and applications should not be deferred as a delaying tactic or to put off making a decision because of the number of objectors to the proposals.
- 9.6 Messages should not be passed to individual Committee Members either from other Members or members of the public. This could create an impression that a Member is being improperly influenced.

**Advice to Members:**

**Do** come to meetings with an open mind and demonstrate that you are open-minded.

**Do** make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** come to your decision only after due consideration of all of the information reasonably required.

**Do** make sure that if you are proposing, seconding or supporting a decision that you clearly identify the planning reasons leading to this conclusion and can identify the supporting evidence.

**10 Officers**

10.1 Members, whether or not they sit on a Planning Committee, must not put improper pressure on any Officer to put forward a particular recommendation and should not do anything which compromises or is likely to compromise his or her professional integrity and impartiality. Doing so may be a breach of the Code of Conduct.

10.2 Planning Officers must act in accordance with Officer and professional codes of conduct. The Royal Town Planning Institute requires its members to fearlessly and impartially exercise their independent professional judgment to the best of their skill and understanding. Accordingly there may be occasions where Officers make recommendations which may be contrary to the views and wishes of Members.

**Advice to Members:**

**Do not** apply improper pressure on Officers to make a particular recommendation.

**Do** respect the professional obligations of planning Officers.

## **11 Members as developers or applicants**

- 11.1 If a Member has an interest in land that may be the subject of re-designation or other decision in the Development Plan process, or if a Member, or someone with whom they have a close association is making a planning application to the Council, then they should discuss this at the earliest opportunity with the Director of [Environment, Transport and Planning](#). The planning application should contain a declaration (in the form of a covering letter) of the Member's position in relation to the planning application, so that all those consulted are aware of the relationship. The Director of [Environment, Transport and Planning](#) will oversee the consideration of the application with the case officer, including any discussions that may involve other Members.
- 11.2 Any application by a Member will be reported to the Planning Major Committee or the Planning Minor Committee as appropriate and will not be dealt with by an officer under delegated powers. The Member's interest should be made clear at the Committee.
- 11.3 If a Member's planning application comes before the Planning Committee they will have a disclosable pecuniary interest in relation to the application. This must be declared and means that the Member may not participate in the discussion or vote on the application. Government guidance suggests that the prohibition on discussing the item would prevent Members making representations to the Committee as an ordinary member of the public. While some lawyers have questioned this guidance there is a degree of uncertainty. The safest option would be for the Member to either seek a dispensation allowing them to make representations, or ask someone else to make those representations on their behalf.

## **12 Enforcement cases**

- 12.1 Planning enforcement is particularly sensitive since it can ultimately result in Court proceedings. All Members are encouraged to report breaches of planning control to Officers or to

support their constituents in doing so. They may seek updates on progress which is being made to resolve matters but should avoid playing too pro-active a role such as by involving themselves in meetings between Enforcement Officers and developers.

### 13 Member Training

- 13.1 In order to ensure that Members are fully aware of the requirements placed on them when sitting on Planning Committees it is the policy of the Council to require Members to attend prescribed training before sitting as a Member or Substitute Member. [From time to time, the Council may also require Members to attend refresher training sessions.](#)

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**Planning Committee Protocol**

**Purpose of the Protocol**

- 1. Introduction**
- 2. Public Speaking Procedure**
- 3. Pre-Committee Matters including Site Visits**
- 4. Committee Agenda**
- 5. Order of Proceedings**
- 6. Decision Making**
- 7. Voting Procedures**
- 8. Following the Committee Meeting**
- 9. Review and Monitoring**

**Purpose of the Planning Committee Protocol**

This protocol has been adopted to ensure the highest standards of probity in the performance of City of York planning function. Consistency, fairness and openness are important qualities for any regulatory function and they are vital to the conduct of a planning committee.

The purpose of the protocol is:

- (a) To state how the Members of the Planning Committee will exercise those functions, including behaviour in relation to applicants, residents and other third parties;
- (b) To ensure a consistent and proper approach by all Members of the Planning Committee to the exercise of planning functions;
- (c) To ensure applicants and their agents, residents and other third parties are dealt with by Members of the Planning Committee consistently, openly and fairly;
- (d) To ensure the probity of planning transactions and the high standards expected in public office; and
- (e) To ensure planning decisions are made openly, fairly and in the public interest, in accordance with legislation and guidance.

The Localism Act 2011 sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. The Members' Code of Conduct sets out the general principles the Council has adopted. This Protocol relating to planning matters is intended to be supplementary to The Members' Code of Conduct and The Council's Constitution. Accordingly, the provisions of the Code of Conduct and Code of Good Practice for Councillors involved in the Planning Process continue to have full force and effect.

The aim of this protocol is to provide more detailed guidance on the application of the guidance in relation to planning matters.

Copies of this Protocol will be incorporated into the Council's Constitution and will be kept under review in accordance with paragraph 10.2 of this Protocol. Additionally, this Protocol will be publically available online.

## 1. Introduction

- 1.1 This Protocol applies to all meetings of the Council's Planning Committees (both Major and Minor) in relation to the determination of planning applications and any other business dealt by the Planning Committees.
- 1.2 The determination of planning applications is a process involving the application of national, strategic, local and neighbourhood level planning policies within a legislative framework. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by third parties. Complaints about maladministration and injustice can also be made to the Local Government Ombudsman. It is important that those involved in the determination of planning applications, and particularly officers and Members of the Planning Committee, act reasonably and fairly to applicants, supporters and objectors.

## 2. Public Speaking Procedure

- 2.1 This document sets out the procedures members of the public, Parish Councils and Councillors who are not members of the Planning Committee must follow when addressing the Planning Committee.
- 2.2 If members of the public have written to support, object to or comment on an application the Council will write to them about the date and location of the Planning Committee meeting where the application will be considered. Likewise, the Council will also notify all applicants (or their agents) whose applications are to be considered.
- 2.3 Anyone who has not made a representation on the application at the planning consultation stage, or who has made a late representation, will still be able to request to speak at Planning Committee in accordance with the Council's Public Participation Protocol but the Council will not write to them about the date and location of the Committee meeting. However, details of Planning Committee meetings are published on the Council's website.
- 2.4 Anyone who supports or objects to an application does not have to speak at a Planning Committee meeting. Representations are reported to the Planning Committee either in writing or verbally so it is up to the individual whether to attend or speak (in person or remotely).

### Registering to Speak at Planning Committee

- 2.5 Anyone who wants to speak at Planning Committee (which for the avoidance of doubt includes Ward Councillors, and Town or Parish Councillors) must complete a 'request to speak at a public meeting form available at: by <https://www.york.gov.uk/form/SpeakAtCouncilMeetings>
- 2.6 A request to speak at a public meeting form must be received no later than 5pm two working days before the meeting takes place. For a Monday meeting, this would be 5pm on the previous Thursday. Requests to speak will not be carried forward to future Planning Committee meetings and therefore it will be necessary to register a

request to speak at a public meeting form for each and every Committee meeting.

#### Speaking Procedure at Planning Committee

2.7 At Planning Committee the Chair will introduce the item and ask speakers to address the Planning Committee in turn. Each speaker will be given 3 minutes. The number of speakers is at the Chair's discretion.

2.8 The five categories and order of speakers is as follows:

- i) **Objector(s)**
- ii) **Parish Council Representative(s)** - The Council expect the Parish Council representative to express the single, corporate view of that Council.
- iii) **Ward Councillor(s) not sitting as a Planning Committee Member**
- iv) **Supporter(s) who are not associated with the applicant or application** (for the avoidance of doubt this cannot include family of the applicant or agent).
- v) **The applicant and/or agent**

2.9 To assist the process those wishing to speak are requested to ensure they express their views clearly and concisely within the time allocated and any matters raised are relevant to the application. All those involved in public speaking are restricted to an oral presentation only.

2.10 The Chair of the Planning Committee may intervene, or vary the order of speakers, in the interests of efficiency.

2.11 Those addressing the Planning Committee will not be able to ask questions or join in the debate after their speaking time has elapsed. After a speaker has addressed the Planning Committee for 3 minutes, Members of the Planning Committee may, through the Chair, ask questions to speakers on points of fact and clarification before they debate an application. Speakers must not interrupt other speakers, nor interrupt the Planning Committee debate.

### Items on the agenda

- 2.12 The Planning Committee agenda is available 5 working days in advance of the meeting. The agenda and associated reports can be viewed on the Council's website.
- 2.13 Speakers are advised to familiarise themselves with the contents of the relevant Planning Committee report in the Committee Agenda prior to addressing the Planning Committee in order to avoid taking up Planning Committee time in repeating the Officer's comments.

### Presenting new information

- 2.14 If speakers wish to present documents or photographs to the Planning Committee, the material must be submitted to [planning.comments@york.gov.uk](mailto:planning.comments@york.gov.uk) no later than 5pm on the second working day before the meeting. For a Monday meeting this would be 5pm on the previous Thursday. The Council will consider the information to ensure that there is no issue of impropriety, i.e. showing people or events in an unfavourable way, or defamation/slander for example.
- 2.15 The submission of paper documentation on the day of the meeting by applicants, agents and persons making representations to the Committee is not permitted and cannot be circulated in the meeting.

### Material considerations

- 2.16 Relevant issues in considering planning applications (**material considerations**) can include (but are not limited to):
- The Development Plan
  - Other planning policies
  - National Planning Policy Framework and other Government advice

- Highway safety and traffic considerations
- Landscape impact
- Local amenity
- Noise
- Privacy (overlooking etc.)
- Conservation areas and listed buildings
- Archaeology
- Risk of flooding
- Loss or effect on trees and wildlife/nature conservation
- Case law and relevant previous decisions etc.

2.17 The Committee must only consider material considerations when determining planning applications.

Non-Material considerations

2.18 Issues which are irrelevant when determining planning applications (**non-material considerations**). This list is not exhaustive but gives examples of the types of issues that are not relevant when determining applications:

- Business competition
- Ownership disputes
- Reduction in property values
- Restrictive Covenants
- Moral objections
- Personal circumstances or private rights
- Matters controlled by other legislation e.g. Buildings Regulations, Licensing.
- The applicant's motives for making an application.
- Loss of trade elsewhere.
- Construction issues e.g. standard of workmanship, length of time taken to do work.
- Precedent e.g. unrelated decisions that have been made before.
- Complaints about procedures in dealing with applications.

2.19 An application submitted after development has been carried out has to be determined on its own planning merits like any other.

### **3. Pre-Committee Matters Including Site Visits**

#### Site Visits

- 3.1 The site visit is for the Members of the Planning Committee to view aspects of an application site, it is a fact finding exercise for the Planning Committee. The prospect of a Planning Committee site visit should not deter Members of the Planning Committee from looking at a site themselves from any public vantage points in the same way that any other member of the public may do.
- 3.2 Although the site visit is a formal part of the decision making process, it is not where decisions are taken.

#### Arrangements for the site visit

- 3.3 Planning Committee site visits will take place before the application is considered by the Planning Committee. The date, time and order of site visits will be circulated to Members of the Planning Committee.
- 3.4 The committee visits will be virtual unless it is considered by the Chair that an in person site visit is necessary due to the complexity of the site.
- 3.5 If access onto the site is necessary, the applicant or agent will be informed of the site visit and asked to ensure that access is available.

#### Attendance at the site visit

- 3.6 The persons entitled to be present at all times during the site visit are Members of the Planning Committee and appropriate Officers as determined by the lead planning officer for the committee meeting.

Virtual Visits

- 3.7 Where the site visit is virtual Local Ward Members and Parish Council representatives may join the site visit group but only to observe and listen. Where this happens, the representative(s) will not be permitted to address the Planning Committee or its Members unless asked to identify physical features such as boundaries or access points.
- 3.8 If members of the public would like to request that site specific items are viewed they must make the planning case officer aware of this request before the site visit commences.

In person visits

- 3.9 For in person site visits the land owner or their agent or the applicant may need to accompany Members of the Planning Committee on the site visit. Where this happens that person will not be permitted to address the Planning Committee or its Members unless asked to identify physical features such as boundaries or access points.
- 3.10 Members of the public may attend and listen to the proceedings where these are conducted in public areas, but they have no right to enter private land or buildings.

Conduct at the site visit

- 3.11 The following procedures will be observed in the holding of all Planning Committee site visits:
- 3.12 Officers will arrange the in person site visit in advance with relevant parties. There is no right to enter on private land without permission of the land owner. Where appropriate, officers will obtain permission from the land owner or their agent for those invited to attend the site visit to enter the land. If permission is not given for Members and Officers and other interested parties to enter, the site will have to be viewed from the public highway/areas.

- 3.13 The Chair (or Vice Chair deputising for the Chair) will control proceedings throughout.
- 3.14 The Chair will explain that the purpose of the site visit is to obtain information relevant to the determination of the application. The Chair will summarise the proceedings and the constraints as set out below.
- 3.15 The Chair will introduce the Planning Officer who will describe the proposals to Members with reference to matters of fact and features on the land and the submitted plans/drawings and summarise the relevant issues and material considerations. It is expected that Members of the Planning Committee will already be familiar with the planning officer's report where one has been provided.
- 3.16 Members of the Planning Committee may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of the planned development.
- 3.17 Other officers may be present to provide other specialist/expert advice/information where relevant/required (e.g. Highways Engineers, Tree Officers or Environmental Health Officers Etc.).
- 3.18 Members of the Planning Committee will then be invited through the Chair to ask any questions of fact or seeking clarification from the Officers present. Members of the Planning Committee should not direct these questions to the applicant or others present. Any matters not to hand will be reported at the Planning Committee meeting. Discussion on the merits of the application will not be permitted, and Members of the Planning Committee should refrain from making comments on the proposal.
- 3.19 During the in person site visit, no separate discussions regarding the application must take place with Officers or Members of the Planning Committee and either applicants, objectors or supporters. In order to assist in ensuring that Members of the Planning Committee receive the same information, they are required to keep together in one group with the Chair and the Planning Officer during the entirety of the

accompanied site visit. They will not break-off to discuss the proposal separately with residents or the applicant.

