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# **PART 1**

## **SUMMARY AND EXPLANATION**

### **1. What is the Constitution?**

- 1.1 The Constitution of Rother District Council sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose.
- 1.2 References to legislation including statutory instruments contained within this Constitution may have been superseded and therefore substituted by changes derived from the European (Withdrawal) Act 2018 (“the Act”) and subordinate legislation introduced following the United Kingdom’s exit from the European Union.

### **2. How the Council operates**

- 2.1 The Council consists of 38 Councillors elected every four years and are democratically accountable to residents of their Ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.2 All Councillors meet together as the Council, where they decide the Council’s overall policy framework and set the budget each year; meetings of the Council are normally open to the public. The policies and procedures adopted by the Council provide the rules under which the Council operates; policies are usually developed and or amended to reflect the values of the Council’s administration, through the Council’s overview and scrutiny function and consultation with relevant stakeholders.
- 2.3 The Council appoints the Leader to serve for a term of four years who in turn appoints a Deputy Leader and Members to the Executive (Cabinet).
- 2.4 Councillors must agree to follow the code of conduct adopted by the Council to ensure high standards in the way they undertake their duties.

### **3. How decisions are made**

- 3.1 The Executive (Cabinet) is the part of the Council which is responsible for most day-to-day decisions. The Leader is responsible for the allocation and discharge of all executive functions (i.e. what Cabinet portfolios will exist, how they will be allocated and delegations etc.).
- 3.2 All meetings of the Cabinet will be open for the public to attend except where exempt information or confidential matters are being discussed. If the Cabinet wishes to hold a meeting or part thereof in private, public notice must be given to allow the public to make representations about why the proposed meeting or part thereof should be open to the public. Further details can be found at Part 4-2, Access to Information Rules of this Constitution.

- 3.3 When key decisions are to be discussed or made, these are published in the Cabinet's Forward Plan in so far as they can be anticipated. Key decisions include any Executive decision which is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant (£100,000) having regard to the local authority's budget for the service or function to which the decision relates; or be significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority. The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

## **4. Overview and Scrutiny**

- 4.1 The Council shall appoint at least one overview and scrutiny committee which may pre-scrutinise and review the decisions of the Cabinet. Overview and scrutiny committees may make reports and recommendations to the Cabinet and to the Council on policies, budget and service delivery.
- 4.2 They may involve non-councillors from other public bodies, voluntary and community groups in their work and undertake enquiries into matters of local concern.
- 4.3 Overview and scrutiny committees also monitor the decisions of the Cabinet and may call-in a decision which has been made, but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the Cabinet reconsider the decision. Overview and scrutiny committees may also be consulted by the Cabinet or the Council on forthcoming decisions.

## **5. The Council's Officers**

- 5.1 The Council has people working for it called officers to give advice, implement collective decisions and manage the day-to-day delivery of its services. Officers and councillors work together within a protocol that governs their working relationships (see Part 5 Codes and Protocols). Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely.

## **6. Citizens' Rights**

- 6.1 Citizens have a number of rights in their dealings with the Council. These are set out in Article 3.

# PART 2 ARTICLES

## Article 1 – The Constitution

### 1.1 Purpose of the Constitution

The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making through consultation with the community and the Council's partners;
- (c) help Councillors represent their constituents more effectively;
- (d) enable decisions to be taken efficiently and effectively and in an open manner so that all decisions are made in public whenever possible;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
- (h) provide a means of improving the delivery of services to the community; and
- (i) promote understanding of the Council and its work.

### 1.2 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

### 1.3 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above. The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

## Article 2 – Members of the Council

### 2.1 Composition and Eligibility

- (a) **Composition:** The Council comprises 38 Councillors. One or more Councillors are elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by Parliament.
- (b) **Eligibility:** Only registered voters of the District or those living or working there are eligible to hold the office of Councillor.

## 2.2 Election and Terms of Councillors

The regular election of Councillors is held on the first Thursday in May every four years. The term of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next following regular election.

A councillor shall cease to be a councillor if:

- (a) they resign by giving written notice to the proper officer (such resignation to take effect upon the receipt of such notice by the proper officer); or
- (b) they fail to attend meetings of the Council for a period of six months, unless the failure was due to a reason approved by the authority in advance; or
- (c) they cease to be qualified to be a member of the authority or become disqualified from being a member of the authority; or
- (d) they come to the end of the term of office for which they were elected and have not been re-elected.

## 2.3 Roles and Functions of all Councillors

- (a) **Key Roles:** All Councillors will:
  - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
  - (iii) effectively represent the interests of their Ward and of individual constituents;
  - (iv) respond to constituents' enquiries and representations, fairly and impartially;
  - (v) participate in the governance and management of the Council;
  - (vi) be available to represent the Council on other bodies; and
  - (vii) maintain the highest standards of conduct and ethics.
- (b) **Rights and Duties**
  - (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law;
  - (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it; and
  - (iii) for these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

## **2.4 Conduct**

Councillors will at all times observe the Members' Code of Conduct and the Member / Officer Protocol set out in Part 5 of this Constitution and shall have regard to the current procedural guidance for Members of the Planning and Licensing and General Purposes Committee adopted by the Council.

## **2.5 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

## **2.6 Recognition of political groups**

Members shall be entitled to join political groups. In accordance with the Local Government (Committees and Political Groups) Regulations 1990. A political group shall be treated as constituted when there is delivered to the Proper Officer a notice in writing which:

- (a) is signed by two or more Members of the Council who wish to be treated as a political group;
- (b) states that Members of the Council who have signed wish to be treated as a political group;
- (c) states the name of the political group;
- (d) states the name of the Member who shall be the Leader of the political group.

## **2.7 Definitions of Controlling and Opposition Groups**

The political group or groups of the Council whose Members have been appointed to the Cabinet by the Leader of the Council shall be identified as the Controlling Group or Groups. For the purposes of political control, the Cabinet shall collectively be identified as the Executive.

The political group with the largest number of seats on the Council and whose Members have not been appointed to the Cabinet by the Leader of the Council shall be identified as the Major Opposition Group.

Other political groups with seats on the Council and whose Members have not been appointed to the Cabinet by the Leader of the Council shall be identified as Minor Opposition Groups.

## **2.8 Leader of the Major Opposition Group's report to Council**

The Leader of the Major Opposition Group may make a written report to the Annual Meeting of Council.

# Article 3 – Citizens and The Council

## 3.1 Citizens' Rights

Citizens have the right to:

- (a) vote at local elections if they are registered;
- (b) contact their local Councillor about any matters of concern to them;
- (c) obtain a copy of the Constitution;
- (d) attend meetings of the Council, Cabinet, Committees and Sub-Committees except where, for example, personal or confidential matters are being discussed;
- (e) speak at Planning Committee meetings in accordance with the provisions of the public speaking procedure;
- (f) petition to request a referendum on a mayoral form of Executive;
- (g) submit a petition in accordance with the Council's Petition Scheme under the Council's Petition Scheme, if it includes 10 or more signatures. A petition may be signed by anyone living, working or studying in the Rother District;
- (h) participate in the Council's question time and contribute, by invitation, to investigations by Overview and Scrutiny Committees;
- (i) find out, from the Cabinet's Forward Plan, what key decisions are to be discussed by the Cabinet or decided by the Cabinet or officers, and when;
- (j) attend public meetings of the Cabinet when both key and non-key decisions are being discussed or decided;
- (k) with the knowledge of all persons present at a meeting, record, broadcast and report meetings of the Council that are open to the public;
- (l) make representations about why proposed private Cabinet meetings or part thereof should be open to the public;
- (m) see reports and background papers, and any records of decisions made by the Council and Cabinet, excluding exempt or confidential information;
- (n) complain to the Council if they are dissatisfied with the action or lack of action taken by the Council on a matter which is the Council's responsibility in accordance with the Council's Corporate Complaints Procedure;
- (o) complain to the Local Government and Social Care Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- (p) complain to the Council's Monitoring Officer if they have evidence which they think shows that a Parish, Town or District Councillor has not observed the relevant Members' Code of Conduct; and
- (q) inspect the Council's accounts and make their views known to the external auditor.

## 3.2 Citizens' Conduct

Citizens are expected to treat councillors, officers and others providing services with respect. The Council will not tolerate abusive or threatening behaviour or damage to Council property. The Council asks that citizens remain polite and patient and use the complaints procedure if aggrieved.



# Article 4 – The Full Council

## 4.1 The Full Council

The Full Council is a meeting of the 38 Councillors representing Wards in Rother District Council. It is chaired by the Chair of the Council and managed in accordance with the formal Council Procedure Rules in Part 4 of this Constitution.

## 4.2 Functions of the Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework and the budget with the exception of the calculation and approval of the council tax base, which is delegated to the Chief Finance Officer;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to or not wholly in accordance with the budget;
- (d) electing the Leader of the Council and, in certain circumstances, removing the Leader;
- (e) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;
- (f) approving the list of outside bodies and making appointments thereto, unless the appointment is an Executive function or has been delegated by the Council;
- (g) adopting an Allowances Scheme under Article 2.5;
- (h) changing the name of the area;
- (i) confirming the appointment of the Head of Paid Service and the designation of the Monitoring Officer and the Chief Finance Officer (Section 151 Officer) and taking the final decision to dismiss the Head of Paid Service, Chief Finance Officer and Monitoring Officer;
- (j) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;
- (k) adopting a Code of Conduct and agreeing any amendments to it;
- (l) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself or its Regulatory Committees rather than the Executive; and
- (m) all other matters which, by law, must be reserved to Council.

## 4.3 Meanings

- (a) Policy Framework: The policy framework means those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 to be adopted by the Council, other plans and strategies which the Department for Levelling Up, Housing and Communities recommends should be adopted by the Council as part of the policy framework and all other policies and strategies which the Council adopts as a matter of local choice, including but not limited to:
  - The Corporate Plan, setting out the Council's key objectives

- Environment Strategy
  - Crime and Disorder Reduction Strategy
  - Plans and strategies which together comprise the Local Development Framework
  - Annual Pay Policy Statement
  - Food Law Enforcement Plan
  - The plan and strategy which comprise the Housing Investment Programme
- (b) Budget: The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

#### **4.4 Council Meetings**

There are three types of Council meeting:

- (a) the Annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### **4.5 Responsibility for Functions**

The Council will maintain the schedules in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Executive.

## **Article 5 - Chairing the Full Council**

### **5.1 Election of the Chair and Vice-Chair**

At its annual meeting the Full Council will elect one of their number by secret ballot to chair the Council for the ensuing year. It will also elect a deputy. Neither of these offices can be held for more than two terms consecutively. The Councillor elected as Chair will serve as the first citizen of the Rother District.

### **5.2 Role and Function of the Chair of Rother District Council**

The Chair will have the following responsibilities:

- (a) to be the Civic Leader of Rother District Council and to represent the Council at various functions of a civic, community and ceremonial nature;
- (b) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (c) to preside over meetings of the Full Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;

- (d) to ensure that the Full Council meeting is the forum for debate of matters of concern to the local community and the place at which Members who are not on the Cabinet are able to hold the Cabinet to account;
- (e) to promote public involvement in the Council's activities;
- (f) to be the conscience of the Council;
- (g) to attend such civic and ceremonial functions as the Council and the Chair determines appropriate; and
- (h) to be an ex-officio Member on all Committees (excluding Cabinet) with no rights to move, second or vote on any Committee.

### **5.3 Role of the Vice-Chair**

The Vice-Chair shall to deputise, as necessary, for the Chair of the Council.

## **Article 6 – Overview and Scrutiny Committees**

### **6.1 Terms of Reference**

The Council will appoint at least one Overview and Scrutiny Committee to discharge the functions conferred by Section 9F-9FI of the Local Government Act 2000.

### **6.2 General Role**

Within their terms of reference, Overview and Scrutiny Committees will:

- (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) make reports and/or recommendations to the Council and/or the Cabinet and/or any joint or area Committee in connection with the discharge of any of the functions of the Council or the Cabinet, as appropriate;
- (iii) consider any matter affecting the area or its inhabitants; and
- (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet and/or any Area Committees appointed.

### **6.3 Specific Functions**

**(a) Policy Development and Review:** Overview and Scrutiny Committees shall:

- (i) assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
- (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) engage with and question Members of the Cabinet and / or Chief Executive, Deputy Chief Executive, Director – Place and Climate Change and Heads of Service or such other officers as may be determined by the Chief Executive, about their views on issues and proposals affecting the area; and
- (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

- (b) Scrutiny:** Overview and Scrutiny Committees may:
- (i) review and scrutinise the decisions made by and the performance of the Cabinet and/or Council officers both in relation to individual decisions and the impact of those decisions over time;
  - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
  - (iii) engage with and question Members of the Cabinet, Chief Executive, Deputy Chief Executive, Director – Place and Climate Change and Heads of Service or such other officers as may be determined by the Chief Executive, about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
  - (iv) make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process;
  - (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and residents about their activities and performance; and
  - (vi) engage with and question and gather evidence from any person (with their consent).
- (c) Finance:** Overview and Scrutiny Committees may exercise overall responsibility for any finances made available to it.
- (d) Annual Report:** Overview and Scrutiny Committees must report annually to the Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

## **6.4 Proceedings of Overview and Scrutiny Committee**

Overview and Scrutiny Committees and any appointed formal Sub-Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

# **Article 7 – The Cabinet**

## **7.1 Role**

The Cabinet will carry out all of the Local Authority's functions which are not the responsibility of any other part of the Local Authority, whether by law or under this Constitution.