- 3.20 During the in person site visit, Officers and Members of the Planning Committee will not accept any representations (including verbal presentations, documents, letters or petitions) from applicants, objectors or supporters. Any representations should be sent to the Planning Department by email to: [planning.comments@york.gov.uk](mailto:planning.comments@york.gov.uk) and these will be reported at the relevant meeting of the Planning Committee.
- 3.21 No hospitality will be accepted by Officers and Members of the Planning Committee from the applicant or any other interested party present at the site visit.
- 3.22 The Chair will conclude the site visit. Where Members of the Planning Committee attend an in-person site visit they will leave the site promptly, as a group, and refrain from talking to the applicant, objectors or other interested parties. No indication of the views of Members of the Planning Committee or the likely outcome of the Planning Committee's deliberations on the application will be given. To do so might imply that a Member's mind is already made up.
- 3.23 If Members of the Planning Committee require further information or clarification of any aspect of the development, the officer(s) attending the site visit will be asked to ensure that such information is available by the time the application is considered by Members of the Planning Committee at the relevant meeting of the Planning Committee.

#### Pre-Committee Briefings

- 3.24 Pre-committee briefings will be held with the Chair and Vice Chair and relevant Officers. The purpose of the pre-committee briefing is to update the Chair and Vice Chair on the applications to be presented at the next Planning Committee meeting and to go through any amendments/speakers etc. following dispatch of the formal agenda.

#### 4. Committee Agenda

- 4.1 Each planning application for a consideration by the Planning Committee is the subject of a written report with an officer recommendation. In addition to the report, officers will present the item for consideration together with illustrative material to explain the scheme. The planning application itself is available to view on Public Access at [Simple Search \(york.gov.uk\)](https://www.york.gov.uk/simple-search) under the relevant application number or using the address search function.
- 4.2 The Planning Officer will also present to the Committee any relevant additional information that has been received prior to the meeting but after publication of the agenda.

#### 5. Order of Proceedings

- 5.1 Generally, Planning Committee meetings take place at West Offices, however virtual Planning Committee meetings may also be utilised where situations facilitate them. The time of the meeting is stated on the agenda papers and published in the Diary of Meetings on the Council's website.
- 5.2 At the discretion of the Chair, the order of business on the agenda may be varied at the meeting with the agreement of the Planning Committee.
- 5.3 The procedure for considering each item shall be as follows:
- The Planning Officer shall provide an update on any pre-Committee updates and then introduce the application.
  - Public speaking in accordance with the Public Speaking Procedure (as set out in paragraph 3 of this Protocol will take place).
  - The Planning Officers will address, where necessary, any issues raised during public speaking and respond to questions from Members of the Planning Committee.
  - The Planning Committee will consider the application and reach a decision.

- Advice may be provided by Planning Officers and/or the Legal Officer at any time as necessary.

5.4 Members should raise any queries they may have on an application with the Chief Planning Officer as soon as possible prior to the meeting, including the need for additional information. This can help identify issues early on and help to make sure that issues do not come to light for the first time at Committee. A 'no surprises' at Committee approach should be the aim.

## 6. Decision Making

6.1 In coming to a decision on a planning application, a Member of Planning Committee must:

- Come to the meeting with an open mind;
- Not communicate with anyone (except Officers, other Planning Committee Members, and public speakers through the Chair) orally, electronically, in writing or by any other means during the proceedings of the Planning Committee;
- Come to a decision only after due consideration of all the information reasonably required to base a decision upon;
- Not take part in the debate or vote on a proposal unless they have been present for the entire item including the Officer's presentation and any public speaking, and
- Ensure that if they are proposing, seconding or supporting a decision contrary to the Officer's recommendation or the Development Plan, that they identify and understand the planning reasons leading to their conclusion and that they consider any professional advice given.

6.2 Reasons must be given before a Secunder to the proposal is sought and the vote is then taken and recorded if the proposal is contrary to or an amendment to the Officer recommendation.

## 7. Voting Procedures

- 7.1 The Chair of the meeting will usually bring the Planning Committee to a vote promptly on the officer recommendation in the first instance, where they consider that there has been sufficient debate on the item.
- 7.2 All items on the agenda will require a decision being taken on them and cannot be undetermined (unless they are deferred).

### Decisions contrary to the Recommendation

- 7.3 A motion to go against the recommendation should usually only be considered after a vote on the recommendation (or an amendment to the recommendation) has taken place. Where a motion to go against the recommendation (or an amendment to the recommendation) set out in the report is proposed, material planning reasons for voting against the recommendation must be given. When the recommendation is not supported, a new motion to either grant or refuse or defer the application must be moved and seconded. However, before a new motion is proposed, the Committee must first receive advice from the Chief Planning Officer or their representative, as to what form a new motion could take. That advice will be based upon the material planning considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge.

## 8. Following the Committee Meeting

- 8.1 The decisions of the Planning Committee must be recorded in the minutes of the meeting and published on the Council's website (for interested parties who cannot attend).
- 8.2 If an application for planning permission has been refused, or permission has been granted with conditions imposed, an applicant can appeal to The Planning Inspectorate via their website:  
<https://acp.planninginspectorate.gov.uk/>

8.3 The decision notice issued by the Planning Department will be accompanied by information on how to appeal. There is no 'third party right of appeal', so only the applicant may appeal against a decision made.

## **9. Review and Monitoring**

9.1 This Protocol will be monitored and reviewed annually by the Chief Planning Officer and Chair and Vice Chair of the Planning Committees to ensure it remains current and relevant to the operational needs of those Committees.

9.2 As this Protocol will be incorporated into the Council's Constitution, any proposed changes will be reported to the Audit and Governance Committee for information and to Full Council for approval and immediate implementation.

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## **Appendix 18 - Guidance to Councillors and Officers Appointed to Outside Bodies**

### **1 Introduction**

- 1.1 This guidance sets out the main issues which Councillors and Officers should consider when appointed by the Council to serve on outside bodies.
- 1.2 In the context of this guidance ‘outside bodies’ include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. Councillors or Officers may be involved as a director, trustee, governor or member (with or without voting powers).
- 1.3 Councillors and Officers who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.
- 1.4 With the increasing emphasis on partnership working, Councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Councillors and Officers always need to be clear about their roles and be alert to potential conflicts of interest in order to ensure transparency and public confidence in local democracy.
- 1.5 The purpose of this guidance is to assist Councillors and Officers in the discharge of their responsibilities on outside bodies clearly and effectively. It covers, primarily, the position of Councillors and Officers appointed by the Council to serve on outside bodies, though much of the advice applies equally to Councillors and

Officers who are involved with outside bodies in a private capacity. In those situations, however, the Council's insurances will not apply.

- 1.6 This guidance is general and Councillors and Officers should contact the Monitoring Officer for further advice if they have any particular issues of concern.

## **2 Issues to consider before appointment**

- 2.1 Before accepting an appointment to an outside body Councillors and Officers should check the following:

- a) The legal status of the organisation, e.g. company, trust, charity, unincorporated association;
- b) The capacity in which the Councillor or Officer is to be appointed, e.g. director, trustee,
- c) Whether the Councillor or Officer will have voting rights or observer status;
- d) The purpose of the organisation and how this relates to the Council's functions and objectives;
- e) The relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
- f) The requirements of the organisation's governing instrument, e.g. constitution; trust deed; memorandum and articles of association, both as a member and generally;
- g) The financial status of the organisation;
- h) governance and decision-making arrangements, including the management of risk;
- i) Any code of conduct for members of the outside body;
- j) Any potential liabilities;
- k) Extent of any insurance cover for members of the outside body.

- 2.2 Having checked the above, Councillors and Officers should consider carefully whether they are willing to be appointed to participate formally in the management of the external organisation

e.g. as a director, trustee or voting member, or whether their role as a representative or Officer of the Council may be more effectively discharged as a non-voting member with observer status only. Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation, Councillors and Officers are generally advised to seek appointment as members with observer status only, unless there are exceptional reasons for more formal participation.

- 2.3 Councillors and Officers are encouraged to seek advice from the Monitoring Officer where any of the above issues are unclear.

### **3 Application of the Council's Code of Conduct for Members**

- 3.1 The Council's Code of Conduct for Members at Appendix 14 and the Council's Code of Conduct for Officers at Appendix 15 of the Constitution, place specific obligations on Councillors and Officers when acting in that capacity in their dealings with outside organisations. The Code will, in particular, apply where a Councillor or Officers is acting as a representative of the Council on an outside body.
- 3.2 Apart from the general duty to promote and support high standards of conduct, the following duties of the Code are particularly relevant in this context:
- a) act solely in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;
  - b) Avoid placing yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
  - c) Make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;

- d) Declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts in a way that protects the public interest.
- e) Comply with the statutory requirements on the registration and declaration of interests.

3.3 Councillors and Officers who have a direct or indirect disclosable pecuniary interest in any business at a meeting of the Council, e.g. award of a contract, must not participate in any discussion of the matter or, in the case of a Councillor, vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

3.4 Councillors and Officers who serve on more than one body, in particular, need to be mindful of potential conflicts of interest and always act in an open and transparent manner in carrying out their respective roles. For example, where a Councillor is at a council meeting considering an application for a grant or a community asset transfer request from a parish council or other public body of which they are a member, they should declare the existence and nature of their interest. Having done so, they may, generally, take part in the discussion of that item and vote, unless there are particular reasons why this would not be appropriate. It is also advisable as a matter of transparency, to include details of the interest in their register of interests.

3.5 The same principle will generally apply where Councillors are appointed to serve as school governors, but it is always necessary to have regard to the nature and extent of any conflict of interest in deciding whether to participate or vote. Where the governing body is considering a matter which is likely to have a material effect on the Councillor or a member of their family, it would be advisable to declare an interest and take no further part in the proceedings.

3.6 Councillors and Officers appointed to serve on outside bodies should be mindful of their legal obligations regarding disclosure of confidential information and in case of doubt should seek advice from the Monitoring Officer.

#### **4 Predetermination and Bias**

4.1 Aside from the Code of Conduct, under common law, Councillors must be careful to avoid any pre-determination or bias in their decision-making. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgement fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

4.2 The Localism Act 2011 clarified the rules on predetermination. It makes it clear that a Councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A Councillor is not, for example, prevented from participating in discussion of an issue, or voting on it, if they have campaigned on the issue or made public statements about their approach to it.

4.3 The general position remains however, that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.

4.4 Councillors need to be aware that decisions may be challenged and set aside on the grounds of bias. Under common law, bias involves some element of partiality or personal interest in the outcome of a case, as a result of a close connection with the parties, or the subject matter of the dispute, or because of a tendency towards a particular shared point of view.

4.5 The relevant test for bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision-maker was biased. The risk of a successful challenge on these grounds may be overcome by proper observance of the requirements of the Code of Conduct and particularly the provisions set out above.

## **5 Legal status, capacity, duties and liabilities**

- 5.1 Where a Councillor or Officer is appointed to an external organisation by the council, the Councillor or Officer will be representing the interests of the Council. However, they will also have duties to the organisation. The extent of these duties will depend on the type of organisation and the nature of the position that the Councillor or Officer is appointed to.
- 5.2 If the Councillor or Officer is serving in a decision-making capacity, or has a position of management or control on the external organisation, they will owe duties to that organisation that are distinct and separate from their duties as Councillor or Officer.
- 5.3 In contrast, where the Councillor or Officer is appointed to an external organisation as an observer only and is not required to participate in the organisation's management or governance other than to attend and vote at annual or general meetings, it is likely that the Councillor or Officer will, for the most part, be acting as a representative of the Council and would not have the same duties in respect of the governance of the organisation referred to above.
- 5.4 The specific responsibilities of Councillors and Officers will depend upon the legal status of the outside body and the capacity in which they have been appointed. The position of Councillors and Officers in relation to various types of outside body, is summarised in the appendices to this note as follows:

- Appendix A - Director of Limited Liability Company

- Annex 1 – Summary - Executive, Shareholder Committee and Companies
- Appendix B - Trustee of Trust or Charitable Trust
- Appendix C - Member of Unincorporated Association
- Appendix D - Member of Steering Group, Joint Committee or Partnership Body

5.5 The key point to note, is that where Councillors or Officers are carrying out their duties as a trustee, director, or management committee member, they may take account of the wishes of the Council, but their primary duty is to act in the best interests of the organisation to which they have been appointed.

## **6 Liability, Insurance and Indemnity**

6.1 Councillors and Officers can incur personal civil and criminal liability from formal participation in outside bodies. However, under section 265 of the Public Health Act 1875 (as applied by Section 39, Local Government (Miscellaneous Provisions) Act 1976), Councillors and Officers enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence.

6.2 This immunity does not apply however, where they act beyond the powers of the council or act in bad faith (i.e. with dishonest or malicious intent) or negligently, and it does not protect them from criminal liability, for example for fraud where they exercise managerial responsibilities.

6.3 City of York Council has a wide insurance provision to protect its assets and liabilities. Within these provisions the Council has extended its cover to protect its elected and co-opted members of outside bodies when carrying out duties in connection with the business of the Council. Those afforded the protection are:

- a) Elected Members of the Council or co-opted members of any Committee or Sub-Committee;
- b) Members of committees, schemes or associations formed to assist in the activities of the Council.

6.4 Further assistance on the issues covered in this guidance may be obtained from the Council's Monitoring Officer.

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## **Appendix A – Duties and Responsibilities of a Director of Limited Liability Company (both Teckal and Non-Teckal)**

### **1 Directors Duties**

1.1 Directors owe a number of duties to their company, which are set out in the *Companies Act 2006*. These duties are to:

- a) Act within powers (*section 171*) - see paragraph 2 '*Acting within powers - Consequences of exceeding authority*'.
- b) Promote the success of the company (*section 172*).
- c) Exercise independent judgement (*section 173*) - see paragraph 3 '*Duty to act for the company and risk of local authority becoming a shadow director*'.
- d) Exercise reasonable skill, care and diligence (*section 174*) – see paragraph 4 '*Requirement for appropriate level of skill and expertise*'.
- e) Avoid conflicts of interest (*section 175*) – see paragraph 5 '*Avoid conflicts of interest – Council vs Company*'.
- f) Not accept benefits from third parties (*section 176*).
- g) Declare interest in a proposed transaction or arrangement with the company (*section 177*).

1.2 Councillors and Officers appointed as directors should be aware of these duties, particularly those which could lead to:

- a) A conflict with their role as a Councillor or Officer (for example, the duties to promote the success of the company, to exercise independent judgement, and to avoid conflicts of interest).
- b) Personal liability for the debts of the company.

### **2 Acting within powers - Consequences of exceeding authority**

2.1 Directors must ensure that they act within the company's constitution (its memorandum and articles of association) and must only exercise these powers for their proper purpose. If a director acts outside of their powers a company can still be bound by the unlawful actions of their Officers / Directors (unlike statutory

corporations, such as local authorities). Third parties acting in good faith can rely on decisions made by directors acting outside their authority, but the company may recover any resulting loss from the director personally.