## **7.2 Form and Composition**

The Cabinet will consist of the Leader of the Council together with such other number of Councillors as determined and appointed by the Leader of the Council normally at its Annual Meeting, being at least two but not more than 10 Councillors. The Cabinet cannot include either the Chair or Vice-Chair of Council. Subsequent changes to the membership of the Cabinet may be made by the Leader and shall take effect immediately upon the receipt of written notice of the appointment by the Chief Executive.

### **7.3 The Leader and Deputy Leader**

The Leader will be a Councillor elected to the position by the Council at its first Annual meeting following a whole-Council election. The Leader's term of office will be four years and starts on the day of their election as Leader and ends on the day of the post-election annual meeting which follows their election as leader; or until:

- (a) they resign from the office; or
- (b) they are no longer a Councillor; or
- (c) they are removed from office by resolution of the Council.

The Leader shall appoint one Member of the Cabinet to be the Deputy Leader to assume the full powers of the Leader in any circumstances in which the Leader is unable to act. The Deputy Leader shall also act as Leader if the post of Leader is vacant. The Deputy Leader shall hold office in accordance with the provisions of Article 7.4 below.

### **7.4 The Deputy Leader and other Executive Members**

The Deputy Leader and other Executive Members shall be Councillors appointed annually to the position by the Leader of the Council normally at its Annual meeting, and will hold office until:

- (a) they resign from office; or
- (b) they are no longer Councillors; or  
they are removed from office, either individually or collectively, by the Leader of the Council who must give written notice to the Head of Paid Service. The removal will be effective immediately on receipt of the notice by the Head of Paid Service.

### **7.5 Vacancies – Leader and Deputy Leader**

- (a) When a vacancy arises in the office of the Leader, the Council shall fill the vacancy at the next ordinary meeting of the Council, or at a subsequent meeting. The Councillor appointed to fill the vacancy shall hold office for the remainder of the original term, subject the provisions of Article 7.3 (b) above.
- (b) When a vacancy arises in the office of Deputy Leader or a Member of the Cabinet, the Leader shall appoint a councillor to fill the vacancy and shall inform the Council of the appointment at the next meeting. The Councillor(s) appointed shall be subject to the terms of office in Article 7.4 above.

### **7.6 Allocation of Portfolios**

The Leader of the Council shall normally, at the Annual Council meeting, allocate such portfolios as they consider appropriate to the Members of the Executive. The current portfolios and descriptions can be found on the Council's website at the following link: <https://rother.moderngov.co.uk/mgCommitteeDetails.aspx?ID=153>

### **7.7 Proceedings of the Executive**

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.

## **7.8 Responsibility for Functions**

The Leader will maintain a list in Part 3 of this Constitution setting out which Committees of the Executive, officers or joint arrangements, if any, are responsible for the exercise of particular Executive functions.

# **Article 8 – Regulatory & other Committees**

## **8.1 Regulatory and Other Committees**

The Council will appoint the Committees set out in Part 3 of this Constitution - Responsibility for Functions - to discharge the functions described therein.

## **8.2 Mandatory requirement to undertake appropriate training**

No Councillor shall be eligible to sit on a regulatory committee, either as a substantive or substitute Member and vote unless and until they have undertaken suitable training upon appointment to such a committee. To remain eligible Members must undertake both initial and annual suitable refresher training, identified by agreement between the relevant Director/Head of Service and Committee Chair. A record of attendance at training events will be maintained by Democratic Services as evidence that each Member's training requirement has been met.

# **Article 9 – Ethical Standards function of the Audit and Standards Committee**

The roles and functions of the Audit and Standards Committee relating to the Audit function is set out in Part 3 of this Constitution.

## **9.1 Composition**

- (a) The Council has established the Audit and Standards Committee to advise it and exercise the functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act. The composition is as set out in Part 3 of this Constitution to discharge the functions described in Article 9.3 below.
- (b) The Audit and Standards Committee shall make an annual report to Full Council on its business in relation to ethical standards matters.
- (c) Independent Person(s):
  - i) The Council shall appoint one or more Independent Persons as required under Section 28(7) of the Localism Act 2011;
  - ii) The Independent Person shall have the right to attend meetings of the Audit and Standards Committee when ethical standards matters are on the agenda, and any Sub-Committee / Panel established to consider ethical standards matters, but shall not be entitled to vote at meetings;
  - iii) The Independent Persons' view will be sought by the Council's Monitoring Officer before they make a decision on an allegation which they have decided shall be investigated. The Independent Persons' views may be

sought by the Council's Monitoring Officer at any other stage, or by a Subject Member, or a Member or co-opted Member of a Parish or Town Council within the District, against whom an allegation has been made that they have breached the Code of Conduct and the complaint has been referred for an investigation.

- iv) The term of office for the Independent Persons will be fixed for four years. Independent persons may reapply on expiry of their current term for a maximum of two terms.

## **9.2 Sub-Committee of the Audit and Standards Committee (Hearing Panel)**

The Audit and Standards Committee will appoint a sub-committee known as a Hearing Panel for the purpose of:

- (a) considering an Investigating Officer's final report in cases where it is concluded that a councillor has failed to comply with the relevant Code of Conduct; and
- (b) considering what sanctions to impose, if any, in accordance with the Council's Hearing Procedure.

## **9.3 Role and Function**

The Audit and Standards Committee when fulfilling the ethical standards matters will have the following roles and functions:

- (a) promoting and maintaining the highest standard of conduct by Councillors and co-opted Members;
- (b) assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct and any other codes and protocols relating to standards of conduct throughout the Council, including the Member / Officer Protocol and the Officer Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct and any other codes and protocols relating to standards of conduct throughout the Council, including the protocol on Member / Officer Protocol and the Officer Code of Conduct;
- (e) advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- (f) putting in place arrangements to investigate and make decisions on complaints in relation to allegations that a Member or co-opted Member of the authority as failed to comply with the Code of Conduct;
- (g) the exercise of (a) to (f) above in relation to the Parish and Town Councils wholly or mainly in its area and the Members of those councils;
- (h) maintaining an overview of dispensations granted to councillors and co-opted members from requirements relating to interests set out in Members' Code of Conduct;
- (i) advising the Council on the appointment of Independent Persons; and
- (j) overview of all Council complaints handling and Local Government and Social Care Ombudsman investigations, including the power to make payments or other benefits in cases of maladministration etc. (Section 92 of the Local Government Act 2000).

# Article 10 - Area Committees and Forums

## 10.1 Area Committees

The Council may appoint Area Committees and forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making. The Council will consult with relevant Parish and Town Councils and the Chairs of relevant Parish meetings when considering whether and how to establish Area Committees.

# Article 11 - Joint Arrangements

## 11.1 Promoting well-being through partnership

The Council or the Cabinet, in order to promote the economic, health, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

## 11.2 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not Executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint Committee with these other local authorities.
- (b) The Cabinet 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.
- (d) The details of any such arrangements entered into will be found on the Council's website at the following link: <https://www.rother.gov.uk/councillors-democracy-and-meetings/joint-arrangements/>

## 11.3 Delegation to and from other Local Authorities

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the Executive of another local authority.
- (b) The Cabinet may delegate executive functions to another local authority or the Executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.
- (e) The details of any such delegations entered into will be found on the Council's website at the following link: <https://www.rother.gov.uk/councillors-democracy-and-meetings/joint-arrangements/>



## 11.4 Contracting Out

The Council in relation to functions which are not executive functions, and the Cabinet in relation to executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making. The details of any such contracting our arrangements entered into will be found on the Council's website at the following link: <https://www.rother.gov.uk/councillors-democracy-and-meetings/joint-arrangements/>

## Article 12 - Officers

### 12.1 Management Structure

- (a) **General:** The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers:** The Council will engage persons for the following three posts, who will be designated chief officers.

| POST   | FUNCTIONS AND AREAS OF RESPONSIBILITY   |
|--|---|
| Chief Executive<br>(Head of Paid Service)      | <ul style="list-style-type: none"><li>• Overall corporate management and operational responsibility (including overall management responsibility for all officers)</li><li>• Provision of professional advice to all parties in the decision-making process</li><li>• Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions</li><li>• Representing the Council on partnership and external bodies (as required by statute or the Council)</li><li>• Executive Support</li><li>• HR &amp; Policy</li><li>• CFO and Financial Services</li><li>• Democratic Services &amp; Elections</li><li>• Communications</li></ul> |
| Deputy Chief Executive<br>(Monitoring Officer) | <ul style="list-style-type: none"><li>• Revenues and Benefits</li><li>• Housing and Customer Services</li><li>• Legal Services Contract</li><li>• Environmental Services, Licensing and Community Safety</li><li>• ICT Transformation</li><li>• Internal Audit &amp; Risk Management</li></ul>  |
| Director – Place and Climate Change            | <ul style="list-style-type: none"><li>• Planning Policy and Strategy</li><li>• Planning DM / Building Control Contract</li><li>• Regeneration and Major Projects / Estates</li><li>• Neighbourhood / Commercial Services</li><li>• Response to climate change</li></ul>   |

- (c) **Head of Paid Service, Monitoring Officer and Chief Financial Officer (Section 151 officer) Roles:** The Council will designate the following posts as shown:

| POST                   | DESIGNATION                                 |
|------------------------|---|
| Chief Executive        | Head of Paid Service                        |
| Finance Manager        | Chief Finance Officer (Section 151 Officer) |
| Deputy Chief Executive | Monitoring Officer                          |

- (d) **Structure:** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.
- (e) **Corporate Management Team:** The senior officer team responsible for the operational management of the Authority is known as the “Corporate Management Team” and comprises the Chief Executive, Deputy Chief Executive and Monitoring Officer, Director – Place and Climate Change, Chief Finance Officer and all Heads of Service.

## 12.2 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council:** The Head of Paid Service will report to Council on the manner in which the discharge of the Council’s functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Corporate Complaints Officer:** The Head of Paid Service will be responsible for the administration of the Corporate Complaints Procedure and for dealing with complaints made to the Local Government and Social Care Ombudsman.
- (c) **Restrictions on functions:** The Head of Paid Service cannot be the Monitoring Officer but may hold the post of Chief Finance Officer, if a qualified accountant.

## 12.3 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution:** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for reference by Members, staff and the public.
- (b) **Ensuring Lawfulness and Fairness of Decision Making:** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council or to the Cabinet in relation to an executive function if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Audit and Standards Committee:** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee in relation to ethical standards.
- (d) **Code of Conduct Complaints:** The Monitoring Officer will:

- i) adhere to the arrangements put in place by the Council to deal with allegations that a member of the Authority or of a Parish or Town Council within its area has failed to comply with the relevant authority's Code of Conduct.
  - ii) establish and maintain a register of interests of Members and Co-opted Members of the Council and Parish and Town Councils across the district, and to ensure that it is available for public inspection and published on the Council's website.
  - iii) consider all complaints at first instance and decide whether to refer the matter for investigation, to take no action or to seek to resolve the matter through alternative means.
  - iv) receive reports from the Investigating Officer and determine whether to refer the matter to the Audit and Standards Committee for consideration, to take no further action or to seek to resolve the matter through alternative means.
  - v) grant a Member or Co-opted Member of the District Council a dispensation from the restriction on speaking and/or voting when any matter in which that person has a disclosable pecuniary interest is to be considered at a meeting of the Council or any of its committees, sub-committees, joint committees or joint sub-committees.
- (e) **Proper Officer for Access to Information:** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether Cabinet Decisions are within the Budget and Policy Framework:** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (g) **Providing Advice:** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (h) **Restrictions on Posts:** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.
- (i) Appoint a deputy (where required) who shall undertake the Monitoring Officer's duties where the Monitoring Officer is unable to act owing to absence or illness. [s5, Local Government & Housing Act 1989].

## 12.4 Functions of the Chief Finance Officer (Section 151 Officer)

- (a) **Ensuring Lawfulness and Financial Prudence of Decision Making:** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council or to the Cabinet in relation to an Executive function and 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 is about to enter an item of account unlawfully. [s.114 Local

Government Finance Act, 1988]. Such a report shall have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (b) **Administration of Financial Affairs:** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to Corporate Management:** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing Advice:** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Giving Financial Information:** The Chief Finance Officer will provide financial information to the media, members of the public and the community.
- (f) **Restrictions on Posts.** The Chief Finance Officer cannot be the Monitoring Officer.
- (g) If appropriate, to appoint a deputy who shall undertake the Chief Finance Officer's duties where the Chief Finance Officer is unable to act owing to absence or illness. [s114, Local Government Finance Act 1988].

## **12.5 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

## **12.6 Conduct**

Officers will comply with the Officers' Code of Conduct and the Member / Officer Protocol set out in Part 5 of this Constitution.

## **12.7 Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

# **Article 13 - Decision Making**

## **13.1 Responsibility for Decision Making**

The Council will issue and keep an up to date record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

## 13.2 Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights (see Article 13.8 below for further details);
- (d) a presumption in favour of openness, helpfulness and consistency;
- (e) clarity of aims and desired outcomes; and
- (f) an explanation of the options which were considered and the reasons for the decision will be included as part of the record of any decision.