### **3 Duty to act for the company and risk of local authority becoming a shadow director**

- 3.1 Councillors and Officers appointed to external corporations must ensure that they take decisions in accordance with their personal convictions; **they must not act on behalf of, or in promotion of, the local authority.** As a director, the Councillor or Officer has a statutory duty to promote the success of the company and exercise independent judgement. If the Councillor is unable to do this without compromising their duty to the authority, they should resign their post. However, an Officer's duty to the authority is contractual, and so the authority can waive their contractual obligations if appropriate.
- 3.2 Furthermore, if the Councillor or Officer is a mere conduit for the local authority's viewpoint, the local authority risks being held to be a shadow director of the company. A shadow director is a person in accordance with whose directions or instructions the directors of a company are accustomed to act.
- 3.3 If the local authority is found to be a shadow director in an insolvency situation, it could be liable for the debts of the company where it knew, or ought to have concluded, that the company could not avoid insolvency but did not prevent it from continuing to trade (wrongful trading).

### **4 Requirement for appropriate level of skill and expertise**

- 4.1 A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both:

- a) The general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (the "objective" test).
- b) The general knowledge, skill and experience that the director actually has (the "subjective" test).

4.2 So, at a minimum, a director must display the knowledge, skill and experience set out in the objective test, but where a director has specialist knowledge, they must meet the higher subjective standard. Therefore, a Councillor or Officer should consider, along with the appointing local authority, whether they have the skills necessary to run a company; it is not enough that an individual has the time and enthusiasm. In addition, individuals with specialist skills will be expected to apply those skills to their role as director.

#### Liabilities arising from insolvency of company or association

- 4.3 The need to have the necessary expertise to manage the company's finances is particularly important if the company is struggling financially. A director who does not scrutinise and understand the company's accounts risks incurring personal liability to the company's creditors for wrongful trading under section 214 or Section 246ZB of the Insolvency Act 1986 if they continue to trade when they knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid becoming insolvent.
- 4.4 It is important to recognise that liability arises whether or not the director understood the company's financial position or intended any harm; if they should have known the company could not avoid insolvency, they were obliged to take every step to minimise its creditors' losses.

## **5 Avoid conflicts of interest – Council vs Company**

- 5.1 A Councillor or Officer appointed as a director to a company will owe specific duties to the company in that capacity under both

statute and common law. Councillors and Officers are under a duty to exercise independent judgement when they are making decisions on behalf of the council. However, as a director of an external organisation they will also have a duty to exercise independent judgement and to act in the best interests of the company to which they are appointed.

- 5.2 This means that if the Councillor or Officer finds themselves in a situation where the interests of the council arise, the Councillor or Officer must disclose that interest. If they simply act or vote in line with the Council's position, the Councillor or Officer would not be acting in the best interests of the company and would be in breach of their duties as a director and could incur personal liability for their actions. Where a potential or actual conflict of interest arises, the Councillor or Officer may have to resign from either the company or the council.
- 5.3 A summary regarding potential conflicts of interest for Councillors who are members of Executive and/or the Shareholder Committee is set out in Annex 1 (Summary - Executive, Shareholder Committee and Companies) to this Appendix 1.

## **6 Other responsibilities**

- 6.1 Directors must also be aware of how acts and decisions of other individuals may bind the company, for example:
- a) Company directors may have powers delegated to them by the company, but they also have ostensible authority to act on behalf of the company, and their actions will bind that company, so that a third party dealing in good faith with a company's director may rely on the actions of that director even if they were not actually authorised by the company.
  - b) Employers have vicarious liability for the tortious acts of employees carried out in the course of their employment. This can include discrimination against one employee at the hands of another, as well as breaches of health and safety.

## **Annex 1: Summary - Executive, Shareholder Committee and Companies**

### **1 General**

1.1 The shareholder of a company owned by the Council is always the City of York Council, not the members of the Executive or the Shareholder Committee themselves, or any Council Directors appointed to represent the Council on the boards of these companies.

### **2 Executive**

#### **2.1 Purpose in relation to companies:**

2.1.1 The Executive will make decisions in relation to a company of which the Council is a Shareholder that are reserved to the Executive in the terms of reference of the Shareholder Committee as set out in the Constitution at Article 12: Shareholder Committee.

2.1.2 These are decisions that involve:

- a) changes to company governance e.g. including amending a company's articles of association, or its shareholder agreement;
- b) agreements to any amalgamation, merger, joint venture, profit sharing or similar arrangements; and
- c) approving steps to wind up a company.

#### **2.2 Conflicts:**

2.2.1 A member of the Executive can also be a director of a company. However, in the context of the Council being a shareholder of various companies and members of the

Executive also being Directors of various companies there is potential for conflicts to arise.

- 2.2.2 Councillors who have a direct or indirect disclosable pecuniary interest in any business at a meeting of the Council, e.g. award of a contract, must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

### **3 Shareholder Committee**

#### **3.1 Purpose:**

- 3.1.1 The Shareholder Committee has been established by the Executive specifically to discharge the shareholder functions of the Council in relation to those companies of which the Council is a shareholder. The Shareholder Committee does not have day-to-day operational control over any of the companies of which the Council is a shareholder.
- 3.1.2 The decisions which the Shareholder Committee is required to make in relation to a company are set out in the Shareholder Committee terms of reference as set out in the Constitution at Article 12: Shareholder Committee and the Shareholder Agreement for each company.

#### **3.2 Conflicts:**

- 3.2.1 In law, a shareholder of a company can also be a director of a company – this is often the case in small family-run companies. However, in the context of the Council being a shareholder of various companies and members of the Shareholder Committee also being Directors of various companies there is potential for conflicts to arise.
- 3.2.2 Councillors who have a direct or indirect disclosable pecuniary interest in any business at a meeting of the

Council, e.g. award of a contract, must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

## 4 Director

### 4.1 Purpose:

4.1.1 A member who is appointed as a director of a company will be involved in all decisions regarding the day-to-day operation of that company. Directors owe a number of duties to their company which are set out in the Companies Act 2006:

- h) Act within powers
- i) Promote the success of the company
- j) Exercise independent judgement
- k) Exercise reasonable skill, care and diligence
- l) Avoid conflicts of interest
- m) Not accept benefits from third parties
- n) Declare interest in a proposed transaction or arrangement with the company

### 4.2 Conflicts:

4.2.1 Council decision making

Where a member of Shareholder Committee and/or the Executive is also a director of a company and the Shareholder Committee or the Executive is being asked to make a decision in relation to that company, e.g. award of a contract, the member should declare a direct or indirect disclosable pecuniary interest and must not participate in any discussion of the matter or vote on it, unless a dispensation has been obtained. Failure to comply with these

requirements without reasonable excuse may result in prosecution.

#### 4.2.2 Company decision making

Conversely if the Councillor finds themselves in a situation in relation to the company where the interests of the Council arise, the Councillor must disclose that interest. The Councillor has a duty to exercise independent judgement and to act in the best interests of the company to which they are appointed. If they simply act or vote in line with the council's position, the Councillor would not be acting in the best interests of the company and would be in breach of their duties as a director and could incur personal liability for their actions.

### 5 Simple checklist:

If in doubt, consider the following questions:

1. Are you a member of the Executive and/or the Shareholder Committee?
2. Are you a director of the company in relation to which the Executive and/or Shareholder Committee is being asked to make a decision?

If the answer is 'yes' to both a potential conflict could arise and the member should declare this and not participate in any discussion of the matter or vote on it.

## **Appendix B – Duties and Responsibilities of a Trustee of Trust or Charitable Trust**

Additional duties and responsibilities placed upon Trustees include making sure that the body acts in accordance with the overriding duty to all beneficiaries of the Trust. Beneficiaries may be people within the City of York or a specific category of persons for whose benefit the Trust was originally established. The Trustee Act 2000 contains most of the duties upon the Trustees; the Act also includes a statutory duty of care which applies when a Trustee is:

- Exercising a general power of investment or any specific power of investment arising from the Trust;
- Making investments arising in line with the Standard Investment Criteria under Section 4 of the Act or taking independent advice on investments under Section 5;
- Exercising the power to acquire land or deal in land;
- Appointing agents, custodians or nominees or in reviewing their obligations;
- Compounding liabilities under Section 15 of the Trustee Act 1925;
- Insuring Trust property;
- Dealing with reversionary interests, valuations or audits.

The standard of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual, e.g. the standard of care will be higher for someone with an accounting qualification in relation to financial matters than someone without such a qualification.

Duties and responsibilities applicable to charities are even more extensive, as charitable Trustees have additional responsibilities under the Charities Acts. Information on this can be found on the Charity Commission website, or by using the attached link:

<https://www.gov.uk/guidance/charity-commission-guidance>.

In many cases the Charity Commission needs to be consulted before a charity takes action or decides on a particular course of action involving charity property.

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## **Appendix C – Duties and Responsibilities of a Member of Unincorporated Association**

Unincorporated associations and partnerships are not separate legal entities which means that the individuals who are represented on the management committee are personally liable for all acts and omissions of the body. Each of the individuals are jointly and individually liable for what the organisation does. Partnerships and voluntary organisations often have this legal status, however, such associations and partnerships should still have a written constitution setting out the procedural rules which need to be followed and governing how it operates.

An unincorporated association may be charitable and may register as a charity, if this is the case then the duties and responsibilities set out in Appendix B must be considered.

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## **Appendix D – Duties and Responsibilities of a Member of Steering Group, Joint Committee or Partnership Body**

The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions, which are not Executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities and a Councillor may be appointed to such a joint committee. A Member of the Executive may not be a Member of any joint committee established to carry out the Council's scrutiny functions.

The Council's Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

The council may delegate non-Executive functions to another local authority, or in certain circumstances, the Executive of another local authority. The decision whether or not to accept such a delegation from another local authority shall be reserved to the meeting of Full Council.

The Access to Information rules in Part 5A of the Local Government Act 1972 will apply to joint committees established under this Appendix.

## **Appendix 19 – Protocol for use of ICT by Members/Use of Resources**

### **1. Introduction**

- 1.1 This protocol sets out to support Members to carry out their role effectively with the Information Communication Technology (ICT) provided whilst protecting the Council and its Members from the risks associated with its use. The protocol helps Members to stay compliant with the law and good security practice and is intended to assist and enable them in carrying out their activities.
- 1.2 This protocol must be used in conjunction with agreed policies and procedures around ICT security and use of systems such as internal email. Any breach of the requirements of the protocol or the agreed policies and procedures may amount to a breach of the Members' Code of Conduct and the removal of access to the Council's assets, systems and resources.

### **2. ICT Equipment**

- 2.1 Members are provided with equipment to support their needs. Support is available from ICT to help Members understand what each item can and cannot support and to match the device to the Member's individual requirements, such requirements may include a laptop, tablet or mobile phone. Printers will not be supplied.
- 2.2 All items are procured through the standard ICT procurement process and will be covered by standard warranty and insurance policies. All equipment issued belongs to and will remain the property of City of York Council. The equipment provided must be used for all democratic work, including use at Council meetings, reading/annotating agendas, reports, minutes and

accessing City of York Council emails and for constituent work related to the Council and Council business. It is not to be used for purely political purposes or private business purposes. Where members are also appointed to other bodies, arrangements may be made to share equipment.

- 2.3 All reasonable steps must be taken to ensure that equipment is kept secure and protected from theft/damage. Particular care must be taken to ensure that equipment is not left on view in cars or in public transport, etc. In the event of theft, loss or damage to any part of the equipment, members must inform the ICT Service Desk, by telephone (01904 552222) or email ([ictservicedesk@york.gov.uk](mailto:ictservicedesk@york.gov.uk)) immediately. In the event of theft of the equipment, the theft must be reported to the Police without delay in order to obtain an Incident Number and then provide this information to the ICT Service Desk and Insurance @ [insurance.claims@york.gov.uk](mailto:insurance.claims@york.gov.uk).
- 2.4 The member will only grant access to any equipment to an authorised employee or agent of the Council for the purpose of service, repair or audit and will make the equipment available at reasonable notice and in working hours. Use by family/friends or any other third party is not permitted, family members can provide assistance to members in the use of the equipment as long as the Member remains in overall control and does not divulge their user name or password.
- 2.5 If a member ceases to be a Member of the Council, the equipment must be returned to the Council within 10 working days and in such an event access to Council systems will be disabled within 10 working days.

***Lending any equipment to a third party is strictly forbidden.***

### **3. Software**

- 3.1 Members ICT equipment is configured to comply with the Council's ICT Security Policy and to meet the requirements of the Public Services Network. Any unauthorised changes may contravene these policies therefore configurations must not be changed and Members must not attempt to add additional hardware or software to any equipment.
- 3.2 If any additional applications are required, these can be requested by contacting the ICT Service Desk. Each request will be evaluated on its merits. Members should never delete any of the Council supplied software or any applications.
- 3.3 In the event of any maintenance or updates becoming necessary, the ICT Service desk may be able to do this upon request remotely, but where this is not possible the equipment must be returned to West Offices at an agreed time for such works to be carried out.
- 3.4 If there is a suspicion of a virus infecting any equipment or any notifications of untoward activity, this must be reported immediately to the ICT Service Desk. Do not ignore warnings as this could lead to more widespread infections and serious disruption to Council ICT systems.
- 3.5 All software provided by the Council with any equipment remains the property of the Council, or the licensing organisation and may not be shared or copied to another computer/device.

### **4. Access to Systems**

- 4.1 Access to the Council's systems is via a username and password and individual applications may need their own

username and password. Members are required to adhere to the Council's password policy. Regular audits of all passwords are undertaken as part of the security audits of the Council. Care must be taken to keep passwords secure and passwords must not be disclosed to anyone and must be changed when required by ICT should security concerns be identified.

- 4.2 Systems and equipment must only be used for Council business. ICT equipment left unattended must be locked or logged off. Members are responsible for all activity undertaken when logged onto the equipment and must not allow any unauthorised person access to the Council's systems.
- 4.3 Members are permitted to connect their equipment to their home or third party Wi-Fi, subject to any provisions of the Council's ICT policies.

## 5. Storage

- 5.1 Various places are available to store electronic data and specific guidelines will be provided as part of Member training/Member induction. All council meeting papers will be accessible by Modern.gov. Members are discouraged from printing off meeting papers. Members are encouraged to be as paperless as possible and should only print essential material.
- 5.2 Any data stored locally on equipment is not backed up and will be lost in the event of loss or damage to the equipment. All data that you need to retain should be moved where possible to central storage. Council data should not be transferred to removable media, should it be necessary only City of York Council items that are provided by the Council and are encrypted are to be used and this must not then be transferred to personal or third party equipment

without the necessary permissions from the Corporate Governance Team.

## **6. Internet Access**

- 6.1 Do not access any area that could be construed as unfit, obscene or would otherwise be considered inappropriate for a Member of the Council. All internet sites visited by any user (Member or Officer) when connected via Council equipment will be recorded, monitored and if necessary will be available for audit purposes. If you accidentally visit any area that could be construed as unfit, obscene or inappropriate you must leave it immediately and inform the Monitoring Officer.
- 6.2 Care must be taken when downloading files via the internet. Computer viruses may be contained in files and/or emails and can severely damage the operation of the equipment and the Council's systems. If in doubt, do not click on links or download files.
- 6.3 The equipment provided to Members should not be used to access personal social media sites such as Facebook or Twitter. It is however permissible for Members to use the equipment provided for social media for legitimate Council reasons such as communicating with residents or maintaining corporate sites. It is recommended that Members have separate social media accounts for Council business. Members are required to adhere to the provisions of any Council ICT policies around social media. Passwords for social media accounts must never be the same as the passwords used for logging onto the device or any CYC system.

**7. Email**

- 7.1 Members will be allocated a Council email address for use on Council business. This email must not be used for personal or political purposes. If you receive any unsolicited emails (e.g. junk or chain mail) do not forward to any other recipients and delete them or move them into the junk folder.
- 7.2 You must not use anonymous emailing services to conceal your identity when sending emails, falsify emails to make them appear to originate from someone else, or provide false information to any internet service which requests a name, email address or other details.
- 7.3 Members must not automatically forward emails from a Council email account onto a webmail account hosted on the internet by a third party, for example Google, Yahoo, Hotmail, etc. and should not manually do so as a matter of course as this can lead to Council data being placed on an insecure domain.
- 7.4 All Council ICT policies are available on the Council's Intranet. These policies must be adhered to at all times.

**8. Cameras**

- 8.1 Any camera on ICT equipment must not be used to take inappropriate, illicit or sexually explicit photographs or videos, nor be used to embarrass anyone in any way. Members must use their judgement on appropriate use of cameras. Good practice is to ensure that any person to be photographed has given their consent.

**9. Monitoring**

- 9.1 The Council has the capability to monitor all use of the internet and intranet and retains logs of all use. The reason

that monitoring takes place is to ensure compliance with legislation and the standards and rules set by the Council. We record and monitor:

- Details of websites visited or attempted to be visited;
- Pages accessed;
- Files downloaded;
- Graphic images examined;
- Any file attachments (e.g. pictures or Word documents).

9.2 The Council has the capability to monitor, log and retain email correspondence. Any email and internet traffic being sent or received through the Council system will be scanned for potential viruses.

## **10. Complying with legislation**

10.1 The following is a summary of areas to be aware of:

- a. Data Protection - You are responsible for complying with the Data Protection Act 2018, which covers information held in electronic and paper-based form about individuals. It is a criminal offence to collect and process personal data on your ICT equipment unless the use is registered with the Data Protection Registrar. The Director of Governance has copies of all of the Council's Data Protection registrations and can give Members advice if necessary.
- b. Computer Misuse – The Computer Misuse Act 1990 covers unauthorised or malicious use of any computer system. It is the law used to prosecute hackers and people who write and distribute computer viruses deliberately. It is a criminal offence to access or attempt to access any computer system you are not authorised to access. The law protects against

employees and members of the public who deliberately cause damage to systems and data. The Act also makes it illegal for a person to deliberately delete data or sabotage systems to the detriment of the Council.

- c. Harassment – The Protection from Harassment Act 1997 covers harassment either by using email to send a harassing message to someone or by downloading and distributing material from the Internet which constitutes harassment because it creates an intimidating working environment.

Harassment and discrimination are unlawful under the Protection from Harassment Act 1997, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 and the Race Relations (Amendment) Act 2000. As with any form of harassment under the anti-discrimination legislation, the intention of the parties is irrelevant. The problem with email is that, written communication can be misinterpreted and offence may be caused where none was intended.

- d. Obscene Material – Publishing legally “obscene” material is a criminal offence under the Obscene Publications Acts 1959 and 1964. This includes electronic storing and/or transmitting obscene materials that would tend to deprave and corrupt or paedophilic material.
- e. Defamation or False Statements – The liability for defamation or false statements applies to electronic communication just as it does to more traditional forms of communication. Anyone who emails a libellous or false email message or posts such a message on the Internet will be responsible for it and liable for any damage it causes to the reputation of the victim. In addition to the liability of the individual who made the

libellous or false statement, the Council may also be held liable. This could be either under the normal principles of:

- **Indirect Liability** – because the Council is considered responsible – known as “vicarious liability”; or;
- **Direct Liability** – as a publisher because of providing the link to the Internet and email system.

An untrue statement that damages the reputation of a person or company by causing people to think worse of them will generally be defamatory. Similarly, a false statement intended to cause damage to a person or their economic interests can bring a claim for damages.

Do not put anything on an email or an attachment, which you would not put in a normal letter on Council headed paper. Treat email as you would a postcard going through the open post.

- f. **Copyright** – Although any material placed on the Internet or in public discussion areas is generally available, the originator still has moral and, possibly, legal rights over it. You should not copy it without acknowledging the original source and, where appropriate, gaining their permission. This applies even if you modify the content to some extent. Please note that any official material placed on a website is subject to copyright laws.

Copyright laws are different for each piece of software. In general, the copyright to every piece of software run on a system is owned by whichever company or person who wrote it. The Council has a legal duty to make sure sufficient licences of the correct type are present to

cover the use of all software. Members must be aware of these issues and make sure that the Council has correct licences for any software used.

- g. Contracts – Electronic communication, such as email, is generally regarded as an informal means of communication but it is, nevertheless, capable of creating or varying a contract in just the same way as a written letter. You should be careful not to create or vary a contract accidentally.
- h. Disclaimer – despite putting confidential disclaimers and, where appropriate, personal disclaimers, on external communications, there is still nevertheless a legal connection to the Council. Always remember that any statement you make may still be construed as representing the Council.

## **11. Points of Contact**

- 11.1 The ICT Service Desk is the first point of contact for all ICT enquiries, queries and support problems. Calls can be logged via the ICT Self Service Portal icon that you will see on your CYC desktop or by telephoning 01904 552222
- 11.2 Further assistance on the issues covered in this protocol may be obtained from the Council's Monitoring Officer or the Council's Head of ICT, or by consulting the ICT Policies page on the Council's Intranet website.

## Appendix 20 - Member Allowances and Member Allowances Scheme

### 1 Basic Allowance

- 1.1 Every Councillor, irrespective of any particular office he or she may hold on the Council, is entitled to the same level of basic allowance. The basic allowance will be paid to Councillors as a monthly salary. It is intended to recognise the time commitment of all Councillors, including such inevitable calls on their time as meetings with officers and constituents and attendance at political group meetings.
- 1.2 The basic allowance also covers incidental costs incurred by Councillors such as the use of their homes, general administration, out of pocket expenses, internet and telephone expenses and travel within the city of York.
- 1.3 The basic allowance will be uplifted on an annual basis in line with any general salary increases payable to Council staff taking into account any views specifically expressed by the Independent Remuneration Panel.

### 2 Special Responsibility Allowance

- 2.1 In addition to the basic allowance it was agreed at Council that Councillors may receive a special responsibility allowance for any of the following additional responsibilities:
- a) Leader of the Council
  - b) Deputy Leader of the Council
  - c) Group Leader (Main Opposition)
  - d) Deputy Group Leader (Group with more than ten Members)
  - e) Group Leader (Minority Party – minimum 4 Members)

- f) Executive Member
- g) Chair of Customer & Corporate Services Scrutiny Management Committee
- h) Chair of Scrutiny Committee
- i) Chair of Planning Major Committee
- j) Chair of Planning Minor Committee
- k) Chair of Licensing and Regulatory Committee
- l) Chair of Audit and Governance Committee
- m) Lord Mayor as Chair of Council

2.2 Should Councillors be eligible for a special responsibility allowance, this will be added to the basic allowance and shown in total on their monthly payslip. However, only one Special Responsibility Allowance is payable per Member by the Council and where a member attracts more than one Special Responsibility Allowance, only the higher Allowance will be paid.

### **3 Other Entitlements**

#### Dependent Carers Allowance

- 3.1 Council has agreed to pay a dependent carers allowance to those Councillors/co-optees who are eligible with regard to expenditure incurred for the care of children or dependent relatives to enable a Member to carry out council functions.
- 3.2 The reimbursement of costs incurred will normally be at a rate of the living wage.
- 3.3 This rate of allowance may be exceeded in circumstances where professional care is required for children or dependent relatives with medical or other special needs.

- 3.4 In no circumstances will the allowance exceed the amount actually paid.
- 3.5 Claims for dependent carers allowance should be submitted via iTrent for approval by the Head of Democratic Governance by the date notified, and where possible should be supported by recipients.
- 3.6 All dependent carer allowance claims should be made within two months of the meeting attended.

#### Welfare Support

- 3.7 In recognition of the effects of work related and personal stress related to their role, Members will be able to access, in principle, a similar level of Welfare Support to that of a City of York Council employee, where deemed appropriate in consultation with the Head of Human Resources.

#### Travel and Subsistence

- 3.8 Travel allowances are payable to Members for travel outside of the city of York in respect of approved duties. The following are to be regarded as approved duties:
- a) A meeting of a joint committee of which the Authority is a member
  - b) A meeting of any body to which the Council makes appointments
  - c) A meeting of the Local Government Association, any sub group of the Association or any body to which the Association makes appointments
  - d) Duties undertaken on behalf of the Authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the Authority to inspect or authorise the inspection of premises
  - e) Duties undertaken on behalf of the Authority in connection with arrangements made by the Authority for the attendance of pupils at a school approved for the purposes of section 342 of the Education Act 1996

- 
- f) A meeting which has both been authorised by the Authority, a committee, or subcommittee of the Authority or a joint committee of the Authority and one or more other authorities, or a sub-committee of a joint committee and to which representatives of more than one political group have been invited (if the Authority is divided into several political groups) or to which two or more Councillors have been invited (if the authority is not divided)
  - g) Visits by Executive Members, Chairs and Vice-Chairs of Committees and Group Leaders on business associated with those roles
  - h) Attendance of Members at conferences, training courses and seminars approved in accordance with the council's arrangements for Member development
  - i) Other travel approved by the appropriate officer as being reasonably necessary to further the aims of the council (excluding travel for party political or social functions)
- 3.9 Claims should be submitted via iTrent by the date notified, for approval by the Head of Democratic Governance. Receipts showing expenditure incurred should be retained for audit purposes.
- 3.10 The Council will pay or reimburse approved travel or subsistence expenses for Members in accordance with HMRC recommended rates or such other national guidance as may be applicable.
- 3.11 No travel allowance is payable for travel within the area of the city unless the Member has medical or other special needs requiring the use of taxis on approved duties.
- 3.12 When travelling by public transport preference must always be given to the cheaper fare whenever possible.
- 3.13 When using a Councillor's/co-optee's own vehicle the amount claimed for travel must not exceed the value of a 2<sup>nd</sup> class rail ticket for the same journey, where that comparison is possible.
- 3.14 All travel and subsistence claims should be made within two months of the meeting attended.

- 3.15 Tea and evening meal allowances cannot be claimed in the same evening. Tea or evening meal allowances will only be paid if absence is continuous.

Meals provided free of charge

- 3.16 The claim shall be reduced by an appropriate amount in respect of any meals provided free of charge by an authority or body in respect of the meal or the period to which the allowance relates, e.g. should a Councillor/co-optee attend a seminar/meeting and lunch is provided free of charge, a subsistence claim for lunch would not be acceptable.

Travel by Taxi

- 3.17 Councillors/co-optees may claim taxi fares provided that the journey is necessary to undertake an approved duty of the Council outside of the area of the city and where no public transport is reasonably available.
- 3.18 Expenses incurred on taxi travel within the area of the city will only be payable where a Member has a medical or other special need requiring the use of taxis in order to carry out approved duties.

Parking Passes and Cycle Allowances

- 3.19 Councillors are entitled to choose one of the following:

a) Option 1 - Councillors Parking Pass

Allows Councillors to park in most Council car parks with the exception of 'The Shambles', 'Marygate' and 'Coppergate Centre' within the permitted time limits of that car park.

b) Option 2 - Cycle Allowance

A monthly allowance payable to Councillors via their payslip. Councillors in receipt of this allowance are expected to use their bicycle as their usual mode of

transport.

- 3.20 Requests for full details of current amounts payable in relation to Councillor allowances and entitlements together with any queries regarding the scheme should be directed to Democratic Services.

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## **Appendix 21 - Urgent Decision Making Protocol**

- 1 In accordance with the Constitution, the Council undertakes its business via a range of functions, namely Council meetings (Full Council, Executive and Regulatory committees), Scrutiny meetings, Executive Member Decisions and Officer Decisions.
- 2 In response to national advice and guidance (as experienced during the COVID-19 Pandemic), where the Council is unable to sustain the above mentioned functions and an urgent Scheme of Delegation is required to enable business as usual decision making to still take place safely and as transparently as possible. This allows for there to be a mechanism in place which can ensure the Council can make urgent decisions so as to fully protect and meet the best interests of the Council, its Officers and residents.

### **Decisions to be taken using the Urgent Powers of the Chief Operating Officer**

- 3 The Chief Operating Officer or their nominated deputy (see below) has the following delegations:
  - a) To take such immediate action as they consider necessary to implement the Council's peace time emergency planning scheme, or to take such decisions in the event that a constitutionally prescribed decision making meeting cannot be convened within the required timeframe or in direct response to Central Government guidance or direction;
  - b) The power to take any decision, including a key decision, in a situation where the matter is urgent and does not allow time for a report to be considered by the Council, the Executive, the relevant Executive Member or the appropriate Committee. Wherever possible, in the case of any key decisions, such decisions shall be made in consultation with the Leader of the Council or the Deputy

Leader. The decision shall be reported to the next appropriate and available meeting.