## 13.3 Types of Decision

- (a) **Decisions Reserved to Council.** Decisions relating to the functions listed in Article 4.2 will be made by the Council and not delegated.
- (b) **Key Decisions:**
  - (i) Any Cabinet decision which is likely to result in the Local Authority incurring expenditure which is, or the making of savings which are, significant (£100,000) having regard to the Local Authority's budget for the service or function to which the decision relates; or be significant in terms of its effect on communities living or working in an area comprising two or more Wards in the area of the Local Authority shall be treated as a key decision.
  - (ii) A decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules as set out in Part 4 of this Constitution.

## 13.4 Decision Making by the Council

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

## 13.5 Decision Making by the Cabinet

Subject to Article 13.8, the Cabinet will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

## 13.6 Decision Making by Overview and Scrutiny Committees

Overview and Scrutiny Committees will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

## 13.7 Decision Making by other Committees and Sub-Committees established by the Council

Subject to Article 13.8, other Council Committees and Sub-Committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

## **13.8 Decision Making by Council bodies acting as Tribunals**

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

## **13.9 Appeals**

Where any appeal arises from a decision delegated to any officer, committee of the Cabinet or any sub-committee, neither that officer, committee or sub-committee nor any member of that committee or sub-committee nor any person previously having had any part in the relevant decision, shall be involved in the appeal.

# **Article 14 - Finance, Contracts and Legal Matters**

## **14.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution.

## **14.2 Contracts**

Every contract made by the Council will comply with the Procurement Procedure Rules set out in Part 4 of this Constitution.

## **14.3 Legal Proceedings**

The Solicitor to the Council is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests.

## **14.4 Authentication of Documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Solicitor to the Council or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value exceeding £100,000 and entered into on behalf of the Local Authority in the course of the discharge of an executive function shall be made in writing and must either be signed or made under the Common Seal of the Council attested in accordance with Article 14.6 below.

## **14.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Solicitor to the Council. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The

Common Seal will be affixed to those documents which in the opinion of the Solicitor to the Council should be sealed.

## 14.6 Attestation

The Seal shall be attested by the following persons present at the sealing, viz. the Chair or Vice-Chair of the Council or other Member of the Council, the Chief Executive, Deputy Chief Executive, Solicitor to the Council or Chief Finance Officer, and an entry of every sealing of a document shall be made and consecutively numbered in a book kept for the purpose and shall be signed by a person who has attested the Seal.

# Article 15 - Review and Revision of the Constitution

## 15.1 Duty to Monitor and Review the Constitution

- (a) The Audit and Standards Committee will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.
- (b) Within its first year, a review will be undertaken by each new, incoming administration at the start of a four-year Council term, to consider the decision making structure and any proposals for change.

## 15.2 Protocol for the Monitoring and Review of the Constitution

A key role for the Audit and Standards Committee is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task, the Members of the Committee may:

- (a) observe meetings;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with the Committee 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.

## 15.3 Changes to the Constitution

- (a) **Approval:** All Changes to the Constitution including delegations to officers, will be approved by the Council after consideration of the proposal by the Audit and Standards Committee.
- (b) **Change from one form of Executive to another:** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.
- (c) **Automatic Amendments:** The Chief Executive is authorised, in consultation with the Chair and Leader of the Council and Monitoring Officer, to agree and incorporate into the Constitution:
  - (i) Factual changes, for example to reflect changes in job titles or the management structure; and

- (ii) Changes which are required by new legislation which the Council has no choice but to make.
- (d) **Annual Reporting:** In each subsequent year following an election year, a report will be made to the Annual Council Meeting setting out changes that have been made to the Constitution, if any, in the preceding 12 months under officer delegations or otherwise.

## **Article 16 - Suspension, Interpretation and Publication of the Constitution**

### **16.1 Suspension of the Constitution**

- (a) **Limit to Suspension:** The Articles of this Constitution may not be suspended. The Council Procedure Rules may be suspended to the extent permitted within those Rules and the law.
- (b) **Procedure to Suspend:** A motion to suspend any Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

### **16.2 Interpretation**

The ruling of the Chair of the Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### **16.3 Publication**

- (a) The Head of Paid Service shall provide every Member of the Council, upon the delivery of the individual's declaration of acceptance of office on the Member first being elected to the Council, with the details of where to view a copy of the Constitution on the Council's website.
- (b) The Chief Executive shall ensure that a copy of the Constitution is available for inspection on the Council's website, at Council offices and other appropriate locations and may be purchased in hard copy by members of the local media and the public on payment of a reasonable fee.



# **PART 3**

## **RESPONSIBILITY FOR FUNCTIONS**

### **1. Council**

1.1 **Membership:** All 38 Elected Members of the Council.

#### **1.2 Functions and Delegations**

- (a) Adopting and changing the Constitution, save for consequential legislative and other minor amendments delegated to the Chief Executive and Monitoring Officer\*.
- (b) Approving or adopting the policy framework and the budget in accordance with Article 4 of the Constitution including the Corporate Plan, and any Plans and Strategies which the Council has decided should be adopted.
- (c) Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget.
- (d) Appointing the Leader of the Council.
- (e) Agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them.
- (f) The appointment of any individual:
  - (1) to any office other than an office in which they are employed by the authority;
  - (2) to any body other than –
    - (i) the authority;
    - (ii) a joint Committee of two or more authorities; or
  - (3) to any Committee or Sub-Committee of such a body,and the revocation of any such appointment; \*
- (g) Adopting an allowances scheme under Article 2.5.
- (h) Changing the name of the District (Section 74 of the Local Government Act 1972).
- (i) Changing the name of a Parish (Section 75 of the Local Government Act 1972).
- (j) Conferring the title of Honorary Alderman or admitting to be an Honorary Freeman (Section 249 of the Local Government Act 1972).

- (k) Petitioning for a charter to confer borough status (Section 245b of the Local Government Act 1972).
- (l) Confirming the appointment of the Head of Paid Service the Monitoring Officer and Chief Finance Officer (Section 151 Officer).
- (m) Taking the final decision to dismiss the Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151 Officer).
- (n) Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills.
- (o) Adopting a Code of Conduct and agreeing any amendments to it.
- (p) All other matters which, by law, must be reserved to Council.

*(\*Local choice functions determined at the discretion of the Council to be the responsibility of the Council rather than the Executive).*

## 2. Cabinet

2.1 **Membership:** Leader and at least one but no more than nine further Members of the Council, one of whom will be appointed by the Leader as the Deputy Leader.

### 2.2 Restrictions on Membership

- (1) Members of Cabinet are excluded by statutory rules from appointment to any Overview and Scrutiny Committee as either a Substantive or Substitute Member.
- (2) The Chair and Vice-Chair of the Council are excluded by statutory rules from appointment to the Cabinet.

### 2.3 Functions and Delegations

- (1) To propose the budget and policy framework for approval by the Council.
- (2) To carry out all of the Council's functions and take all decisions except:
  - (a) those reserved to Council, the Audit and Standards Committee, Human Resources Committee, Licensing and General Purposes Committee and Planning Committee; and
  - (b) those delegated to the officers,

providing those decisions are within the approved budget and policy framework; and
- (3) To refer matters including the review of strategies and policies to the Overview and Scrutiny Committee for consultation, investigation and report.

## 3. Audit and Standards Committee

### 3.1 **Membership:**

- (1) Eight Members of the Council in accordance with political balance, excluding Members of the Executive.
- (2) Two non-voting co-opted Members of Parish and Town Councils wholly in the Council's area, nominated by the Rother Association of Local Councils in respect of standards-related matters.
- (3) Two non-voting Independent Persons appointed in accordance with Section 28(7) of the Localism Act 2011 in respect of Standards-related matters.
- (4) One non-voting Audit Independent Person in respect of audit-related matters.

### 3.2 **Restrictions on Membership**

The Leader of the Council is excluded by statutory rules from appointment as Chair of the Audit and Standards Committee and the Council has chosen to exclude all Members of Cabinet from appointment to the Audit and Standards Committee.

## **Audit Functions**

### 3.2 **Functions and Delegations**

#### Statement of Purpose

When carrying out the Audit functions and delegations, the purpose of the Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process.

### 3.3 **Audit Activity**

- (1) To consider the Audit Manager's annual audit report and opinion, and a summary of internal audit activity.
- (2) To approve the internal audit strategy, plan and monitor performance.
- (3) To consider summaries of internal audit reports setting out the main audit findings and level assurance given to each area reviewed.
- (4) To consider reports from internal audit on agreed recommendations not implemented and consider their impact on the overall control environment.
- (5) To ensure there is an effective working relationship between external audit and internal audit.
- (6) To consider the External Auditor's annual planning letter and comment on the scope and depth of external audit work and ensure it gives value for money.
- (7) To consider the External Auditor's annual governance report regarding issues affecting the control environment and governance reporting.

- (8) To consider the Council's audit risk assessment response to the External Auditor.
- (9) To consider specific reports as agreed with the External Auditor.
- (10) To consider the governance arrangements for the management and monitoring of the Council's significant partnerships and wholly or partly owned council commercial entities.
- (11) To consider and recommend to Council the appointment of one Audit independent person.

### **3.4 Regulatory Framework**

- (1) To maintain an overview of the procurement procedure rules, financial procedure rules and codes of conduct and behaviour (other than the Code of Conduct for Members).
- (2) To review any issue referred to it by the Chief Executive, or any council body.
- (3) To monitor the effective development and operation of risk management and corporate governance in the Council.
- (4) To monitor council policies on 'Raising Concerns at Work' and the anti-fraud and corruption strategy and the Council's complaints process.
- (5) To oversee the production of the Council's Annual Governance Statement and to recommend its adoption.
- (6) To consider the Council's arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice.
- (7) To consider the Council's compliance with its own and other published standards and controls.
- (8) To ensure effective scrutiny of the treasury management strategy and policies.
- (9) To monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.
- (10) To consider and recommend to Council and proposed changes to the Constitution.

### **3.5 Accounts**

- (1) To review the annual statement of accounts. Specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council. To agree the signing of the accounts following the review.
- (2) Approving the Authority's statement of accounts, income and expenditure and balance sheet or records of receipts and payments (as the case may be). (The Accounts and Audit Regulations).

- (3) To consider the External Auditor's annual audit report on issues arising from the audit of the accounts.

## **Standards Functions**

### **3.6 Functions and Delegations**

- (1) To promote and maintain high standards of conduct by Members and Co-opted Members of the Council. [Section 27(1)]
- (2) To report annually to Full Council on ethical standards matters.
- (3) To consider and recommend to Full Council the Members' Code of Conduct dealing with the conduct expected of Members and Co-opted Members of the Council when acting in that capacity [Section 27(2)] and including provision in respect of the registration and disclosure of
  - a) Pecuniary interest; and
  - b) Interests other than pecuniary interests. [Section 28(2)]
- (4) To consider and recommend to Full Council revisions to the existing Code of Conduct or adopt a replacement Code of Conduct. [Section 28(5)]
- (5) To consider and recommend to Full Council any other code or protocol relating to standards of conduct throughout the Council, including the Member / Officer protocol and the Officer Code of Conduct.
- (6) Duty to put in place arrangements to investigate and make decisions on written allegations that a Member or Co-opted Member of the Council has failed to comply with the Code of Conduct. [Section 28(6)]
- (7) To consider and recommend to Council the appointment of one or more independent persons for the following purposes:
  - a) To give the Council views on any allegations it has decided to investigate, before a decision is reached;
  - b) At the discretion of the Council, to give the Council views on any other allegations; and
  - c) At the discretion of a Member, Co-opted Member or Member of a Parish or Town Council, to give the Member views on any allegations relating to the behaviour of that Member. [Section 28(7)]
- (8) Power to have regard to a Member's or Co-opted Member's failure in complying with the Code of Conduct, in deciding whether to take action in relation to that Member and what action to take.
- (9) To consider and recommend to Full Council the making of Standing Orders to provide for the exclusion of a Member or Co-opted Member of the Council from a meeting while any discussion or vote takes place in which that person may not participate. [Section 31(10)]
- (10) Power to grant a Member or Co-opted Member a dispensation from the restriction on speaking and/or voting when any matter in which that person has a disclosable pecuniary interest is to be considered at a meeting of the

Council or any of its committees, sub-committees, joint committees or joint sub-committees. To be exercised by the Monitoring Officer.

- (11) Power to revise and keep under review all other codes and protocols relating to standards of conduct throughout the Council, including the Member / Officer Protocol and the Officer Code of Conduct.
- (12) Overview of complaints handling and Local Government and Social Care Ombudsman investigations, including the power to make payments or other benefits in cases of maladministration etc. (Section 92 of the Local Government Act 2000).

## 4. Human Resources Committee

### 4.1 Membership:

Seven Members of the Council appointed in accordance with political balance requirements, one of which will be the Leader of the Council, whose Portfolio contains Human Resources.

- 4.2 The Human Resources committee considers all matters relating to Human Resources within the council. This includes the approval of policies and staff retention packages. The committee receives reports from the Human Resources Manager twice a year on the operational management of the organisation, highlighting fluctuations in trends on indicators affecting the staff resources of the Council, such as sickness, recruitment and equal opportunities.

### Functions and Delegations

1. Functions relating to Local Government pensions, etc. (Regulations under section 7, 12 or 24 of the Superannuation Act 1972 (c. 11)).
2. Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal) (Section 112 of the Local Government Act 1972).
3. To determine annual pay awards within existing Council policy and budgetary provision.
4. Duty to make arrangements for proper administration of financial affairs etc. (Section 151 of the Local Government Act 1972).
5. Power to appoint officers for particular purposes (appointment of “proper officers”) (Section 270(3) of the Local Government Act 1972).
6. The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.\*
7. Any other duties and powers in relation to the employment of staff not listed above.

(\*Local choice functions determined at the discretion of the Council to be the responsibility of the Human Resources Committee rather than the Executive).

## 5. Licensing and General Purposes Committee

5.1 **Membership:** 12 Members of the Council.

### 5.2 **Mandatory Licensing and General Purposes Committee Training**

Members appointed to the Licensing and General Purposes Committee must attend mandatory licensing training, as prescribed by Legal Services before being selected to serve on a Licensing Panel. It will also be necessary for Members to attend continuous refresher training as and when provided.

### 5.3 **Functions and Delegations**

To carry out all of the Council's functions as set out below and take all decisions except those delegated to the officers, provided that:

- (a) Any Member of the Council (who is not a Member of the Committee) may speak at meetings of the Committee on an issue which alone affects the Ward which the Member represents on the Council;
  - (b) Any other Member of the Council (who is not a Member of the Committee) may speak at meetings of the Committee only on invitation by the Chair of the Committee;
1. To recommend to Council the adoption of statutory Licensing Policies.
  2. To set fees and charges for licences and permits.
  3. To adopt standard conditions for licences.
  4. To designate consent and prohibited streets for the purposes of street trading.
  5. To agree hackney carriage fares.
  6. Duties and powers in relation to elections and parish councils.
  7. Any other duties or powers not being an Executive function or function of another committee.

## 6. General Licensing Panel (Licensing Sub-Committee)

6.1 **Membership:** Three Members of the Licensing and General Purposes Committee.

Ward Members can address a General Licensing Panel only if they have made a relevant representation or have been asked to represent the views of objectors who have made relevant representations within the prescribed timescales. There is no general right to address a General Licensing Panel as Ward Member.

## 6.2 Functions and Delegations

1. Powers for the grant (with conditions), refuse, suspend or revoke:

Approved premises, consents, licences, notices, permits and registrations issued or received by the Council;  
that are not solely designated as Executive functions;  
except those delegated to the Taxi and Private Hire Panel.

2. The determination of an appeal against any decision made by or behalf of the authority, not delegated to the Taxi and Private Hire Panel.

## 7. Taxi and Private Hire Licensing Panel (Licensing Sub-Committee)

- 7.1 **Membership:** Three Members of the Licensing and General Purposes Committee.

### 7.2 Functions and Delegations

1. Powers for licensing hackney carriages, hackney carriage and private hire drivers, private hire operators and vehicles: These provisions include the issues of grant (with conditions), refusal, suspension, and revocation of driver, operator and vehicle licences, and applications for exemptions.
2. Power to administer penalty points under the Council's Penalty Scheme for drivers and operators reported to the Panel for breaches of the scheme.
3. Determine appeals in relation to the licensing of hackney carriages, hackney carriage and private hire drivers, private hire operators and vehicles.

## 8. Overview and Scrutiny Committees

- 8.1 **Membership: 12 Non-Executive Members of the Council**

- 8.2 **General Role and Specific Functions**

The General Role and Functions of the Overview and Scrutiny is set out in Article 6 of this Constitution.

- 8.3 **Task and Finish Groups**

In fulfilling their functions, Overview and Scrutiny Committees may, between them, create up to a maximum of four active Task and Finish Groups at any one time. The size, quorum and political make up to be at the discretion of the Overview and Scrutiny Committees, with membership open to non Members of the Council. In creating such Task and Finish Groups, consideration needs to be given to ensure that no "undue burdens" are placed on one specific service area.

## 9. Planning Committee



9.1 **Membership:** 14 Substantive Members of the Council. One substitute Member may be appointed by each political group on the Committee.

## 9.2 **Mandatory Planning Committee Training**

Members appointed to the Planning Committee must attend an annual mandatory training session, as prescribed by the Development Manager and in consultation with the Chair of the Planning Committee, before taking part in the decision making process. This applies to both Substantive and Substitute Members. It will also be necessary for Planning Committee Members to attend continuous refresher training as and when provided, and advisory for Substitute Members.

## 9.3 **Functions and Delegations**

To carry out all of the Council's functions as set out below and take all decisions except those delegated to the officers, provided that in relation to all non-application matters, any other Member of the Council (who is not a Member of the Committee) may speak at meetings of the Committee only on invitation by the Chair of the Committee.

1. Power to determine applications for planning permission (Sections 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990 (c.8)).
2. Power to determine applications to develop land without compliance with conditions previously attached (Section 73 of the Town and Country Planning Act 1990).
3. Power to grant planning permission for development already carried out (Section 73A of the Town and Country Planning Act 1990).
4. Power to decline to determine applications for planning permission (Section 70A of the Town and Country Planning Act 1990).
5. Duties relating to the making of determinations of planning applications (Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) and directions made thereunder).
6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person (Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (S.I. 1992/1492))
7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights (Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418)).
8. Power to enter into agreements regulating development or use of land (Section 106 of the Town and Country Planning Act 1990) and to determine applications to discharge or modify planning obligations under Section 106A and respond to appeals under Section 106B.

9. Power to issue a certificate of existing or proposed lawful use or development (Sections 191(4) and 192(2) of the Town and Country Planning Act 1990) and Article 24 and Schedule 4 of the Town and Country (General Development Procedure) Order 1995).
10. Power to serve a completion notice (Section 94(2) of the Town and Country Planning Act 1990).
11. Power to grant consent for the display of advertisements (Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992) and to enforce against advertisements displayed in contravention of the regulations under the said regulations and under Sections 224 and 225 of the Town and Country Planning Act 1990.
12. Power to authorise entry onto land and to obtain (Sections 196A 324 and 325 of the Town and Country Planning Act 1990) and to prosecute for wilful obstruction under S.196C and 325.
13. Power to require the discontinuance of a use of land or alternation or removal of development (Section 102 of the Town and Country Planning Act 1990) and to prosecute breaches under Section 189 and enforce compliance under Section 190.
14. Power to serve a planning contravention notice, breach of condition notice or stop notice (Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990).
15. Power to issue an Enforcement Notice (Section 172 of the Town and Country Planning Act 1990) and a stop notice under Section 183; to withdraw, waive or relax and enforcement notice under Section 173 and a stop notice under Section 183(7); to prosecute for breaches of an enforcement notice under Section 179 and a stop notice under Section 187 of the Town and Country Planning Act 1990.
16. Power to apply for an injunction restraining an actual or apprehended breach of planning control (Section 187B of the Town and Country Planning Act 1990).
17. Power to determine applications for hazardous substances consent, and related powers (Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990 (c. 10)).
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 (Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c. 25) and paragraph 6(5) of Schedule 14 to that Act).
19. Power to require proper maintenance of land (Section 215(1) of the Town and Country Planning Act 1990) and respond to appeals under Sections 217 and 218. The power to prosecute under Section 216 and to carry out works in default and recover costs under Section 219.

20. All the powers given to the Council under the Planning (Listed Buildings and Conservation Areas) Act 1990 and including without prejudice to the generality of the foregoing the following powers:
- (a) Power to determine applications for listed building consent, and related powers (Sections 16, 17, 27 and 33 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)).
  - (b) Power to determine applications for conservation area consent (Section 16(1) of the Planning (Listed Buildings and in Conservation Areas) Act 1990, as applied by Section 74(3) of that Act).
  - (c) Duties relating to applications for listed building consent and conservation area consent (Sections 13 and 14 of the Planning (Listed Buildings and in Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 22 of Department of the Environment Circular 14/97).
  - (d) Power to serve a building preservation notice, and related powers (Sections 3 and 4 of the Planning (Listed Buildings and in Conservation Areas) Act 1990).
  - (e) Power to issue enforcement notices in relation to demolition of unlisted building in conservation area (Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990).
  - (f) Power to compulsorily acquire a listed building in need of repair and to serve a repairs notice (Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990) and the payment of compensation under Sections 49-51 and the power to acquire land by agreement under Section 52.
  - (g) Power to apply for an injunction in relation to a listed building. (Section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990).
  - (h) Power to execute urgent works and recover expenses (Sections 54 and 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990).
  - (i) Power to prosecute for breaches of the Planning (Listed Buildings and Conservation Areas) Act 1990.
21. Power to make and confirm a tree preservation order under Sections 198 to 201 of the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999 (S.I. 1999/1892) and to compensate for loss or damage pursuant to an order under Sections 203-205 of the Town and Country Planning Act 1990.
22. Power to enforce the duty in Section 206 to replace trees the subject of a tree preservation order by the service of a notice under Section 207 and to the execution of works and the recovery of costs under Section 209 of the Town and Country Planning Act 1990.
23. Power to prosecute for a contravention of a tree preservation order under Section 210 of the Town and Country Planning Act 1990.
24. Power to enforce the preservation of trees in a conservation area by a prosecution under Section 211 and to enforce the duty to replace trees in conservation areas under Section 213 of the Town and Country Planning Act 1990.

25. The power under Section 214A of the Town and Country Planning Act 1990 to apply to the court for injunction for an actual or apprehended offence under Sections 210 or 211 of the said 1990 Act.
26. All the powers given to the Council under the Building Act 1984 and by all orders and regulations made thereunder and without prejudice to the generality of the foregoing the power to issue a notice under Section 36 Building Act 1984 to pull down, alter or remove works carried out contrary to the Building Regulations or carried without plans having been deposited or not in compliance with the requirement in plans that have been passed; together with the power under that Section to carry out works in default and to recover the costs incurred by the Council. The power to pay for reports under Section 37 and to defend appeals under Section 39 and 40 Building Act 1984.
27. All the powers given to the Council in respect of building works, the condition, use and safety of buildings and premises under the Public Health Acts 1875 – 1961, the Fire Precautions Act 1971, the Defective Premises Act 1972, the Highways Act 1980, the Chronically Sick and disabled Act 1970, the Clean Air Act 1993, the Disability Discrimination Act 1996 and the East Sussex Act 1984 including any statutory amendments made thereto and all orders and regulations made thereunder.
28. All the powers given to the Council under the Hedgerows Regulations 1997 (S.I. 1997/1160), and Part 8 of the Anti-Social Behaviour Act 2003.
29. Making of Limestone Pavement Orders (Section 34(2) of the Wildlife and Countryside Act 1981 (c. 69)).
30. Power to extinguish, divert and create footpaths and bridleways pursuant to Sections 116-121 Highways Act 1980; the power to apply to the Secretary of State to make an order extinguishing vehicular rights on the highway under Section 249 of the Town and Country Planning Act 1990 and to extinguish public rights of way over land held for planning purposes under Section 251 following the procedures set out in Section 252; the power to make an order to stop up or divert any footpath or bridleway to enable development to be carried out under Section 257 of the Town and Country Planning Act 1990 or under Section 258 where the land is held for planning purposes subject to confirmation under Section 259.
31. Power to serve a planning contravention notice to obtain information relating to land under Section 171C and to prosecute under Section 171D of the Town and Country Planning Act 1990 for a failure to comply with the notice; the power to service a notice requiring particulars of a person's interest in land under Section 16 of Local Government (Miscellaneous Provisions) Act 1976 including the power to prosecute for a failure to comply with the notice.
32. Power to enter into agreements with respect to means of access (Section 35 of the Countryside and Rights of Way Act 2000 (c.37)).
33. Power to provide access in absence of agreement (Section 37 of the Countryside and Rights of Way Act 2000).

34. Any other Planning issue appropriate for delegation to the Planning Committee.

*(\*Local choice functions determined at the discretion of the Council to be the responsibility of the Planning Committee rather than the Executive).*

#### 9.4 Planning Committee – Other Matters

1. Formal Site Visits – Members of the Planning Committee are expected to attend formal site visits organised by officers. Members who are not present at the formal site visits will be permitted to stay and contribute to the debate and vote on the relevant application(s).
2. Member Referrals – Members who have called in a planning application to be considered by the Planning Committee must attend the relevant meeting, send a Member on their behalf or provide an apology / reason for non-attendance. **In the interests of ethics and probity Members are NOT able to call in an application in which they have a disclosable pecuniary interest or personal and prejudicial interest.**

#### 9.5 Members' Rights to Speak at Planning Committee

- (1) Members of the Council who are not Members of the Planning Committee may attend and speak to planning applications at meetings of the Committee for a maximum of five minutes.
- (2) Members of the Council who are not Members of the Planning Committee may attend and speak to planning applications at meetings of the Committee that are subject to the public speaking scheme for a maximum of five minutes which may be interspersed throughout the Committees' deliberations.
- (3) Members of the Council who are not Members of the Planning Committee who attend and speak to planning applications at meetings of the Committee that are subject to the public speaking scheme are encouraged to submit a brief summary of the issues in advance of the meeting to be circulated to Members of the Planning Committee.
- (4) The Chair of the Planning Committee will exercise discretion at all times in relation speakers and the length of time allowed to speak.