- 4 A nominated deputy to the Chief Operating Officer has the following powers:
  - a) The Chief Operating Officer will designate one of the Corporate Directors as the deputy to the Chief Operating Officer. Such designation shall carry with it the delegation to exercise all and any of the Chief Operating Officer's specific delegated functions, during any period where the Chief Operating Officer is absent in the sense that they are not in a position to exercise the powers of the Chief Operating Officer, for example due to sickness, incapacity, a position of conflict or being out of contact in the case of emergency.
- 5 Please note this excludes those decisions which are required to be made by the following Officers in their statutory capacity:
  - a) Corporate Director for People
  - b) Chief Finance Officer (s151)
  - c) Director of Governance (Monitoring Officer)
  - d) Director of Public Health

### **Process to be followed**

- 6 When considering each decision, the Chief Operating Officer and / or their deputy will receive a sufficiently detailed report from the relevant/appropriate Chief Officer. As a mandatory minimum, each report will detail implications relating to Finance, HR, Legal and Public Health.
- 7 The Chief Operating Officer and / or their deputy prior to making the decision will consult with:
  - a) The Leader of the Council and in their absence the Deputy Leader;

- b) The Chief Finance Officer (s151 Officer);
  - c) The Director of Governance (Monitoring Officer);
  - d) Head of HR (where relevant and appropriate);
  - e) Director of Public Health (where relevant and appropriate).
- 8 Once the decision has been taken, the decision record and the detailed report will be provided to the Monitoring Officer and in their absence the Head Civic, Democratic and Scrutiny Services, and arrangements will be made for the decision to be published on the Council's website. The decision template will record the views offered by the Leader of the Council (or Deputy Leader) and other consultees.
- 9 All decisions made will be reported on a retrospective basis by the Monitoring Officer to the relevant Committee.

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## Appendix 22 - Protocol for Webcasting, Filming and Recording of Council Meetings

### 1 Background

- 1.1 The main purpose of webcasting is to promote openness and accountability, and to support greater participation in local democracy by giving members of the public, elected members, officers and other interested parties the opportunity to view meetings without having to attend in person.
- 1.2 Live webcasting and the retention of recordings online for later viewing does not replace the formal record of the meeting and the decisions made. The only formal record of any meeting of a Local Authority is its minutes and agendas which are required to be maintained and retained for a number of years.

### 2 Operating Procedure for Filming/Webcasts

- 2.1 At the start of each meeting to be filmed, an announcement will be made to the effect that the meeting is being webcast, and that the Chair may also terminate or suspend the webcasting of the meeting, in accordance with this protocol. This will be confirmed by the Chair making the following statement: *“I would like to remind everyone present that this meeting will be broadcast live to the internet and will be capable of repeated viewing.”*
- 2.2 Webcasts will only commence at the beginning of a meeting when the Chair opens the meeting and will finish when the meeting is closed. During any adjournments or parts of the meeting where press and public are excluded video and audio will be switched off and a holding screen displayed for those viewing live.

- 2.3 The Chair of the meeting shall have the discretion to terminate or suspend the webcast if:
- a) The meeting is adjourned;
  - b) A resolution is lawfully passed to exclude the press and public from the meeting or a specific portion of the meeting;
  - c) There is a public disturbance;
  - d) Webcasting may lead to a potential infringement of the rights of any person or other breach of law, subject to legal advice; or
  - e) The Chair considers that continuing to webcast would prejudice the proceedings of the meeting, subject to agreement by the majority of Members attending the meeting.
- 2.4 Anything that is outside of the scope of the meeting will not be filmed. This includes reaction shots, walkouts etc. Where an operator is unsure on what to film or is in an unfamiliar situation, the operator should select a camera shot of the Chair of the meeting.
- 2.5 Webcasts or parts of webcasts may be removed if, in the reasonable opinion of the Monitoring Officer, it may prejudice the Council's or the public's interests.
- 2.6 Content may also be removed if the Monitoring Officer considers it necessary because all or part of the content of the webcast is or is likely to be in breach of any statutory provision or common law, for example Data Protection and Human Rights legislation or provisions relating to confidential or exempt information. The reason for any decision to edit a webcast will be logged and published.

- 2.7 Council anticipates that the need to exercise this power will occur only on an exceptional basis.
- 2.8 Any elected Member who is concerned about any webcast should raise their concerns with the Head Civic, Democratic and Scrutiny Services.
- 2.9 Should the live webcast be halted for a technical reason the following procedure will be applied:
- a) The webcasting operator will inform the Democracy Officer and Chair as soon as practically possible
  - b) The Chair may agree a short adjournment to see if the problem can be resolved. *\*If after adjourning the problem still persists, the meeting should continue irrespective of it not being transmitted live. [\*N.B. Not applicable under current legislation covering remote meetings. In this case the remainder of meeting would need to rescheduled]*
  - c) If the live webcast cannot be resumed a back-up recording will be published following the meeting
- 2.10 People under the age of 16 will not be filmed unless written parental/guardian permission has been provided.
- 2.11 Recordings of meetings will be made available to view online for a period of 6 years after which time they will be permanently deleted. Footage covering the meetings of Annual Council, which are mainly ceremonial, can be kept indefinitely for posterity.

### 3 Public Speakers and Audience Attendees

- 3.1 As part of the process for registering to speak at public council meetings, residents will be advised that the meeting will be streamed live on the internet made available to view later online.
- 3.2 If an attendee does not wish to be filmed whilst speaking to the committee, the webcast operator will:
- a) Give guidance to the best place to sit
  - b) Ensure no close-up images of the attendee will be taken
  - c) If the attendee is speaking, the webcast operator will focus the camera on the Chair or a camera view where the speaker will not be shown.
- 3.3 Guidance will be provided to people in the audience at public council meetings advising them to contact Democratic Services staff if they have concerns about being seen on camera.

### 4 Signage at Meetings

- 4.1 On signs to be displayed at the entrance to the meeting room and on the meeting agenda, there will be the following notice:

#### **WEBCASTING NOTICE**

Please note: this meeting may be filmed for live and /or subsequent viewing online - at the start of the meeting the Chair will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the Council's published policy.

The council avoids filming public seating areas where possible. If you have concerns about being seen on camera during the meeting please contact a member of the council's Democratic Services Team.

## **5 Filming by members of the public and press**

- 5.1 Members of the public and press are permitted to film or record, from the seating area assigned to members of the press and public, councillors and officers at any council meetings that are open to the public and press.
- 5.2 We may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees will be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

## **6 Tweeting or blogging by members of the public and press**

- 6.1 The Council permits social media reporting of all its public meetings.

## **7 Photography**

- 7.1 The Council permits photography at all of its public meetings.

## Appendix 23 - Procedure Rules and Guidance for Remote Meetings

This appendix was suspended on 6<sup>th</sup> May 2021, however is retained within the constitution for transparency reasons.

1. These implement The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (the “Regulations”) which became into force on 4th April 2020, and provide for alternative arrangements for Local Authority meetings which are required to be held between 4th April 2020 and 7th May 2021.
2. These arrangements will remain under review by the Monitoring Officer.
3. These Rules should be read in conjunction with Appendix 3 Council Procedure Rules.

### Which meetings do the Regulations refer to?

4. The Regulations refer to the following:
  - Full Council;
  - Executive;
  - Committees;
  - Sub Committees; and
  - Annual Council (separate arrangements).

### Full Council

5. There are no current arrangements planned to convene a meeting of Full Council unless one is deemed necessary. Should one be required, the Monitoring Officer will ensure it meets with the terms of the Regulations for remote meetings.

## **Annual Council**

6. Separate guidance will be issued in due course.

## **Other Committees of the Council**

7. Upon receipt of proposed items of business, the Monitoring Officer, in consultation with the relevant Portfolio Member and or Chair of a Committee and the Head of Paid Service and s151 Officer shall make arrangements for a remote meeting to take place in accordance with the Regulations using the risk assessment process meeting process being implemented.

## **Quoracy of Meetings**

8. All remote meetings of the aforementioned meetings will operate with the minimum quoracy levels, which is as follows:
  - Annual Council – one quarter of the whole number of Members of the Council
  - Budget Council - one quarter of the whole number of Members of the Council
  - Full Council - one quarter of the whole number of Members of the Council
  - Executive – minimum of 4 Members;
  - Planning Committee – minimum of 4 Members (2 Liberal Democrat and 2 Labour); and
  - Licensing hearings held under Licensing Act 2003 – 3 Members.
9. In the event that a remote meeting starts quorate but, due to unforeseen circumstances, for example, IT issues, does not remain quorate, the Democratic Services Officer may temporarily suspend the meeting until the issue is resolved and the meeting can recommence. These circumstances will be fully reflected in the minutes produced for each meeting.

10. In order to avoid a meeting not being quorate should a Member experience IT issues and lose the connection to the remote meeting, there should be an additional two Members present above the minimum quoracy level for the relevant meeting.

## **Voting**

11. All Members attending a meeting will be asked to enter a named vote where voting is required so as to aid clarity and transparency with the live streaming arrangements. To record a vote, the Democratic Services Officer will perform a roll call of all Members present and ask them to state their voting intention (For, Against, Abstain). The Officer will keep a clear note of the votes made. These will then be counted and recorded in the minutes. At the conclusion of the voting the numbers of votes cast for, against and abstentions will be announced as well as the outcome of the vote. In the event of any vote being equally divided the Chair will have a second or casting vote.

## **Access to documents**

12. All agendas, reports and background papers will be available for public inspection by them being placed on and be available to view on the Council's website. There is no longer a requirement to produce a printed copy of an agenda for public distribution. (Regulations 15 and 16(4) and (5)).

## **Public Participation**

13. The requirement to ensure that meetings are open to the public includes access by remote means, including video conferencing, live webcast and live interactive streaming. Where a meeting is accessible to the public through such remote means, the meeting is open to the public whether or not members of the public are able to attend the meeting in person.
14. The Council will endeavour to facilitate public participation where the meeting is being held remotely and where the IT platform allows for

this. There may be instances where the IT platform would not permit the number of public speakers who wish to speak, or, where there are unforeseen issues with IT. Any consideration to reduce public participation will take account of technical issues and fairness.

15. Remote meetings will have a standing item on the agenda regarding public participation. Members of the public may register to speak on an item on the agenda or an issue within the meeting's remit (but see Annexes 1 and 2 on licensing hearings and planning matters) by contacting Democratic Services using the contact details as set out in the agenda for the meeting no later than 5.00pm two working days before the meeting. Speakers will have a maximum of 3 minutes to speak and may subsequently be asked questions by Members. There is no public right of reply following the decision of the meeting.
16. For planning matters and licensing hearings, members of the public may speak on the matters or applications to be considered by members only. See the relevant Annex to this Appendix 22 for further detail. For Planning meetings, it will be at the Chair's discretion as to the number of speakers at that particular committee.
17. In exercising their right to public participation a member of the public is entitled to express views positive or negative about the performance of the Council but must not say anything which is defamatory or discriminatory, make any personal attack on an officer or disclose confidential or exempt information including personal information.
18. In the event that the Council are unable to facilitate public participation for a specific remote meeting, written questions for the public may be submitted for consideration at the meeting. Members of the public are strongly encouraged to email their comments in questions to the Democratic Services team prior to the meeting taking place so that in the event of technology difficulties, comments and views can still be taken into consideration at the meeting.
19. Meetings will be live streamed on the Council's YouTube website. Members of the public who wish to participate in meetings may need to familiarise themselves with the chosen video conferencing technology.

### **Arrangements for Confidential/Part II items of business**

20. The Council have arrangements in place which will enable Members to go into a private session that is entirely separate to the public meeting to enable such matters to be dealt with in private.
21. Agendas will be organised so that such items are dealt with last, with the public excluded from that part of the meeting.
22. In the event there is a need to enter private session during the course of the meeting, for example to give Members the opportunity to seek legal advice, the meeting will be adjourned whilst Members and officers attend the private session. As soon as the private session has concluded, the public meeting will be re-opened so that business can be resumed. During this time, a “screen saver” will appear on the video-conferencing platform notifying anyone viewing of the short adjournment in the public element of the meeting.

### **Moving or cancelling remote meetings**

23. The Monitoring Officer may, following consultation with the Chair of the relevant remote meeting move or cancel a remote meeting without notice.

### **Background Guidance**

24. The Regulations allow Councils to devise arrangements to hold meetings remotely without all, or any, of the Members being physically present in a room. This allows for remote meetings through electronic, digital, virtual locations, live webcast, live interactive streaming, video and telephone conferencing. Authorities are empowered to make provision in their standing orders for remote attendance at meetings regarding, for instance, voting, member and public access to documents; and remote access of public and press

to a local authority meeting to enable their attendance or participation.

25. The Council have developed and implemented standing orders and other rules which can facilitate remote meetings which have now been incorporated into the Constitution in this Appendix 23:
  - a. Appendix 22 - Webcasting Protocol
  - b. Appendix 8 - Public Participation Rules
  
26. In the event that West Offices is in lockdown and remote meetings are being delivered in place of physical or hybrid meetings, the following will not occur:
  - Printed copies of an agenda will not be available;
  - Public inspection of any agenda items will be via the council website only.

**Which ICT platform will City of York Council use to promote remote meetings that can be live streamed?**

27. The ICT platform which the Council will use to facilitate remote attendance and access to its meetings may change during the course of a remote meeting, for example, going from public (Part I) to private (Part II) session. Factors, including securing and sharing data through these platforms will determine the platform used at any time. The platform used will enable the following to take place:
  - Contributions to be received from people using a wide variety of devices, not all of whom are on the Council network;
  - Being accessible to participants and members of the public who are either taking an active role or just observing; and
  - Presentations and documents (maps, plans, etc) to be displayed where required.
  
28. It should be noted that, wherever possible, local Officer Schemes of Delegation will continue to be fully promoted and utilised (i.e. Planning Area Sub-Committee), although it is recognised that this

may not be possible for some matters, i.e. certain licensing applications.

29. There may still be instances where urgent decisions are required. As such, the Council will continue to operate the Urgent Decision Making Guidance issued in March 2020 until further notice.
30. All meetings must be live streamed or live webcast (unless the meeting has resolved to go into private (Part II) session to deal with confidential or exempt information). They cannot be recorded and then uploaded to the Council's website at a later date.

### **What does "remote" meeting mean?**

31. "Place" of a meeting is defined in Regulation 5(1) as:

*"Where a meeting is held, to be held, includes reference to more than one place, including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers".*

32. Members are in remote attendance so long as they comply with all of the following conditions at the specific time (of the scheduled meeting) and are able to:
  - Hear, and where practicable see, and be so heard and where practicable be seen by, the other members in attendance;
  - Hear, and where practicable see, and be so heard and where practicable be seen by any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and
  - Be heard, and where practicable, be seen by any other members of the public attending the meeting.
33. Any reference to a member, or a member of the public is a member of the public attending the meeting and includes that person attending via remote access.
34. A member must therefore be able to fully engage with the meeting. No reference is made to officers who attend to advise Members.