#### Parish and Town Council Speaking Rights at Planning Committee

- (1) A formally nominated representative of a relevant Parish or Town Council may register to speak at a Planning Committee meeting on:
  - an individual householder planning application;
  - any minor/other planning application including any non-major planning application (i.e. listed planning consents or developments up to nine units or up to 1,000sqm of commercial floor space; and
  - any major planning application of 10 units and above or above 1,000sqm of commercial floor space.

subject to the following restrictions:

- a) the Parish or Town Council must have made a submission on the application before the Agenda was published;
  - b) pre-registered their wish to speak, confirmed they are the formally nominated representative of the Parish or Town Council, identified the agenda item they wish to speak to and confirmed their contact details;
  - c) only one representative may register to speak in favour of or against any application and at the meeting may only speak for a maximum of five minutes; and
  - d) where the application relates to a development on the parish boundary, only one speaker will be permitted as nominated by the Parish or Town Council by resolution.
- (2) Planning applications which are decided by officers under the Council's scheme of delegation do not come before the Planning Committee and Parish or Town Council speaking rights do not apply in respect of them.
- (3) The Chair of the Planning Committee will exercise discretion at all times in relation speakers and the length of time allowed to speak.

#### 9.6 Public Speaking Rights at Planning Committee

- (1) A member of the public may register to speak at a Planning Committee meeting on:
- an individual householder planning application;
  - any minor/other planning application including any non-major planning application (i.e. listed planning consents or developments up to nine units or up to 1,000sqm of commercial floor space; and
  - any major planning application of 10 units and above or above 1,000sqm of commercial floor space.

subject to the following restrictions:

- a) the member of the public must have made a submission on the application before the Agenda was published;
- b) pre-registered their wish to speak, identified the agenda item they wish to speak to and confirmed their contact details;
- c) where the application before the Committee is an individual householder planning application only one member of the public may register to speak in favour of or against the application and at the meeting may only speak for a maximum of five minutes;
- d) where the application before the Committee is a 'minor application' no more than two members of the public may register to speak in favour of or against the application and at the meeting each person may only speak for a maximum of five minutes;
- e) where the application before the Committee is a 'major application' no more than three members of the public may register to speak in favour of or against the application and at the meeting each person may only speak for a maximum of five minutes.

- (2) Planning applications which are decided by officers under the Council's scheme of delegation do not come before the Planning Committee and public speaking rights do not apply in respect of them.
- (3) Planning Applications that have already been subject to the public speaking scheme and deferred and reconsidered by the Planning Committee will not usually be subject to public speaking at the subsequent meeting unless any new material planning information has been presented. Each case will be decided on its merits by agreement between the Development Manager and the Chair of Planning Committee.
- (4) The Council's Code of Practice for the scheme can be found on the website at the following link:

[Public speaking at planning committee – Rother District Council](#)

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# **PART 4-1**

## **COUNCIL PROCEDURE RULES**

### **1. Scope**

All of the Council Procedure Rules apply to meetings of Council. None of the rules apply to meetings of the Cabinet. Only Rules 5-10, 12.3, 13–15, 16–25 (but not Rules 17.5 (b) and 21.1) apply to meetings of Committees and Sub-Committees. In the case of the Overview and Scrutiny Committees, Rules 15.4 (b) and 15.5 may be waived by the Chair of the Committee at their discretion for any agenda item or items.

### **2. Annual Meeting of The Full Council**

#### **2.1 Timing and Business**

In a year when there is an ordinary election of Councillors, the Annual meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the annual meeting will take place in March, April or May. The Annual meeting will:

- (i) elect a person to preside if the Chair of Council is not present;
- (ii) elect the Chair of Council, who will assume office at this point;
- (iii) appoint the Vice-Chair of Council;
- (iv) approve the minutes of the last meeting;
- (v) in a year when there is any election of councillors, receive the Returning Officer's Return of councillors elected;
- (vi) receive any announcements from the Chair and/or Chief Executive;
- (vii) elect the Leader of the Council at the first Annual meeting in a year when there is an ordinary election to serve a term of four years;
- (viii) receive a statement from the Leader concerning appointments to the Cabinet, including the statutory Deputy Leader;
- (ix) appoint at least one Overview and Scrutiny Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3 of this Constitution);
- (x) agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree (as set out in Part 8 of this Constitution);
- (xi) receive any declarations of interest from Members;
- (xii) approve the list of outside bodies to which formal appointments are made and make the appointments thereto;
- (xiii) receive the Leader of the Major Opposition Group's written annual statement, if they wish to give one; and
- (xiv) consider any business set out in the notice convening the meeting.

#### **2.2 Order of Business**

Business falling under items (i) - (ix) of Rule 2.1 shall not be displaced but, subject thereto, the foregoing order of business may be varied:

- (a) by the Chair at their discretion, or

- (b) by a resolution passed on a motion (which need not be in writing) duly moved and seconded, which shall be moved and put without discussion.

### **2.3 Selection of Councillors on Committees**

At the Annual meeting, the Council meeting will:

- (i) decide which Committees to establish for the municipal year;
- (ii) decide the size and terms of reference for those Committees;
- (iii) decide the allocation of seats to political groups in accordance with the political balance rules and to any Councillors not in membership of a political group;
- (iv) receive the nominations of Group Leaders as to the Councillors to serve on each Committee. In nominating committee Members, conflicts of interests should be avoided wherever possible;
- (v) appoint to those Committees;
- (vi) appoint substitute Members as per the current scheme; and
- (vii) at the conclusion of the Annual Council Meeting, convene each Committee to elect the Chairs and Vice-Chairs for the civic year.

## **3. Ordinary Meetings**

### **3.1 Order of Business**

Ordinary meetings of the Council will take place in accordance with a programme decided by the Council. Except as otherwise provided by Rule 3.2, the order of business at Ordinary meetings will be to:

- (i) elect a person to preside if the Chair and Vice-Chair are not present;
- (ii) approve the minutes of the last meeting;
- (iii) receive any declarations of interest from Members;
- (iv) receive the Chair's communications;
- (v) receive questions from, and provide answers to, the public and Members in accordance with the Council's Public and Member Question Time Scheme;
- (vi) debate any petitions received under the Council's Petitions Scheme, which have the requisite number of signatures;
- (vii) deal with any business from the last Council meeting;
- (viii) receive reports from the Cabinet and the Council's Committees and receive questions and answers on any of those reports;
- (ix) receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- (x) consider motions in accordance with Procedure Rule 13; and
- (xi) consider any other business specified in the summons to the meeting.

### **3.2 Variation of Order of Business**

Business falling under items (i), (ii) or (iii) of Rule 3.1 shall not be displaced but, subject thereto, the foregoing order of business may be varied:

- (a) by the Chair at their discretion, or
- (b) by a resolution passed on a motion (which need not be in writing) duly moved and seconded, which shall be moved and put without discussion.

## **4. Extraordinary Meetings**

### **4.1 Calling Extraordinary Meetings**

Those listed below may request the Chief Executive to call Council meetings in addition to ordinary meetings:

- (i) the Council by resolution;
- (ii) the Chair of the Council;
- (iii) the Monitoring Officer
- (iv) the Chief Finance Officer (Section 151 Officer); and
- (v) any five Members of the Council if they have signed a requisition presented to the Chair of the Council who has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

### **4.2 Business**

An extraordinary meeting shall not consider previous minutes, reports from committees or any other matter than the subject for which that meeting is called.

## **5. Appointment of Substitute Members on Committees**

### **5.1 Allocation**

- (a) There shall be no substitution of Members of the Audit and Standards Committee, Cabinet or Licensing Panels. Members of the Cabinet may not be substitutes on any Overview and Scrutiny Committee.
- (b) The Chair of Rother District Council may not be a substitute on any Committee.

5.2 The political groups serving on the Council may appoint substitute Members from their own group in accordance with this Procedure Rule on Committees and Sub-Committees. Only substitute Members who have undergone related training may be substituted on the Planning Committee. Political Groups will be permitted to nominate one substitute Member for each relevant Committee on which they have an allocated seat(s).

5.3 In the case of a vacancy on a Committee, the appropriate named Substitute can attend and take the vacant seat until such times as a replacement Substantive Member has been appointed by Full Council or the Chief Executive, under delegation.

### **5.4 Powers and Duties**

Substitute Members will have all the powers and duties of any ordinary Member of the committee. Substitute Members may attend meetings in that capacity only:

- (a) to take the place of the substantive Member for whom they are the designated substitute;
- (b) to take the place of a vacant seat for whom they are the designated substitute for that Group;
- (c) where the substantive Member will be absent for the whole of the

- meeting;
- (d) has undertaken the mandatory training in the case of the Planning Committee; and
- (e) after notifying the Democratic Services Manager no later than one clear working day prior to the commencement of the relevant meeting.

## 5.5 Substitution

- (a) Substantive Members must organise their own substitute arrangements and confirm the attendance of a substitute to the Democratic Services Manager or Officer at least one clear working day prior to the commencement of the meeting (unless there are extenuating circumstances such as a medical emergency or some other family-related emergency); notification by electronic mail or telephone will suffice for these purposes.
- (b) The Chair of a relevant meeting will seek confirmation of substitute Members present at the “Apologies and Substitutes” Agenda Item.
- (c) Substitutes arriving after the commencement of the meeting and for which prior notification has not been received will not be permitted to act as a substitute.
- (d) Where a substantive Member is substituted on a relevant Committee for more than 50% of the scheduled meetings of that Committee in any civic year, Group Leaders will be alerted and consideration given to the removal of the substantive Member.
- (e) Substitutes are not able to act on behalf of a Substantive Member who has joined a meeting remotely and is therefore unable to vote.

## 5.6 Variation of Membership

- (a) The appropriate Group Leader must notify the Chief Executive, in writing, of any changes in membership or substitute membership of any Committee or Sub-Committee allocated to their group and such changes will be reported to the next meeting of the Council. Such notification must be provided to the Chief Executive or their nominee prior to the commencement of the body in question to enable it to have effect for that meeting.
- (b) The Chief Executive and Monitoring Officer have delegated powers to make appointments, removals or replacement of Members to any Committee and Sub-Committee in accordance with the wishes of the Leader of the political group to which the seat has been allocated.

## 6. Time and Place of Meetings

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

## **7. Notice of and Summons to Meetings**

The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, or at the time the meeting is convened, if it is convened at shorter notice as a matter of urgency, the Chief Executive will send a summons signed by them by post or by electronic mail to every Member of the Council or leave it at their usual place of residence. 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. Chair of Meeting**

The person presiding at the meeting may exercise any power or duty of the Chair. Where these rules apply to Committee and Sub-Committee meetings, references to the Chair also include the Chair of Committees and Sub-Committees.

## **9. Quorum**

### **9.1 General**

The quorum of a meeting in the case of the Council will be one quarter of the whole number of Members and in the case of a Committee or Sub-Committee, will be one third of the whole number of the Committee or Sub-Committee but in no case shall the quorum be less than two Council Members.

### **9.2 Quorum during Meetings**

During any meeting, if the Chair counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If they do not fix a date, the remaining business will be considered at the next ordinary meeting.

### **9.3 Inquorate Meetings**

If a meeting is inquorate it cannot, by law, proceed to make any decisions. However in certain limited circumstances, the meeting may proceed to deliberate such agenda items as are considered appropriate provided that the minutes of the meeting record the fact that the meeting was inquorate.

This would not be appropriate for a meeting of the Cabinet where the decisions are for Cabinet alone to make, nor would it be appropriate for a regulatory Committee. However, if the matter under consideration was one that would need to be referred to full Council for a decision, then Cabinet could proceed to consider the matter and submit a recommendation to Council, provided Council was advised that the recommendation arose from an inquorate meeting of Cabinet.

This procedure could apply equally to a meeting of a Sub-Committee or Overview and Scrutiny Committee where the actual decision is being taken by the parent Committee, Cabinet or full Council.

This procedure should only be used in the exceptional circumstances set out above and where it is not practical or possible to defer consideration of a matter because of

time or other constraints. It is for those Members present at any meeting to determine how they would wish to proceed in the event that a meeting is inquorate.

## **10. Duration of Meeting**

Unless the majority of Members present vote for the meeting to continue, any evening meeting that has lasted for three hours will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If they do not fix a date, the remaining business will be considered at the next ordinary meeting.

## **11. Questions by the Public**

### **11.1 General**

Anyone who works or resides in Rother District may ask questions of Members of the Cabinet at ordinary meetings of the Council. A period of up to 30 minutes at the beginning of each meeting shall be allowed for questions to be put.

### **11.2 Order of Questions**

Questions will be asked in the order in which notice of them was received, except that the Chair may group together similar questions.

### **11.3 Notice of Questions**

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than five clear working days before the day of the meeting. Each question must give the name and address of the questioner and may specify the Member of the Cabinet either by name or portfolio to whom it is to be put.

### **11.4 Number of Questions**

At any meeting no person may submit more than one question and no more than one question may be asked on behalf of an organisation.

### **11.5 Scope of Questions**

The Chief Executive may reject a question if it:

- is not about a matter for which the Local Authority has a responsibility or which affects the District; or
- is defamatory, frivolous or offensive; or
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information; or
- relates to an individual/group business or the questioner's own particular circumstances; or
- relates to a matter which is the subject of legal or enforcement proceedings or an appeal to a tribunal or to a Government Minister or an investigation by the Local Government and Social Care Ombudsman or Monitoring Officer; or
- relates to the personal circumstances or conduct of any officer and Councillor or conditions of service of employees; or

- relates to the activities and aims of a political party or organisation; or
- relates to individual planning applications; or
- is a statement and not a genuine enquiry.

The Chair shall have the discretion to limit the length of preamble or other background information supplied with the question. In addition, the Chair may rule that a question shall not be answered because the preparation of the answer would require the expenditure of a disproportionate amount of time, money or effort.

The ruling of the Chair of the Council as advised by the Chief Executive in the above matters shall be final.