However, they should be able to hear and be heard, and where practicable, seen, along with those other participants.

### **Remote access - Regulation 5 (6): Voting, Access to Documents, Public Participation**

35. The regulations stipulate how remote meetings can be accessed and these require the Council to adopt revised standing orders. This includes provisions for:
- How Members vote at meetings;
  - How agendas and documents are accessed by Members, Officers and members of the public; and
  - How members of the public and press can remotely participate and attend meetings by electronic means including telephone conference, video conference, live webcasts or live interactive streaming.
36. Regulation 5 applies notwithstanding any prohibition or restriction in the Council's standing orders or other rules (Regulation 5(5)). It means that the Council does not have to draft revisions to its Constitution and have them approved by Full Council before commencing remote meetings. The Council is though empowered to change its standing orders and rules to address remote attendance but the legislation does not require it to do so. There will be a need to draw up some processes, in particular how public participation is facilitated, and to operate in a reasonable rational and fair manner. In the event that any remote meeting procedures conflict with the Council's constitution or standing orders, the provisions contained within this document takes precedence in relation to the governance of remote meetings.

### **Convening a Meeting**

37. The Regulations have put alternative arrangements in place for the convening of a meeting including the flexibility of meetings taking place:

- Meetings can now be held on a date and time of the Council's choice;
  - The frequency of meetings can be altered; and
  - Meetings can now be held, moved or cancelled without requirement for further notice.
38. This means that the Council are not bound by the previously published meetings calendar and are free to schedule meetings much more flexibly to meet the local decision-making requirements. However, in the interests of fairness, the Council should give as much notice as possible.
39. It should be noted that hearings to determine licensing applications under the Licensing Act 2003 must be postponed or adjourned to a specified date notified to the parties, with stated reasons that are in the public interest. Please see Appendix 1 for further detail.

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**ANNEX 1 – GENERAL LICENSING AND  
TAXI LICENSING SUB – COMMITTEES  
PROCEDURE FOR REMOTE LICENSING HEARINGS**

**Introduction**

1. This procedure sets out how City of York Council deals with remote hearings. This procedure must be considered in conjunction with Appendix 22: Procedure for Conduct of Remote Meetings which sets out how all meetings, including licensing hearings, are held in York.
2. The procedure adopted at a licensing hearing is at the discretion of the Sub-Committee but will normally follow the pattern outlined below.
3. The Council's licensing hearings procedure is based on regulations made under the Licensing Act 2003. The procedure is intended as a general framework to ensure natural justice and a fair hearing. The Sub-Committee has a duty to view all evidence presented before them impartially. The Sub-Committee is not bound by the formal rules of evidence. Nevertheless, Members must carry out their duty placing what weight they feel is appropriate given the nature of the evidence and the manner in which it was obtained, and communicated.
4. The Council will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination or disposal of any Appeal. The live stream of the Hearing will be recorded and the recording placed on the Council's website.

**Representations at Remote Licensing Hearings**

5. The Applicant is permitted to speak at the remote hearing (see below). Ward Councillors, responsible Authorities and Representors are only permitted to speak if they have made written submissions during the consultation period. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

6. All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee and question each other. Each party will have 15 minutes to address the Sub-Committee and call any witnesses and 5 minutes for questions.
7. However, where there are groups of individuals with a common interest, for example local residents making similar representations either for or against an application, consideration should be given to nominating a spokesperson. Otherwise the Sub-Committee may impose a time limit for such representations where there is pressure on the Sub-Committee to hear numerous applications in a short period of time or for any other valid reason.
8. The Sub-Committee may take into account any documentary evidence or other information in support of the application or representations either before the hearing or, with the consent of all other parties, at the hearing. The procedure set out in paragraph 14-18 will be followed.
9. If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written representation. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by Members.
10. The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives. Duplication should be avoided. Comments must be confined to those points already made, although the parties may expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be made at length.
11. A Representor **may not** introduce any new ground or objection not referred to in their written submission. Additional representations which do not amount to an amplification of the original representation will not be considered by the Sub-Committee.

12. Any person behaving in a disruptive manner will be asked to leave the hearing. However, if this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

### **Procedure prior to the Remote Hearing**

13. The Sub-Committee will use a video-conferencing platform when the hearing is in public session. Clear instructions will be provided to participants on how to join the remote hearing. The Sub-Committee may exclude the public from all or part of a hearing if it considers it is in the public interest to do so. Should any part of the hearing need to be held in private session, a separate private online meeting will be convened by the Sub-Committee using a secure video-conferencing platform. This video-conferencing platform will also be used for decision making in private.
14. All paperwork relevant to the hearing will be published online on the Council's website, 5 working days before the remote hearing. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote hearing. Name and address details of those making representations will be made public. Telephone numbers, email addresses and signatures will be omitted.
15. 5 working days before the remote hearing is due to take place, the Council will contact the parties with a list of issues they would like any party to specifically address them on or clarify at the hearing.
16. If in light of the Council's list of issues any party wishes to produce any further documentary evidence they should submit this to the Council by email three working days before the hearing.
17. Any documentary evidence that is not submitted to the Council by email three working days before the hearing will not be admitted without the agreement of all parties. If it is essential to a party's case that the material be admitted, then the Sub-Committee will consider adjourning the remote hearing to allow all parties a fair opportunity to consider it.

18. Should any party wish to rely on any points of law, specific references in the s.182 Guidance, specific references in the Council's Policy or any other external resources, these should be set down in an electronic document and submitted to the Council by email three working days before the hearing.

### ORDER OF PROCEEDINGS AT THE REMOTE HEARING

#### **Chair's introduction and opening comments**

1. The Chair will introduce the Sub-Committee Members and Officers and welcome the Applicant and Representors (or their representatives), and establish the identity of all who will be taking part.
2. The Chair will outline the procedure to be followed.
3. The Chair will proceed with the order of business on the agenda.

#### **Licensing Manager**

4. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to outline the application.
5. The Chair will invite all parties (who have registered to speak) and/or their representative to ask questions of the Licensing Officer [maximum 5 minutes each party] in the following order:
  - Applicant
  - Police
  - Other Responsible Authority [each in turn]
  - Ward Councillors [each in turn]
  - Interested Parties [each in turn]
  - Sub-Committee Members [each in turn]

#### **The Application**

6. The Chair will invite the Applicant and/or their representative to address the sub-committee, present information in support of their application and call any witnesses to support their application, one witness at a time [*maximum 15 minutes*].
7. The Chair will invite the Representors (who have registered to speak) and/or their representative to ask questions of the Applicant and/or their representative [maximum 5 minutes each party] in the following order:
  - Police
  - Other Responsible Authority [each in turn]
  - Ward Councillors [each in turn]
  - Interested Parties [each in turn]
  - Sub-Committee Members [each in turn]
8. The Applicant and each of their witnesses may be questioned by:
  - Members of the Sub-Committee;
  - The Sub-Committee's legal adviser.

## The Representations

9. The Chair will invite the Representors (who have registered to speak) and/or their representative to address the Sub-Committee, present information and call any witnesses in support of their representation [*maximum 15 minutes each party*] in the following order:
  - Police
  - Other Responsible Authorities [each in turn]
  - Ward Councillors [each in turn]
  - Interested Parties [each in turn]
10. After each presentation the Chair will invite questions from the Applicant and Representors (who have registered to speak) [maximum 5 minutes each party] in the following order:
  - Applicant
  - Police
  - Other Responsible Authority [each in turn]

- Ward Councillors [each in turn]
- Interested Parties [each in turn]
- Sub-Committee Members [each in turn]

11. Where there are groups of individuals with a common interest, for example local residents, presentation through an appointed spokesperson is preferred but not mandated.

### **Cross-examination**

12. Cross-examination of another party is not normally permitted. However, the Sub-Committee will consider any application for permission to cross examine another party should any party wish to make such an application.

### **Summaries**

13. The Chair will invite the Applicant and Representors (who have registered to speak), or their representative, to summarise their case [*maximum 5 minutes each party*] in the following order:

- Police
- Other Responsible Authorities [each in turn]
- Ward Councillors [each in turn]
- Interested Parties [each in turn]
- Applicant

14. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor on law and jurisdiction.

15. The Sub-Committee's legal adviser may seek points of clarification from the Applicant, Representors or their representative.

### **Determination**

16. The Sub-Committee will withdraw to consider their decision in a separate private on line meeting.
17. The Legal Adviser and Democratic Services Officer will remain present during the decision making process. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.
18. Unless expressly stated by the Sub-Committee in the hearing, the Sub-Committee will not return to the public online meeting to announce their decision. The Sub-Committee will provide an outline of their decision in writing to the Applicant and Representors on the day of the hearing concluding, unless further time is required to deliberate. The decision will then be communicated in full, in writing, including the reasons for the Sub-Committee's decision, to the Applicant and Representors, usually within 5 working days of the hearing concluding. The full decision letter will include information about the rights of appeal against the determination made.
19. In the event that the Sub-Committee do return to the public online meeting to announce their decision, the Sub-Committee will only announce an outline of their decision. There can be no further questions or statements from any party. The decision will then be communicated in full, in writing, including the reasons for the Sub-Committee's decision, to the Applicant and Representors, usually within 5 working days of the hearing concluding. The full decision letter will include information about the rights of appeal against the determination made.

## **ANNEX 2: PROCEDURE FOR REMOTE PLANNING COMMITTEE AND PLANNING SUB-COMMITTEE MEETINGS**

### **Introduction**

1. This procedure sets out how City of York Council deals with remote Planning Committee and Sub-Committee meetings. This procedure is supplemental to, and must be considered in conjunction with, Appendix 22: Procedure for Conduct of Remote Meetings document which sets out how all meetings, including Planning Committee meetings, are held in York. Members must also continue to adhere to the Code of Good Practice for Councillors involved in the Planning Process at Appendix 17 of this Constitution.
2. The live stream of the meeting will be recorded and the recording placed on the Council's website.

### **Preparation for the Remote Planning Committee Meeting**

3. The Planning Committee will use a video-conferencing platform when the meeting is in public session. Clear instructions will be provided to participants on how to join the remote meeting. A link for the general public to watch the meeting will be available on the Council's website.
4. The Committee may exclude the public from any part of a meeting if it considers there are commercially sensitive or 'exempt' matters to be discussed. Should any part of the meeting need to be held in private session, a separate private online meeting will be convened by the Committee using a secure video-conferencing platform.
5. All paperwork relevant to the Planning Committee meeting will be published online on the Council's website, 5 working days before the remote meeting. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote meeting.

## Public Participation

6. The applicant, their advisor and members of the public may register their wish to speak on the matters or applications to be considered by members by contacting Democratic Services using the contact details set out in the published agenda for the meeting or, alternatively, by emailing [democratic.services@york.gov.uk](mailto:democratic.services@york.gov.uk) by no later than 5.00pm two working days before the meeting takes place. Clear instructions will be provided to public speakers who have registered to speak on how to join the remote meeting.
7. Members of the public that have registered to speak are strongly encouraged to email the points they wish to make to the Committee to Democratic Services as set out in paragraph 6, above, prior to the meeting taking place so that in the event of technology difficulties, they can still be taken into consideration at the meeting. These will not be circulated to the members of the Planning Committee unless technical difficulties are experienced during the meeting meaning that public participation of one or more registered public speakers is not possible. This is to ensure all views are taken into consideration within the Planning Committee meeting itself and there is no discussion outside the meeting.
8. It will be at the Chair's discretion as to the limit on the number of speakers at that particular committee. Each speaker will be invited to make their representation and will be allowed a maximum of 3 minutes each to speak and may subsequently be asked questions by Members.
9. After each registered public speaker has finished speaking and Members have no further questions of them, they will be asked to leave the remote meeting platform and will be able to view the remainder of the meeting via the live webcast broadcast online.

ORDER OF PROCEEDINGS AT THE REMOTE PLANNING COMMITTEE  
MEETING

**Chair's introduction and opening comments**

10. The Chair will introduce the Committee Members and Officers attending with the Members and welcome any registered public speakers and establish the identity of all who will be taking part.
11. The Chair will outline the procedure to be followed. In all matters of procedure and interpretation of these rules, the Chair's decision will be final.
12. The Chair will proceed with the order of business on the agenda.

**Planning Officer**

13. When the agenda item relating to the application is reached, the Chair will invite the Planning Officer to outline the application.
14. The Planning Officer and any other relevant officers present may be asked questions by the Planning Committee Members.

**Public Participation**

15. The Chair will then invite the registered public speakers to speak for a maximum of three minutes each.
16. The Chair will invite Members to ask questions of each registered speaker immediately after they have spoken.

**Members Debate**

17. After all registered public speakers have spoken and there are no further questions from Members, the Chair will invite Members to

debate the application in question. At this point there will be no further public speaking.

18. At any time it may be necessary for officers to address the Committee to answer questions asked or to comment or clarify any points that have been raised during consideration of the application or to advise the Committee.
19. Any dispute or question as to procedure at the Committee, including the operation of the public speaking scheme, will be determined by the Chair, whose decision on all matters will be final.

### **The Vote**

20. Following consideration of the application, the Chair will ask the Committee to vote on the application in question.
21. Members will be asked to enter a named vote so as to aid clarity and transparency with the remote meeting arrangements. To record a vote, the Chair will perform a roll call of all Members present and ask them to state their voting intention (For, Against, Abstain).
22. In the event of any vote being equally divided the Chair will have a second or casting vote.

### **Close**

23. Once all business of the meeting has been considered, the Chair will close the meeting

## **Appendix 24 - International Travel Protocol**

### Protocol for Members and Officers in respect of International Travel Applicable to both Councillors and Officers

1. All international travel journeys shall be undertaken for legitimate council business reasons only and will only be funded in exceptional circumstances.
2. Any travel which is not paid for by City of York Council must be authorised in advance and full details of the funding party must be provided.
  - a) All travel arrangements will be confirmed as “economy class” or at the lowest cost to the public purse. Councillors and Officers would be able to upgrade their ticket but do so at their own personal expense.
  - b) Councillors and Officers will provide the Council with confirmation that there are no known medical reasons which could prevent them from undertaking international travel, flights etc.
  - c) Subject to meeting health and any other requirements which may be deemed necessary in respect of the proposed travel arrangements and destination, the Council will provide appropriate insurance for the Councillor or Officer.
3. Air travel should be minimised in order to accord with the Council’s commitment to carbon reduction.