#### **11.6 Record of Questions**

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

Copies of all questions will be circulated electronically to all Members and made available to the public attending the meeting as well as published on the Council's website in advance of the meeting when possible.

The minutes of the meeting will record the details of the questions that have been asked (including any supplementary questions) and by whom, together with the answers given.

#### **11.7 Asking the Question at the Meeting**

Although questioners will be required to identify themselves at the meeting, they do not need to ask their questions themselves, unless they wish to. A questioner who has submitted a written question may ask the Chair to put the question on their behalf. The Chair will, in appropriate cases read the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

#### **11.8 Supplementary Question**

A questioner who has put a question in person may also put one supplementary question without notice to the Member of the Cabinet who has replied to their original question. A supplementary question must relate to the answer given. The Chair may reject a supplementary question on any of the grounds in Rule 11.5 above.

#### **11.9 Written Answers**

Any question which cannot be dealt with during public question time due to lack of time will be dealt with by a written answer, which will be sent to the questioner and all Members of the Council within 10 working days of the meeting.

#### **11.10 Reference of Question to the Cabinet or a Committee**

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

## **12. Questions by Members**

### **12.1 On Reports of the Cabinet or a Committee**

A Member of the Council may ask the Leader, Member of the Cabinet or the Chair of a Committee any question without notice upon an item of the report of the Cabinet or a Committee when that item is being received or is under consideration by the Council.

### **12.2 Questions on Notice at Council**

A period of up to 30 minutes following any questions submitted by Members of the public under Rule 11 above shall be allowed for questions to be put by Members of the Council.

A Member of the Council may ask:

- the Leader;
- a Member of the Cabinet; or
- the Chair of any Committee or Sub-Committee

a question on any matter in relation to which the Council has powers or duties or which affects the District provided that either:

- (a) they have given notice to the Chief Executive by 12 noon on the day of the meeting of the wish to ask an oral question together with details as to whom it is to be directed; or
- (b) they have given at least two clear working days' notice, not including the day of the meeting or the day on which the notification was received, of the wish to submit a written question and to receive a written answer.

The ruling of the Chair as advised by the Chief Executive and having regard to Rule 11.5 as to the appropriateness of a question shall be final.

A written question submitted by a Member who is then unable to attend Council will still be put, circulated together with the answer and included within the minutes.

### **12.3 Questions on Notice at Committees and Sub-Committees**

A Member of a Committee or Sub-Committee may ask the Chair of it a question on any matter in relation to which the Council has powers or duties or which affects the District and which falls within the terms of reference of that Committee or Sub-Committee. A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than five clear working days before the day of the meeting.

### **12.4 Response**

An answer may take the form of:

- (a) a direct oral answer; or
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or



- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner and included as an appendix to the minutes.

## **12.5 Supplementary Question**

A Member asking a question under Rule 12.2 may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must relate to the original question or answer given.

The minutes of the meeting will record the details of any question asked by a Member under 12.2, together with the answer given, and the essence of any supplementary question and any reply given.

## **13. Notice of Motions**

### **13.1 Notice**

Except for motions which can be moved without notice under Rule 14, written notice of every motion, signed by a Member of the Council giving the notice, must be delivered to the Chief Executive no later than 10 clear days before the date of the meeting.

E-signatures shall be acceptable for the purposes of this rule. Save that the Chair shall have the discretion to admit a motion to the Agenda by reason of special circumstances on the grounds of urgency, in accordance with the provisions of Part VA of the Local Government Act 1972, where they are satisfied that the matter will not admit of delay until the next meeting of Council.

A record of notices of motion shall be kept.

Only one Motion may be submitted per Member per meeting.

### **13.2 Number of Motions**

A maximum of five motions shall be accepted for debate at an ordinary meeting of the Council under this procedure rule. Motions will be accepted in the order in which notice of the full written motion is received.

### **13.3. Similar Motions**

Where similar motions have been submitted, the Chief Executive will liaise with the Chair and is authorised to ask the proposers to work together to agree a mutually agreeable form of words. Where that does not prove possible, the Chair shall decide which motion shall be accepted.

### **13.4 Motion Set Out in the Agenda**

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Member giving notice states, in writing, that they propose to move it at a later meeting or withdraw it. Subject to a written proposal by the Councillor to move it at a later meeting, any motion not moved at the relevant meeting shall be deemed to be withdrawn.

### 13.5 Scope

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

The Chair, having regard to the advice of the Chief Executive may reject a motion if it:

- (a) is not about a matter for which the local authority has a responsibility, or which affects the district;
- (b) is defamatory, frivolous or offensive;
- (c) is substantially the same as a motion which has been put at the meeting or a meeting of the Council in the past six months. (This does not apply to motions moved in pursuance of a recommendation of Cabinet, a Committee or a Chief Officer or motions which have been withdrawn from a previous meeting);
- (d) requires the disclosure of confidential or exempt information;
- (e) would, if carried, commit the Council to a course or courses of action contrary to agreed processes or outside its authority to act; or
- (f) relates to a planning or licensing application which has yet to be determined.

### 13.6 Time limit

A maximum period of 30 minutes shall be allowed for each motion to be moved, seconded and debated, including dealing with any amendments. At the expiry of the 30-minute period, debate shall cease immediately, the mover of the original motion shall have the right of reply before the motion or amendment is put to the vote. If the original motion has been amended, the mover of the amendment now forming the substantive motion shall have the right of reply before it is put to the vote.

## 14. Motions Without Notice

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 defer consideration of an item of business;
- (g) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (h) to withdraw a motion;
- (i) to amend a motion;
- (j) to proceed to the next business;
- (k) that the question be now put;
- (l) to adjourn a debate;
- (m) to adjourn a meeting;
- (n) that the meeting (evenings only) continue beyond three hours in duration;
- (o) to suspend a particular Council Procedure Rule;
- (p) to exclude the public and press in accordance with the Access to Information Rules;
- (q) to not hear further a Member named under Rule 21.3 or to exclude them from the meeting under Rule 21.4; and

- (r) to give the consent of the Council where its consent is required by this Constitution.

## **15. Rules of Debate**

### **15.1 No Speeches until Motion Seconded**

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

### **15.2 Right to require Motion in Writing**

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

### **15.3 Secunder's Speech**

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

### **15.4 Content and Length of Speeches**

- (a) Speeches must be directed to the question under discussion or to a personal explanation, point of order or point of information.
- (b) Except by consent of the Council no speech shall exceed five minutes in the case of the mover of a motion or amendment and three minutes in all other cases including seconds.

### **15.5 When a Member may speak again**

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

- (a) to speak once on an amendment moved by another Member; or
- (b) to move a further amendment if the motion has been amended since they last spoke; or
- (c) if their first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which they spoke was carried); or
- (d) at the Chair's discretion, in the case of the Leader, Cabinet member or committee chair, to respond to a factual question directly addressed to them; or
- (e) in exercise of a right of reply; or
- (f) on a point of order; or
- (g) at the Chair's discretion, to make a point of information;
- (h) by way of personal explanation; or
- (i) to move a Motion under Procedure Rule 15.10 (Motions which may be moved during debate).

## 15.6 Amendments to Motions

- (a) An amendment to a motion must be relevant to the motion and will either be:
- (i) to refer the matter to an appropriate body or individual for consideration or reconsideration; or
  - (ii) to leave out words; or
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion.

- (b) The Chair may request the mover and seconder of the original motion to indicate whether they are prepared to accept the amendment through its incorporation into their motion. If they are willing to do so, the original motion shall stand altered accordingly, the amendment shall be deemed withdrawn and debate proceed on the original motion, as altered. If they are not willing to do so, consideration of the amendment shall proceed in accordance with the normal rules of debate.
- (c) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (d) If an amendment is not carried, other amendments to the original motion may be moved.
- (e) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (f) After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

## 15.7 Alteration of Motion

- (a) A Member may alter a motion of which they have given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- (b) A Member may alter a motion which they have moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

## 15.8 Withdrawal of Motion

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

## 15.9 Right of Reply

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

- (b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- (c) The mover of the amendment has no right of reply to the debate on their amendment.

#### 15.10 Motions which may be moved during debate

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

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) that the meeting (evenings only) continue beyond three hours in duration;
- (h) to exclude the public and press in accordance with the Access to Information Rules; and
- (i) to not hear further a Member named under Rule 21.3 or to exclude them from the meeting under Rule 21.4.

#### 15.11 Closure Motions

- (a) A Member may, provided that they have not already spoken, move without comment at the end of a speech of another Member the following motions:
  - (i) to proceed to the next business;
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.
- (b) If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, they will give the mover of the original motion a right of reply and then put the procedural motion to the vote. The Chair may reject the procedural motion if they think that the matter before the meeting has not been sufficiently discussed.
- (c) If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, they will put the procedural motion to the vote. If it is passed they will give the mover of the original motion a right of reply before putting their motion to the vote. The Chair may reject the procedural motion if they think that the matter before the meeting has not been sufficiently discussed.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chair thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, they will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

## **15.12 Point of Order**

A Member may raise a point of order at any time. The Chair will hear the Member immediately. A point of order may only relate to an alleged breach of these Council Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Chair on the matter will be final.

## **15.13 Point of information**

A point of information may only be made where a Member is aware that the Council has incorrect information before it on a material point. A Member may ask to raise a point of information at any time by standing and stating, "Point of Information", but shall be permitted to speak only at the Chair's discretion. The Member who raises the point of information must be able to cite evidence to support their statement. The point of information may be raised whilst another Member is speaking but only if that Member is willing to give way. The ruling of the Chair on the admissibility of a point of information shall be final.

## **15.14 Personal Explanation**

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

# **16. Previous Decisions and Motions**

## **16.1 Motion to Rescind a Previous Decision**

A motion or amendment to rescind or reverse, or which has the effect of rescinding or reversing a decision of the Council made within the preceding six months cannot be moved unless there has been a material change in circumstances and the notice of motion is signed by at least one third of all Members or unless it is a recommendation of a Committee or the Cabinet which appears on the agenda.

## **16.2 Motion similar to one previously rejected**

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

# **17. Voting**

## **17.1 Majority**

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

## **17.2 Chair's Casting Vote**

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

## **17.3 Show of Hands**

Unless a secret ballot is required under Rule 17.4 or a recorded vote is demanded under 17.5, the Chair will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

## **17.4 Voting on Member Appointments**

- (a) Where more than one person is nominated for any appointment made by the Council, voting shall be by secret ballot.
- (b) Where there are more than two persons nominated for any position to be filled by the Council, and of the votes given there is not a majority in favour of one person, the name of the person having the least number of votes shall be struck off the list and a fresh vote shall be taken, and so on until a majority of votes is given in favour of one person.

## **17.5 Recorded Vote**

- (a) Except as provided for in Rule 17.4, if four Members present at the meeting demand it, the names for and against the motion or amendment and those abstaining from voting will be taken down in writing and entered in the minutes.
- (b) In accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014, a recorded vote will be mandatory when setting the Council's Budget each year. This mandatory provision applies to not only the substantive motion, but any amendments made thereto.

## **17.6 Right to require Individual Vote to be Recorded**

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

# **18. Minutes**

## **18.1 Signing the Minutes**

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair 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.

## **18.2 No requirement to sign Minutes of previous Meeting at Extraordinary Meeting**

There shall be no requirement to sign the minutes of a previous ordinary meeting at an extraordinary meeting of the Council convened under Rule 4 above. Any

unsigned minutes of previous ordinary meetings and the minutes of the extraordinary meeting shall be signed at the next ordinary meeting.

## **19. Record of Attendance**

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

## **20. Exclusion of Public**

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or Rule 22 (Disturbance by Public).

## **21. Members' Conduct**

### **21.1 Standing to Speak**

When a Member speaks at full Council they must stand if able to do so and address the meeting through the Chair. If more than one Member stands, the Chair shall ask one to speak and the others must sit. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of order or a personal explanation or a point of information.

### **21.2 Chair Standing**

When the Chair stands during a debate or indicates otherwise, any Member speaking at the time must stop and sit down. The meeting must be silent.

### **21.3 Member not to be heard further**

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

### **21.4 Member to Leave the Meeting**

If the Member continues to behave improperly after such a motion is carried, the Chair may either move that the Member leaves the meeting (in which case the motion shall be put and determined without seconding or discussion) or adjourn the meeting for such period as they, in their discretion, shall consider expedient.

### **21.5 General Disturbance**

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as they think necessary. An adjournment in these circumstances shall not require a motion to be passed.

### **21.6 Smoking**

In accordance with the Council's Smoking Policy and national legislation, smoking is not allowed at any time in any part of the Council's buildings and offices by Members, officers or visitors.



## **22. Disturbance by Public**

### **22.1 Removal of Member of the Public**

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

### **22.2 Clearance of part of Meeting Room**

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

### **22.3 Banners, placards, etc**

No member of the public shall be allowed to bring into or display at any Council meeting any banner, placard, poster or other similar item. The Chair may require any such items to be removed.

## **23. Suspension and Amendment of Council Procedure Rules**

### **23.1 Suspension**

All of these Council Procedure Rules except Rule 17.6 and 18.2 may be suspended by motion on notice or without notice if at least one half of the whole number of Councillors are present. Suspension can only be for the duration of the meeting.

### **23.2 Amendment**

Any motion to add to, vary or revoke these Council Procedure Rules will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council if not coming forward as part of a recommendation of a Committee.