### **Actions to be taken prior to approval being granted**

4. The Councillor or Officer will be required to (it is acknowledged that some of the details may be confidential):
  - a) Clarify the purpose of the travel;
  - b) Give details of the aims and objectives to be sought from this travel and how this would benefit City of York Council;

- c) Give reasons as to why this travel is essential and how the aims and objectives cannot be sought by other means e.g. virtual meeting
  - d) Explain what the Councillor or Officer hopes to get out of the proposed trip.
5. Upon returning from an approved trip, the Councillor or Officer will be required to (it is acknowledged that some of the details may be confidential):
- a) Provide feedback from the authorised trip;
  - b) Detail the achieved outcomes and how this will be actioned;
  - c) Detail how City of York Council will benefit as a result of this authorised trip;
  - d) Provide details of the payment of any expenses during the trip (i.e. room service, drinks, etc.).

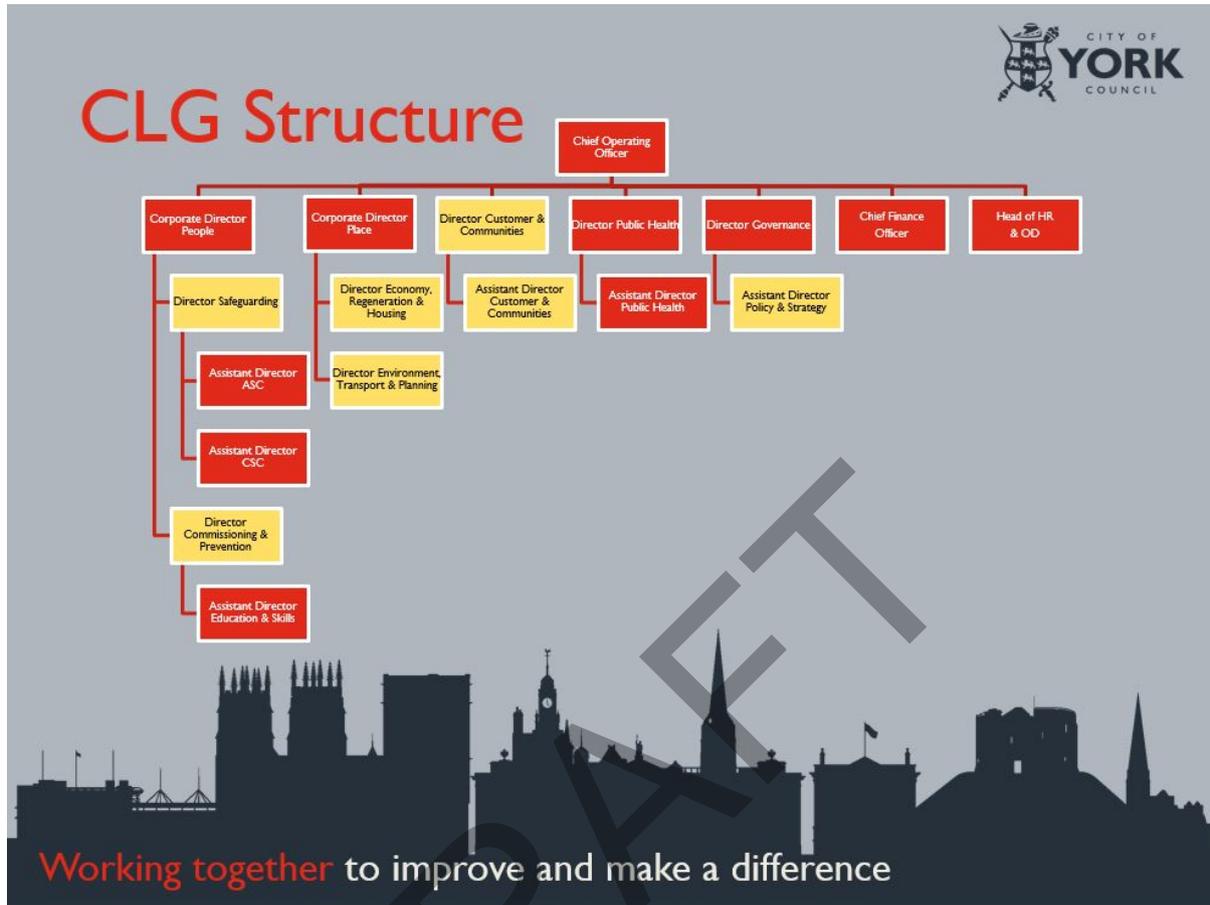
**Applicable to Councillors only**

6. Authorisation for expenditure for international travel shall be sought from the s151 Officer.

**Applicable to Officers only**

7. The Council's Corporate Management Team will authorise expenditure for international travel for officers following consultation with the s151 Officer.

Appendix 25 – Senior Management Structure



## Appendix 26 – Information Governance

- 1 The council is committed to the principles of the UK GDPR/GDPR/Data Protection Act 2018 and other related privacy legislation, e.g. PECR and have detailed policies and systems in place as well as a Data Protection Officer (DPO) to oversee our overall compliance to data protection regulations including the management of access rights requests. Our policies are regularly reviewed and updated, and our staff are periodically trained on data protection and security.
- 2 The council is committed to the principles of transparency and openness in line with the FOI Act, EIR and Local Government Transparency Code and have detailed policies and systems in place which are regularly reviewed and updated and our staff are periodically trained in these areas.
- 3 The DPO is part of the councils Corporate Governance Team and reports directly to the Council's Monitoring Officer. The team manage and monitor key areas in complaints, feedback and information governance ensuring compliance with laws and regulations for complaints including those relating to Data Protection, Freedom of Information and (R)IPA matters; Ombudsmen and Regulator complaints. They advise and support on measures to both detect and prevent risks, so reducing the likelihood and severity of sanctions, penalties or loss of reputation.

Contact details for information governance and the DPO:

email: [information.governance@york.gov.uk](mailto:information.governance@york.gov.uk)  
telephone: 01904 554145  
write to: Data Protection Officer  
City of York Council  
West Offices  
Station Rise  
York  
YO1 6GA

Contact details for complaints, concerns, comments and compliments (the 4Cs) or complaints about adults or children's social care are:

email: [haveyoursay@york.gov.uk](mailto:haveyoursay@york.gov.uk)  
telephone: 01904 554145  
write to: Corporate Governance Team  
City of York Council  
West Offices  
Station Rise  
York  
YO1 6GA

You can also complete the online form at [Have your say – City of York Council](#)

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## **Appendix 27 - Protocol for Monitoring and Review of the Constitution by the Monitoring Officer**

- 1 A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by Full Council, and to make recommendations for ways in which it could be amended in order to achieve better the purposes set out in Appendix 1.
- 2 In undertaking this task, the Monitoring Officer may:
  - a) observe meetings of different parts of the Member and Officer structure;
  - b) undertake an audit trail of a sample of decisions;
  - c) record and analyse issues raised with them by Members, Officers, the public and other relevant stakeholders; and
  - d) compare practices in this authority with those in other comparable authorities, or national examples of best practice;
  - e) undertake any other activities which are deemed necessary and or appropriate, or undertake steps which may directly respond to queries raised by stakeholders for example Internal Audit, External Audit and other organisations/bodies.

## **Appendix 28 - Protocol on the Production and Content of Minutes of Meetings**

### **1 Purpose**

1.1 This protocol sets out formally:

- a) the principles and procedures for the drafting, clearing and publication of minutes of formal meetings of City of York Council; and
- b) guidance on the content of minutes.

### **2 Meetings to which the Protocol Relates**

2.1 In this protocol “meetings” refers to meetings of the following bodies:

- a) City of York Council;
- b) those bodies to which Members are formally appointed at the Annual Meeting, i.e. the Executive and its committees and non-Executive Committees and their sub-committees; and
- c) any bodies of that nature established between Annual Meetings.

2.2 The records of meetings of working groups/parties and panels and task groups, or of joint meetings where City of York Council Democratic Services are responsible for the minutes, whether or not Members are appointed to them, need not follow the arrangements described in this protocol.

### **3 Production of Minutes**

#### Responsibility

3.1 The production of minutes of meetings will be the responsibility of staff of Democratic Services only (referred to in this Protocol as the committee administrator”).

### Timescales

- 3.2 The normal timescales for the production of minutes will be:
- a) draft minutes - within 5 working days of the meeting;
  - b) publication on the Council's website of the final draft – within 10 working days of the meeting.

### Clearance

- 3.3 To reinforce the role of the committee administrator as an impartial recorder and interpreter of decisions taken at a meeting, the drafts of minutes will only be cleared with:
- a) the Monitoring Officer, if they or their representative was present at the meeting; or
  - b) the Democratic Services Manager, if they or their representative was present at the meeting; or
  - c) another senior officer present at the meeting if neither (a) nor (b) was present.
- 3.4 No Member will be consulted on the wording of draft minutes.
- 3.5 In exceptional circumstances other officers who were present at the meeting may be consulted on a draft minute to clarify complex or technical information reported at the meeting which needs to be included in the minutes.
- 3.6 To avoid any uncertainty among those present at the meeting, it will be the responsibility of the committee administrator to seek clarification of any decision or amendment before or at the time of it being put to the vote or agreed, where, in the view of the committee administrator, there exists any doubt or confusion about what the committee has decided or has been asked to decide.

#### **4 Status of published draft/approved minutes**

- 4.1 The published minutes of a meeting will be regarded as an unofficial record of the meeting until they are formally approved by the next available meeting of the relevant body, although in the meantime the decisions taken will in normal circumstances have been implemented, subject to any post decision call in relating to Executive decisions.
- 4.2 Once formally approved by the body, the minutes will be regarded for legal purposes as the only formal record of the meeting. The committee administrator will, at that point destroy any notes he or she took at the meeting on which the minutes were based.
- 4.3 Where a change to the minutes is made at the meeting at which they are signed, the amended record will be published on the website and the changes written by hand on the paper copy signed by the Chair.

#### **5 Content of a Minute**

- 5.1 The minutes of a meeting will typically comprise the following:
- a) where appropriate, a reference number for any previous minute on the subject;
  - b) a listing of Member and Officer attendees;
  - c) details of any apologies received from Members;
  - d) a note of any declaration of interest in the subject made at the meeting;
  - e) details of any public participants and a brief summary of their submission;
  - f) an acknowledgement of any written representations received, who from and a brief summary of their submission;
  - g) details of any resolutions passed at the meeting to exclude the press and public during consideration of any exempt or confidential business, specifying the

relevant exclusion paragraph(s) under the Local Government Act 1972;

- h) a preamble, consisting of a brief summary of the subject of the minute;
- i) in the case of minutes of the Executive, an outline of the options available in making a decision on the subject, a note of the option chosen and the reasons for choosing it;
- j) a record of any discussion on the subject. That record will include:
  - any additional information (either written or oral) presented at the meeting not contained in the report on the subject. This might be a full or summarised record of the information presented;
  - any amendments formally moved or seconded by Members and a note of whether or not they were approved;
  - apart from formal amendments, any general discussion on the subject which has a bearing on or which, in the view of the Monitoring Officer and/or representative of the Monitoring Officer when considering the draft minutes prior to publication will enhance a reader's understanding of the reasons for a decision.
- f. if requested under the relevant Procedure Rules, a record of the vote taken on the subject or the names of members who indicate their wish that the minutes record how they voted; and
- g. the full resolution on the subject, incorporating any amendments made to a recommendation or motion, and worded in such a way as to be clear, with minimal reference to other written records, the meeting's decision and intentions.
- h. Any urgent business which the Chair has agreed to take in accordance with statutory provisions, together with the reasons why.

5.2 The names of individual members will not be recorded as part of the discussion on a subject unless they move or second a formal motion or amendment.

- 5.3 The names of individual Officers will not be recorded as part of the discussion on a subject. Job titles may be included for Head of Service and above.
- 5.4 Minutes covered by the Protocol will indicate the time when a Member arrives if it is after the meeting has commenced or the time they leave if it is before the meeting has closed.
- 5.5 Minutes will indicate the time consideration of an individual item commences.

## **6 Record of Questions/Statements**

- 6.1 Where Members, who are not members of the body, are allowed to ask questions or make statements at the meeting, the minutes will provide a fair and coherent summary of any question and the response given. The names of individual members will not normally be recorded as part of the discussion. In the case of Council meetings, questions to Executive Members and the responses given will, as far as possible, be recorded in full.
- 6.2 A record of any questions asked or statements made by the public at a meeting will normally provide a brief outline of the question or statement and short but coherent summary of the response given.
- 6.3 In exceptional circumstances a question on a matter of particular importance or wide public concern, and the answer given to it, may justify a fuller record but this will be at the discretion of the Head of Democratic Governance in consultation with other relevant officers.

## **Appendix 29 – Joint Standards Committee Procedures**

### **City Of York Council Standards Committee Hearing Procedure**

#### **General Matters**

1. In this procedure the term “interested parties” is used to cover the complainant, the subject member and the investigating officer. The interested parties will all be invited to attend the hearing as potential witnesses.
2. The Independent Persons will also be invited to attend the hearing in an advisory, non-voting capacity. Their views will be sought as to whether the evidence establishes a breach of the code of conduct and, if so, as to what if any penalty should be imposed.
3. The Hearing Panel will be made up of members of the Standards Committee and there will normally be three members. The Panel will be supported by the Monitoring Officer or their representative and a Democratic Officer.
4. The meeting will be open to the press and public unless confidential or exempt information is likely to be disclosed. The Standards Committee considers that in general the public interest in seeing that complaints relating to Councillors are handled properly will outweigh any considerations relating to the privacy of the Councillor concerned but each case will be considered on its own merits including consideration of the privacy of other parties.
5. The hearing will normally follow the procedure set out below but the Chair has the discretion to vary it at any time. Such a variation may be considered where, for example, the Chair believes that doing so will be in the interests of fairness or help in establishing the facts of the case.
6. It will not usually be necessary for the Subject Member to be represented at a hearing but they may choose to arrange

such representation which may be by a solicitor, barrister or another person.

7. The Panel may take legal advice at any time during the hearing or during its deliberations. The substance of any advice given to the Panel will normally be shared with the parties.