## **24. Recording, Filming, Broadcasting and Reporting of Council and Committee Meetings**

### **24.1 Public Rights**

- (a) With the knowledge of all persons present at a meeting, the public have the right to record, film, broadcast and report meetings of the Council that are open to the public, which includes the use of digital and social media recording tools such as Twitter, blogging etc.
- (b) Members of the public are recommended to give prior notice to film or audio record meetings so that necessary arrangements can be made to reduce disruption and possible prohibition at the commencement of the meeting.
- (c) The Chair of the meeting will have absolute discretion to terminate or suspend any activity if, in their opinion, continuing to do so would prejudice proceedings at the meeting or cause disruption to officers, Councillors or other members of the public present.
- (d) While those attending Council and Committee meetings are deemed to have consented to the filming, recording or broadcasting of meetings, those exercising the rights to film, record and broadcast must respect the rights of other people attending under the Data Protection Act 1998.

- (e) Any person or organisation choosing to film, record or broadcast any meeting of the Council is responsible for any claims or other liability from them so doing.

## **24.2 Council**

Where technology facilities allow, the Council will live-stream, audio record and/or video all formal Council meetings held in the Council Chamber. All recordings / video footage will be made available on the Council's website as soon as possible and within one week of each meeting. The recording and/or video of an item of business (or part of an item of business) which is considered in private in accordance with the Access to Information Rules contained within Part 4-2 of this Constitution will not be made publicly available.

## **25. Cancellation of Meetings**

25.1 The Chief Executive is authorised to cancel a meeting, giving reasons, before the agenda has been published, following consultation with the Chair.

25.2 Where, in exceptional circumstances, such as severe weather or other disruptive circumstances, it is necessary to cancel a meeting after the agenda has been published, the Chief Executive shall be authorised to do so, following consultation with the Chair. The notice advising of the cancellation shall specify the exceptional circumstances in which the decision was taken. Outstanding business shall be held over to the next scheduled meeting or considered at a reconvened meeting on a date to be arranged which satisfies the notice requirements set out in the Local Government Act 1972 and Access to Information Rule 4.

## **26. Interpretation of Council or Other Procedure Rules**

The ruling of the Chair as to the construction or application of the Council or other Procedure Rules, or as to any proceedings of the Council or a Committee shall not be challenged at any meeting of the Council or of a Committee.

# **PART 4-2**

## **ACCESS TO INFORMATION RULES**

### **1. Scope**

These rules shall apply to all formal meetings of the Council, the Overview and Scrutiny Committee(s), the Audit and Standards Committee, Human Resources Committee, Regulatory Committees and all meetings of the Cabinet (together called meetings) unless Rule 14 (general exception) or Rule 15 (special urgency) apply or unless provided otherwise by law. Informal meetings i.e. Steering Groups / Working Groups / Task and Finish Groups will determine to what extent the public shall have access to their meetings.

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

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

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

- (a) Members of the public may attend all meetings subject only to the exceptions in these rules and subject also to the constraints of the buildings where the meetings are held having regard to matters of health and safety.
- (b) Save as specified in Rule 3 (c) below, Members of the Council may attend all meetings both when the meetings are open to the public and also when confidential or exempt information is to be discussed.
- (c) In the case of Taxi and Private Hire Licensing Panels Members cannot attend any confidential part of the meeting to speak unless invited by an applicant. In the case of General Licensing Panels no Member can address a Licensing Panel unless the Member has been invited by a representor to the application or the Member has made a relevant representation themselves. There is no automatic right to attend and speak at a Licensing Panel as the local Ward Member.

### **4. Notice of Meeting**

The Council will give at least five clear days' notice, or at the time the meeting is convened, if it is convened at shorter notice as a matter of urgency, of any meeting by posting details of the meeting at all offices of the Council and on the Council's website ([www.rother.gov.uk](http://www.rother.gov.uk)).

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

The Council will make copies of the agenda and reports open to the public available for inspection at the designated offices referred to in Rule 4 above, at least five clear days before the meeting or at the time the meeting is convened, if it is convened at shorter notice as a matter of urgency. If an item is added to the agenda later, the revised agenda (where reports are prepared after the 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) will be open to inspection from the time the item was added to the agenda.

## **6. Supply of Copies**

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 Head of Paid Service thinks fit, any other documents supplied to Councillors in connection with an item

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

## **7. Access to Minutes etc. After the Meeting**

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

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

## **8. Background Papers**

### **8.1 List of Background Papers**

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 an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report but this does not include published works or those which disclose exempt or confidential information (as defined in Rule 10 below).

### **8.2 Public Inspection of Background Papers**

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

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

These Access to Information Procedure Rules are the Council's written summary of the public's rights to attend meetings and to inspect and copy documents. They are available for public inspection, together with the whole Constitution, at all Council offices and on the Council's website, [www.rother.gov.uk/constitution](http://www.rother.gov.uk/constitution).

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

### **10.1 Confidential Information – requirement to exclude public**

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

### **10.2 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.

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

### **10.3 Meaning of Confidential Information**

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.

### **10.4 Meaning of Exempt Information**

Exempt information means information falling within the following categories (subject to any relevant conditions) 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:-

| <b>Para. No.</b> | <b>Category</b>   | <b>Condition</b> |
|------------------|---|------------------|
| 1.               | Information relating to any individual                              | None specified   |
| 2.               | Information which is likely to reveal the identity of an individual | None specified   |

|    |   |   |
|----|---|---|
| 3. | Information relating to the financial or business affairs of any particular person(including the authority holding that information)  | <p>Information is not exempt information if it is required to be registered under:</p> <p>3.1 the Companies Act 1985</p> <p>3.2 the Friendly Societies Act1974</p> <p>3.3 the Friendly Societies Act 1992</p> <p>3.4 the Industrial and Provident Societies Acts 1965 to 1978</p> <p>3.5 the Building Societies Act1986</p> <p>3.6 the Charities Act 1993</p> |
| 4. | Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority. | None specified  |
| 5. | Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.   | None specified  |
| 6. | <p>Information which reveals that the authority proposes:</p> <p>6.1 to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>6.2 to make an order or direction under any enactment.</p>                            | None specified  |
| 7. | Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.   | None specified  |

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

If the Head of Paid Service 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" together with the category of information likely to be disclosed.

## **12. Procedure Before Taking Key Decisions**

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:

- (a) a document (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least 28 clear (consecutive) days have elapsed since the publication of the Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

## **13. The Forward Plan**

### **13.1 Period of Forward Plan**

Forward Plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan. The Forward Plan will be made available for inspection by the public at the Council offices and on the Council's website.

### **13.2 Contents of Forward Plan**

The Forward Plan will contain matters which the Leader has reason to believe will be the subject of a key decision (as well as non-key decisions) to be taken by the Cabinet, officers, area Committees or under joint arrangements in the course of the discharge of an Executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision maker is an individual, their name and title, if any and where the decision maker is a body, its name and a list of its members;
- (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 in respect of which the key decision is to be made;
- (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; and
- (g) the procedure for requesting details of those documents (if any) as they become available.

## **14. Key Decisions - General Exception**

If a matter which is likely to be a key decision has not been included in the Forward Plan, then subject to Rule 15 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
- (b) the Head of Paid Service has informed the Chair of the relevant Overview and Scrutiny Committee, 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;
- (c) the Head of Paid Service has made copies of that notice available to the public at the offices of the Council; and
- (d) at least five clear days have elapsed since the Head of Paid Service complied with (b) and (c).

As soon as reasonably practicable after the Head of Paid Service has complied with the above, they must make available at the offices of the relevant local authority a notice setting out the reasons why compliance with the publicity requirements are impractical and publish the notice on the Council's website.

## **15. Key-Decisions - Special Urgency**

If by virtue of the date by which a key decision must be taken Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chair of the body which is to make the decision, obtains the agreement of the Chair of the relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair of the relevant Overview and Scrutiny Committee, or if the Chair of the relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Chair of the Council, or in their absence the Vice-Chair will suffice.

As soon as reasonably practicable after the Head of Paid Service has complied with the above, they must make available at the offices of the relevant local authority a notice setting out the reasons why compliance with the publicity requirements are impractical and publish the notice on the Council's website.

## **16. Report to Council**

### **16.1 When the Overview and Scrutiny Committees can require a report**

If an Overview and Scrutiny Committee thinks that a key decision has been taken which was not:

- (a) included in the Forward Plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with the relevant Overview and Scrutiny Committee Chair, or the Chair/Vice-Chair of the Council under Rule 15;

the Committee may, by resolution passed at a meeting, require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Head



of Paid Service, who shall by notice require such a report on behalf of the Committee when so requested by the Chair or any five Members.

## **16.2 Cabinet's Report to Council**

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

## **16.3 Quarterly Reports on Special Urgency Decisions**

The Leader will submit quarterly reports to the Council if any Executive decisions have been 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. Record of Decisions**

After any public meeting of the Cabinet, whether held in public or private, the Head of Paid Service or their nominee will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting. The record will also include any conflicts of interest relating to the matter(s) decided declared by any Member of the Cabinet and a note of any dispensation granted by the Head of Paid Service in respect thereof.

## **18. Attendance at Meetings of the Cabinet**

- (a) Notice of public meetings of the Cabinet, whether to be held in public or private, will be served on all Members of the Council at the same time as notice is served on Members of the Cabinet.
- (b) Public meetings of the Cabinet may only take place in the presence of the Head of Paid Service, or the Chief Finance Officer, or the Monitoring Officer or their nominee with responsibility for recording and publicising the decisions.

## **19. Key Decisions by Officers**

### **19.1 Record of Individual Decision**

As soon as reasonably practicable after a key decision has been taken by an officer, they will prepare, or instruct the Head of Paid Service to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The record will also include any conflicts of interest declared by any Member of the Cabinet consulted by the officer and which relates to the decision and a note of any dispensation granted by the Head of Paid Service in respect thereof.

## **20. Overview and Scrutiny Committees Access to Documents**

### **20.1 Rights to Copies**

The Overview and Scrutiny Committees (including its Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to any business transacted at a public meeting of the Cabinet, whether or not it is one to which paragraph 10 applies.

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

### **21.1 Material relating to Previous Business**

All Members will be entitled to inspect any document which is in the possession or under the control of the Cabinet and which contains material relating to any business previously transacted unless it contains exempt information falling within paragraphs 1-2, 4-5 and 7 of the categories of exempt information set out at 10 above.

### **21.2 Material relating to Key Decisions**

All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet which relates to any key decision unless it contains information falling within the paragraphs as stated in Rule 21.1 above.

### **21.3 Nature of Rights**

These rights of a Member are additional to any other right that they may have.

### **21.4 Access to information generally and privileged legal advice**

- (a) The Head of Paid Service will consider Member access requests to privileged legal advice (legal advice sought by the authority) on a case by case basis, in consultation with the Council's Solicitor to the Council.
- (b) Subject to the above, a Member generally has a right to access to all information and material in the possession of the Council (with the exception of privileged legal advice) which relates to the business of any committee on which the Member serves; they have a right to information pertaining to a committee of which they are not a member, providing they can establish that such access is necessary for the proper discharge of their duties as a Member, but in such a case they have no automatic right of access and any request for information or material should be carefully screened.

## **22. Procedure Prior to Private Meetings of the Cabinet**

22.1 At least 28 clear (consecutive) days before notice is given of a private meeting, the Head of Paid Service must make available, at the Council offices, a notice of the intention to hold a meeting (or part thereof) in private and publish it on the Council's website. The notice must include a statement of the reasons for the meeting to be held in private.

22.2 A private meeting of the Cabinet will only be held to consider legitimate business that is confidential or exempt in accordance with the descriptions in

Schedule 12A to the 1972 Local Government Act (Access to Information: exempt information), as amended and detailed at Paragraph 10.4 above.

- 22.3 If any representations are made during the 28 day notice period, the Head of Paid Service will consider the representations, in consultation with the Leader of the Council and determine whether or not the meeting, or part thereof, will be held in private.
- 22.4 At least five clear days before the private meeting, the Head of Paid Service must make available at the Council offices a further notice of the intention to hold the meeting, or part thereof, in private and publish it on the Council's website. The publication of the formal Agenda for the meeting will constitute this notice.
- 22.5 The notice must include a statement of the reasons for the meeting to be held in private, details of any representations received by the Head of Paid Service about why the meeting should be open to the public and a statement of the response to any such representations.

### **23. Exclusion of Access of the Public to Urgent Private Executive Meetings**

Where the date by which a private meeting, or part thereof, must be held makes compliance with the 28 day notice period impracticable, the meeting may only be held in private where the Head of Paid Service has obtained agreement from:

- (a) the Chair of the Overview and Scrutiny Committee; or
- (b) if there is no such person, or if the Chair of the relevant Overview and Scrutiny Committee is unable to act, the Chair of the Council; or
- (c) where there is no Chair of the Overview and Scrutiny Committee or of the Council, the Vice-Chair of the Council, that the meeting is urgent and cannot reasonably be deferred.

As soon as reasonably practicable after the Head of Paid Service has obtained agreement to hold an urgent private meeting, a notice must be made available at the Council offices setting out the reasons why the meeting is urgent and cannot reasonably be deferred and published on the Council's website.