### **Preliminary procedures**

8. Prior to the hearing commencing the Panel may meet privately to review the material presented and to agree the main lines of enquiry.
9. At the start of the hearing, the Chair will arrange introductions of the Panel, its Officers, the Independent Persons and the interested parties. The Chair will briefly explain the procedure which the Panel will follow in the conduct of the hearing. The Chair will confirm that each interested party has seen the final report of the investigating officer and has had the opportunity to engage in the pre hearing procedures.
10. The Monitoring Officer will identify whether the pre hearing procedures have identified any significant disagreements about the facts contained in the Investigating Officer's report. The Panel will record the agreed facts and establish the facts in dispute which they will be required to rule upon.
11. If a party raises an issue which has not been raised previously then that party shall be required to give a full explanation to the Panel as to why it was not raised earlier. The Panel may then:
  - a) Consider whether or not to allow the issue that has been raised to be dealt with at the hearing
  - b) Consider whether the hearing should be adjourned for further investigations to take place.

### **Determining factual disputes**

12. If there are disputed facts which the Panel consider relevant to establishing whether the Code has been breached or as to the seriousness of the breach then, the Panel will adopt an inquisitorial approach in establishing the facts. The Chair will invite members of the Panel to ask questions of the interested parties or any other potential witness present. The Monitoring Officer may also ask questions.
13. Once a witness has answered questions from the Panel then the Chair will ask the interested parties whether there are other issues which ought properly to be raised with the witness. The Chair (or another Member) may put any such issues to the witness themselves or may allow the relevant party to ask questions directly.
14. The Panel must reach a decision as to the facts it finds to be proven. The Panel must also make a decision as to whether the proven facts (including those which are agreed) show a breach of the code of conduct. Depending on the complexity of the case the Panel may consider each of those issues separately or deal with them together. In either case the Chair will invite the parties to make representations on each matter before the Panel reaches its decision.

### **Panel deliberations**

15. When the Panel is considering its finding of facts and whether those facts amount to a breach of the Code of conduct it will do so in private but in the presence of the Monitoring Officer, the Independent persons and the Democratic Services officer.
16. At the conclusion of the Panel's deliberations, the Chair will publicly announce the Panel's findings as to the facts and as to whether those facts show a breach of the code of conduct. The Panel will give reasons for their findings. It will be normal practice to share the substance of any advice given by the Monitoring Officer and Independent persons at this stage.

## Determining Sanctions

17. If the Panel concludes that the Subject Member has failed to comply with the Code of Conduct, the Chair will invite representations from the interested parties as to what action, if any, it should take.
18. The Panel will then consider whether to impose a sanction, and, if so, what sanction to impose and when that sanction should take effect. It will do so in private but in the presence of the Monitoring Officer, the Independent persons and the Democratic Services officer.
19. The sanctions available to the Hearings Panel are to –
  - a) Censure the Councillor;
  - b) Formally report its findings to the City Council *or* Parish Council for information;
  - c) Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that they be removed from any or all Panels or Sub-Committees of the Council;
  - d) Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - e) Recommend to Council that the Leader be removed from Office (if it is the Leader' conduct that is being considered)
  - f) Instruct the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Councillor;
  - g) Remove [*or recommend to the Parish Council that the Councillor be removed*] from all outside appointments

to which they have been appointed or nominated by the authority [*or by the Parish Council*];

h) Withdraw [*or recommend to the Parish Council that it withdraws*] facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access.

20. The Hearings Panel has no power to suspend or disqualify the Councillor or to withdraw Councillors' basic or special responsibility allowances. If the Panel decides to withdraw facilities from the Councillor it must ensure that the Councillor is not thereby prevented from undertaking their representative duties.
21. The Chair will publicly announce the decision of the Panel. The substance of any further advice given by the Independent Person and Monitoring Officer will also be shared. Written notice of the findings of the Panel will be given as soon as is reasonably practicable to the Subject Member. They will also be placed on the council's website. If the complaint was against the Subject Member as a parish Councillor, written notice of the findings of the Panel will be sent to the clerk to the parish council.

#### **Other action**

22. The Panel may also consider making any recommendations to the Council concerned with a view to promoting higher standards of conduct among its members.

### Pre Hearing Procedure

1. Where a decision has been made that a complaint needs to be referred for a hearing then a Sub Committee meeting will be arranged for that purpose. The Sub Committee will sit as a Hearing Panel.
2. A copy of the final investigation report will be sent to the Subject Member, the complainant and to the Independent Persons. If the complaint relates to the Subject Member's conduct as a parish Councillor then a copy will also be sent to the Clerk to the Parish Council.
3. The Subject Member and the complainant will be asked to confirm within fifteen working days whether they:
  - a) Disagrees with any of the findings of fact in the report and the reasons for any disagreement
  - b) Wishes to be represented by a solicitor or barrister, or by any other person (such representation should not normally be necessary)
  - c) Wishes to attend the hearing
  - d) Wishes relevant witnesses to be called to give evidence to the Panel
  - e) Wishes any part of the hearing to be held in private<sup>i</sup>
  - f) Wishes any part of the Investigating Officer's report or other relevant documents to be withheld from the public<sup>ii</sup>
4. The Subject Member and the complainant will be informed that if, at the meeting of the Committee, they seek to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the Committee may refuse to allow the disputed matters to be

raised unless satisfied that there are good reasons why they have not been raised beforehand.

5. Upon receipt of the Member's and complainant's responses, the Investigating Officer shall be invited to comment on it within ten working days, and to say whether or not they:
  - a) Consider that the Committee should request other witnesses to give evidence or submit written or other evidence to the Committee
  - b) Believe any part of the hearing should be held in private
  - c) Believe any part of the report or other relevant documents should be withheld from the public
6. The Monitoring Officer will consider the responses and set a date for the hearing in consultation with the Chair of the Panel.
7. The Monitoring Officer together with the Chair of the Hearing Panel will consider which witnesses should be invited to attend. Witnesses may not be called if the number requested is unreasonable and it appears that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Panel to reach its decision.
8. The Chair of the Hearing Panel may request the attendance of any additional witnesses whose evidence they consider would assist the Panel to reach its decision. The Panel does not though have powers to compel any witness to attend.
9. The Monitoring Officer will:
  - a) Confirm a date, time and place for the hearing
  - b) Confirm the main facts of the case that are agreed

- c) Confirm the main facts that are not agreed
- d) Provide the Panel with a copy of the investigating officer's report
- e) Provide copies of any other written evidence to the relevant parties and the Panel
- f) Confirm which witnesses will be called by the parties
- g) Provide the parties with copies of the proposed procedure for the hearing.

<sup>i</sup> The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Proper Officer of the Council will decide whether papers should be publicly available in advance and the Sub Committee will determine whether all or part of the meeting should be in private.

<sup>ii</sup>See note i

<b>City of York Council Standards Committee</b>	
<b>Pre Hearing checklist</b>	
<b>Complainant</b>	
<b>Subject Member</b>	Councillor
<b>Investigating Officer</b>	
<b>Do you intend to attend the proposed hearing to give evidence or make representations</b>	
Yes/No	
<b>Do you wish to be represented at the hearing by a solicitor, barrister or another person.<sup>1</sup></b>	
Yes/No	
<b>If so by who?</b>	
<i>Name of representative and capacity in which they act: e.g. solicitor, friend, fellow Councillor</i>	
<b>Do you wish the whole or any part of the hearing to be in private?</b>	
Yes/No	
<b>If yes please explain why<sup>2</sup></b>	

<sup>1</sup> Although there has to be a degree of formality to the proceedings of the committee it will be unusual for subject members to be represented. The procedure is not adversarial. The Committee will act in an inquisitorial manner to ensure that the circumstances of the case are fully understood.

<sup>2</sup> The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Council's proper officer will determine whether papers should be publicly available and the Hearing Sub Committee will determine whether the meeting or any part of it should be in private.

<b>Do you wish any part of the Investigating Officer’s report or other relevant documents to be withheld from the public?</b>
<i>Yes/No</i>
<b>If yes please explain why<sup>3</sup></b>
<b>Do you disagree with any of the <u>facts</u> found by the investigating officer as set out in their report?</b>
<i>Yes/No</i>
<b>If yes please set out briefly the facts that you dispute and your view as to the true factual position</b>

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<sup>3</sup> The Standards Committee’s general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Council’s proper officer will determine whether papers should be publicly available and the Hearing Sub Committee will determine whether the meeting or any part of it should be in private.

<b>Do you believe that witnesses should be called to the Hearing</b>
Yes/No
<b>If yes please identify the witnesses who you wish to be called and briefly identify the issues that they will be able to give evidence about<sup>4</sup></b>

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<sup>i</sup> The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Proper Officer of the Council will decide whether papers should be publicly available in advance and the Sub Committee will determine whether all or part of the meeting should be in private.

<sup>ii</sup> See note i

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<sup>4</sup> The Monitoring Officer and Chair will consider whether any witnesses you name are likely to be able to give evidence which will be of value to the Hearing Panel. If they are then those witnesses will be invited to attend. The Panel cannot compel the attendance of any witness.

## Appendix 30: Major Projects Conflicts Protocol

### 1. Introduction

- 1.1. The Council is the Local Planning Authority for the City of York. It determines applications for planning permission and approves relevant planning policies in respect of development.
- 1.2. The Council is the Highway Authority for the City of York and makes decisions in respect of highway matters including the construction and adoption of roads servicing development.
- 1.3. Officers will have different roles in respect of development as professional advisers to promoters, policy makers and decision makers.
- 1.4. Members will have different roles in respect of development as promoters, advisers, policy makers and decision makers.
- 1.5. Where the Council has a material interest in a key, major development project within the City, for example as a landowner, potential investor or development partner, a clear distinction of the roles undertaken by the separate arms of the Council should be documented to ensure transparency of the governance arrangements – in particular in relation to Local Planning Authority and Highway Authority decision making.

### 2. Why have a protocol?

- 2.1. The Council would wish to avoid any perception that developments in which it has an interest are treated differently from those of any other developer.
- 2.2. The Council would also wish to ensure that Officers charged with providing professional and technical advice in respect of its regulatory functions understand that they are free to do so in line with their professional obligations and without feeling constrained by the Council's commercial interests.

- 2.3. The Council would wish to ensure that Members have a clear understanding as to the remit and forum within which they can take part in decision making
- 2.4. A clear protocol identifying the distinction between the Executive Members' role in actively promoting development and the independent role of Planning Major Committee Members when dealing with applications before them will assist Members' understanding and ensure that the processes robustly manage conflicts of interest, demonstrating fairness.

### 3. Key Controls

#### Planning applications

- 3.1. The Council's Constitution, at Appendix 1, sets out the Responsibility for Functions. This is framed so that direct delegation is given to the Director of Transport, Environment & Planning from Full Council. The Director is the Chief Planning Officer for the Council.
- 3.2. All planning applications made by or on behalf of the Council will, in accordance with normal practice, as detailed at Article 13 and Appendix 1 of this Constitution, be determined by the Planning Major Committee and not delegated to Officers unless of a minor nature.
- 3.3. For the avoidance of doubt, planning applications in relation to a major project promoted by the Council as a development partner will likewise be determined by the Planning Major Committee and not delegated to Officers, even when not submitted in the Council's name.

#### Role of Members

- 3.4. Where the Leader and the Deputy Leader are jointly responsible for promoting a major project they will not sit on Planning Major Committee when it is determining an application related to that major project.

Commented [BJ1]: Note Article 13 – Full Council is to determine if Executive Members sit on planning cttees

- 3.5. Where an Executive Member may have input into the master planning of a major project, for example, Culture Leisure and Communities, they will not sit on Planning Major Committee when it is determining an application in respect of that major project.
- 3.6. Other members of the Executive may sit on Planning Major Committee when it is determining an application relating to a major project but should avoid participation in decision making on the scheme at meetings of the Executive. This is in line with the Council's Planning Code of Good Practice Appendix 17 in this Constitution.

“Executive Members may have been involved in promoting a particular development in their role as Executive Members for the Service. Whilst a Member of a Planning Major Committee would not be required to withdraw simply because they are also an Executive Member, if an Executive Member also sits on Planning Major Committee it may be difficult for them to demonstrate objectivity in dealing with an application relating to that development. They must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias or predetermination. Indeed, the Member may be seen as advocate on behalf of the Council for the development in question. In those cases the best course of action would be for the Executive Member to withdraw from the Planning Major Committee for that matter.”

- 3.7. Major planning applications can be the subject of Pre Committee Presentations to the Planning Committee. Members promoting the development at such meetings are likely to have difficulty in demonstrating objectivity at Planning Committee, and should not take part in the Planning Committee determining the application.

#### **Officers**

- 3.8. Where the Corporate Director of Place is responsible for promoting a major project in which the Council is the developer or a development partner a conflict may arise between the planning/highway functions of the Corporate Director of Place and

their economic development and/or the estate management and property functions. Where such a conflict arises the Corporate Director of Place will play no role in advising or taking decisions for the Council in respect of its functions as a planning and/or highway authority relating to that major project, including in relation to planning applications, or planning applications made by a development partner.

- 3.9. Any decision that a conflict exists between the planning/highway functions and the economic development and/or the estate management and property functions of the Corporate Director of Place will be made jointly by the Corporate Director of Place and the Chief Operating Officer and will be recorded in writing.
- 3.10. The Director of Governance shall determine any dispute regarding whether or not a conflict exists between the planning/ highway functions and the economic development and/or the estate management and property functions of the Corporate Director of Place.
- 3.11. The Director of Transport, Environment & Planning has overall responsibility for the advice given to the Council in its role as local planning and highways authority. The Director's advice will not be subject to any undue influence or veto from any other part of the Council. The Director's role in respect of advising the Council as a developer will be restricted to the giving of such advice as would be available to any other developer. Any concerns regarding undue influence can be raised with the Chief Operating Officer or the Director of Governance.
- 3.12. Where the Director of Transport, Environment & Planning has also been involved in the promotion of a particular major project they will play no role in advising or taking decisions for the Council in respect of its functions as a planning and highway authority, nor in relation to any planning applications or planning applications made by a third party relating to that major project where it is considered a conflict exists between the planning/ highway functions, and the economic development, estate management and property functions of the Director of Transport, Environment & Planning. In such circumstances the Chief Operating Officer will have overall

responsibility for the advice given to the Council in its role as local planning and highways authority.

- 3.13. The Corporate Director of Place and the Director of Transport, Environment & Planning, or the Chief Operating Officer (as appropriate) will be responsible for ensuring that “ethical walls” are maintained to prevent information being shared inappropriately between those responsible for progressing the major project and those undertaking regulatory roles. Other parts of the Council, for example legal services, providing support to the scheme and to the regulatory arm will operate similar protocols.
- 3.14. Any conflicts of interest identified will be managed with the aim of removing them. If that is not possible the conflict shall be raised with the Monitoring Officer whose approval to the conflict and any mitigating measures will be required and will be recorded on the relevant file.

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