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# **PART 4-3**

## **BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

### **1. The Framework for Cabinet Decisions**

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

### **2. Process for Developing the Framework**

The process by which the budget and policy framework shall be developed is:

- (a) Not less than four months before a plan/strategy/budget needs to be adopted, the Cabinet will publish initial proposals for the budget and policy framework, having as necessary first canvassed the views of appropriate local stakeholders in a manner suitable to the matter under consideration. Any representations made to the Cabinet shall be taken into account in formulating the initial proposals and shall be reflected in any report dealing with them. If the matter is one where the Overview and Scrutiny Committee has carried out a review of policy, then the outcome of that review will be reported to the Cabinet and considered in the preparation of initial proposals.
- (b) The Cabinet's initial proposals shall be referred to the Overview and Scrutiny Committee for further advice and consideration. The Overview and Scrutiny Committee shall canvass the views of local stakeholders, if it considers it appropriate, in accordance with the matter under consideration, and having particular regard not to duplicate any consultation carried out by the Cabinet. The Overview and Scrutiny Committee shall report to the Cabinet on the outcome of its deliberations. The Overview and Scrutiny Committee shall have 4 weeks to respond to the initial proposals of the Cabinet unless the Cabinet considers that there are special factors that make this timescale inappropriate. If it does, it will inform the Overview and Scrutiny Committee of the time for response when the proposals are referred to it.
- (c) Having considered the report of the Overview and Scrutiny Committee, the Cabinet, if it considers it appropriate, may amend its proposals before submitting them to the Council meeting for consideration. It will also report to Council on how it has taken into account any recommendations from the Overview and Scrutiny Committee.
- (d) The Council will consider the proposals of the Cabinet and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place. In considering the matter, the Council shall have before it the Cabinets' proposals and any report from the Overview and Scrutiny Committee.
- (e) The Council's decision will be published and a copy given to the

Leader. The decision shall be dated and shall state either that the decision shall be effective immediately (if the Council accepts the Cabinet's proposals without amendment) or (if the Cabinet's proposals are not accepted without amendment), that the Council's decision will become effective on the expiry of five working days after the publication, unless the Leader objects to it in that period.

- (f) If the Leader objects to the decision of the Council, they shall give written notice to the Head of Paid Service to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. Where such notification is received, the Head of Paid Service shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.
- (g) The Council meeting must take place within 20 working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.
- (h) The Council shall, at that meeting, make its final decision on the matter on the basis of a simple majority. The decision shall be published and implemented immediately.

### **3. Decisions Outside the Budget or Policy Framework**

- (a) Subject to the provisions of paragraph 5 (virement) the Cabinet and any officers, area Committees or joint arrangements discharging Executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by Council, then that decision may only be taken by the Council, subject to paragraph 4 below.
- (b) If the Cabinet and any officers, area committees or joint arrangements discharging Executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Finance Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget or policy framework) shall apply.

### **4. Urgent Decisions Outside the Budget or Policy Framework**

- (a) The Cabinet and any officers, area committees or joint arrangements discharging Executive functions may take a decision which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by Council if the decision is a matter of urgency. However, the decision may only be taken:

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

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

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

## **5. Virement**

- (a) Virement is permitted between the revenue budget heads that reflect the Council's current approved structure, subject to financial considerations to be determined by the Chief Finance Officer in consultation with either the Chief Executive, Deputy Chief Executive or Director – Place and Climate Change.
- (b) Any virement between budget heads shall only be carried out in accordance with the requirements of the Council's Financial Procedure Rules and, where appropriate, Procurement Procedure Rules.
- (c) Rollover of unspent budgets from the previous financial year to the current financial year shall not be permitted. Additional one-off budget provisions must be planned and agreed with the Chief Finance Officer as part of the annual budgeting cycle.
- (d) Where the Council receives ring-fenced grant funding Heads of Service may, with the agreement of the Chief Finance Officer, carry forward unspent balances into the current financial year.
- (e) Virement is not permitted between revenue and capital budgets.

## **6. Policy Framework**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Cabinet and any officers, area committees or joint arrangements discharging Executive functions must be in line with it.

## **7. Call-In of Decisions outside the Budget or Policy Framework**

- (a) Where the Overview and Scrutiny Committee is of the opinion that a Cabinet decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer.

- (b) In respect of functions that are the responsibility of the Cabinet, the Monitoring Officer's report and/or Chief Finance Officer's report shall be sent to the Cabinet with a copy to every Member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take in respect of the Monitoring Officer's and/or the Chief Financial Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that the decision was a departure, and to the relevant Overview and Scrutiny Committee, if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
- (c) If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Finance Officer. The Council may either:
- (i) endorse a decision or proposal of the Cabinet decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (ii) amend the Council's Financial Procedure Rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that executive function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (iii) where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer and/or Chief Finance Officer.



# **PART 4-4 EXECUTIVE PROCEDURE RULES**

## **HOW THE CABINET OPERATES**

### **1. Who May Make Executive Decisions?**

Arrangements provide for executive functions to be discharged by:

- (a) the Cabinet as a whole;
- (b) a committee of the Cabinet (which may only comprise Cabinet members);
- (c) an officer;
- (d) an area committee;
- (e) joint arrangements; or
- (f) another local authority.

Where Executive functions have been delegated under (b)-(e) above, this does not prevent the discharge of such delegated functions by the Cabinet.

### **2. The Council's Scheme of Delegation and Executive Functions**

The Council's scheme of delegation will be subject to adoption by the Council and may only be amended by the Council. It will contain the details required in Article 7 and set out in Part 3, Functions of Responsibility, of this Constitution.

### **3. Conflicts of Interest**

- (a) Where any member of the Cabinet has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct in Part 5 of this Constitution.
- (b) If the exercise of an Executive function has been delegated to an officer, and should a conflict of interest arise, then the officer shall be expected to refer the decision to the Chief Executive or Cabinet.

### **4. Cabinet Meetings – When and Where?**

The Cabinet will usually meet at least 12 times per year, subject to business, at times to be agreed by the Leader. The Cabinet shall meet at the Town Hall, Bexhill or such other location as agreed by the Leader.

### **5. Quorum**

The quorum for a meeting of the Cabinet shall be four Members of the Executive (to include the Leader or the Deputy Leader).

### **6. How Decisions are to be taken by the Cabinet**

- (a) Executive decisions which have been delegated to the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution. All public

meetings of the Cabinet will be conducted in accordance with those Rules and the principles of decision-making set out in Article 13.

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

## **HOW CABINET MEETINGS ARE CONDUCTED**

### **7. Who Presides?**

If the Leader is present they will preside. In their absence the Deputy Leader shall preside. The Leader or Deputy Leader presiding shall, in the event of a voting tie, have a second or casting vote.

### **8. Who May Attend?**

These details are set out in the Access to Information Rules in Part 4 of this Constitution and include any member of the public or press (other than when confidential or exempt information is to be discussed) and all Members of the Council.

### **9. What Business?**

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

- (a) consideration of the minutes of the last meeting;
- (b) declarations of interest, if any;
- (c) matters referred to the Cabinet (whether by the Overview and Scrutiny Committee or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- (d) consideration of reports from the Overview and Scrutiny Committee; and
- (e) matters set out in the agenda for the meeting, and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

### **10. Consultation**

All reports to the Cabinet from an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and the Overview and Scrutiny Committee, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

### **11. Who Can Put Items on The Cabinet Agenda?**

The Leader will decide upon the schedule for the meetings of the Cabinet. They may put on the agenda of any Cabinet meeting any matter which they wish, whether or not authority has been delegated to the Cabinet or an officer

in respect of that matter. The Head of Paid Service will comply with the Leader's requests in this respect.

- (a) Any Member of the Cabinet may require the Head of Paid Service to place an item on the agenda of the next available meeting of the Cabinet for consideration.
- (b) The Head of Paid Service will place an item on the agenda of the next available meeting of the Cabinet where the Overview and Scrutiny Committee or the Council have resolved that an item be considered by the Cabinet.
- (c) Any Member of the Council may ask the Leader to put an item on the agenda of a Cabinet meeting for consideration, and if the Leader agrees, the item will be considered at the next available meeting of the Cabinet. The notice of the meeting will give the name of the Councillor who asked for the item to be considered.
- (d) The Monitoring Officer and/or the Section 151 Officer may include an item for consideration on the agenda of a Cabinet.

## **12. Who May Speak?**

With the agreement of the Leader the following may speak at Cabinet meetings:

- (a) any Member of the Council (who is not a member of the Cabinet) for the purpose of speaking to an item, the inclusion of which the Member has requested and the Leader has agreed in accordance with Rule 12 (c) above;
- (b) any Member of the Council (who is not a Member of the Cabinet) present at a meeting may address the Executive on any matter on the Agenda; and
- (c) the Chair of any Overview and Scrutiny Committee for the purpose of presenting a report of the Scrutiny Committee to the Cabinet.

## **13. Steering Groups**

- (a) The Cabinet may establish steering groups to inform its decisions and assist it in the discharge of its functions, whether by the Cabinet as a whole or by a committee of the Cabinet. It may do so upon its own initiative or upon the recommendation of the Overview and Scrutiny Committee or any councillor or councillors. The Cabinet shall appoint the members of each Steering Group (which may include non-Cabinet members and co-opted non-members of the Council, where appropriate) and shall determine the terms of reference and working term of each group. Steering groups shall, wherever practicable, comprise representatives of more than one political group.
- (b) All members of the Council may attend and (with the agreement of the Chair) speak at steering group meetings. The Chair may invite any other person or body to attend a meeting of a steering group to inform

discussion on any matter within its terms of reference.

- (c) A steering group may meet in any location jointly with any other committee or advisory group of the Council or with any joint committee or any other group or body of any other local authority to discuss any matter within its terms of reference.

# **PART 4-5**

## **OVERVIEW AND SCRUTINY PROCEDURE RULES**

### **1. Number of Overview and Scrutiny Committees**

- (a) The Council will have one or more Overview and Scrutiny Committees, which will perform all overview and scrutiny functions on behalf of the Council.
- (b) The terms of reference of the Overview and Scrutiny Committee will be as set out at Article 6 of the Constitution.
- (c) In addition the Overview and Scrutiny Committee will:
  - i) approve an annual overview and scrutiny work programme, including the programme of any formal sub-committees and informal task and finish working groups it appoints so as to ensure that the Committee and sub-committees' / working groups' time is effectively and efficiently utilised;
  - ii) put in place a system to ensure that referrals from overview and scrutiny to the Cabinet, either by way of report or for reconsideration, are managed efficiently and do not exceed the limits set out in this Constitution;
  - iii) in the event of reports to the Cabinet exceeding limits in this Constitution, or if the volume of such reports creates difficulty for the management of Cabinet business or jeopardises the efficient running of Council business, at the request of the Cabinet, make decisions about the priority of referrals made; and
  - iv) receive requests from the Cabinet and/or the Council for reports.
- (d) the Overview and Scrutiny Committee may appoint such formal sub-committees and informal task and finish groups as it considers to be necessary from time to time and for so long as considered necessary, subject to there being no more than four active sub-committees / groups at any one time and the same service officers not being involved in more than one active group at any one time. The Committee may also amend the terms of reference of any sub-committees / group it has appointed as appropriate.
- (e) Task and finish groups are not formally constituted sub-committees and therefore do not have to comply with the need to give public notice under the Access to Information rules.

### **2. Membership of Overview and Scrutiny**

All Councillors, except Members of the Cabinet, may be Members of the Overview and Scrutiny Committee. However, no Member may be involved in scrutinising a decision in which they have been directly involved.

### **3. Membership of Sub-Committees / Task and Finish Groups**

- (a) All Councillors, except Members of the Cabinet, may be appointed as a Member of a sub-committee / task and finish group – Membership does not have to be drawn from the make-up of the Overview and Scrutiny Committee. Membership is also open to non-members of the Council, and in particular, participation by youth and ethnic minority representatives should be encouraged. The exact external representation and political make up will be

determined by the parent Committee when establishing the sub-committee / task and finish group.

- (b) Councillor membership of any sub-committee / task and finish group can be changed by the respective Group Leader without the need for reference back to the parent Overview and Scrutiny Committee, as and when the need arises.
- (c) Group Leaders are also able to appoint substitute members (from the same political group) when substantive members are unable to attend task and finish group meetings on an ad-hoc basis.

#### **4. Meetings of Overview and Scrutiny Committee(s)**

Meetings of an overview and scrutiny committee shall be held on such dates and times as may be specified in the Council's calendar of meetings. However, such dates may be varied at the discretion of the Chair of the committee. In addition, extraordinary meetings may be called from time to time as and when appropriate by the Chair of the Committee or on the requisition of not less than three Members of the Committee, delivered in writing to the Head of Paid Service. The summons to the extraordinary meeting shall set out the business to be considered thereat and no business other than that set therein shall be considered at that meeting.

#### **5. Quorum**

The quorum for an Overview and Scrutiny Committee and any sub-committees shall be one third of its membership but in no case shall the quorum be less than two Council Members.

#### **6. Chair**

The Chair of the Overview and Scrutiny Committee will be drawn from the opposition Councillors sitting on the Committee, and subject to this requirement the Committee may appoint such a person as it considers appropriate as Chair.

The Chair of any sub-committees / task and finish groups will be drawn from among the Councillors sitting on the sub-committee / task and finish group, and subject to this requirement may appoint such a person as it considers appropriate as Chair.

The Chair of the Overview and Scrutiny Committee may not be assigned as a Project Sponsor for any major capital project nor act as Chair of any formal sub-committee or informal task and finish group in connection therewith.

#### **7. Work Programme**

The Overview and Scrutiny Committee will be responsible for setting its own work programme and in doing so it shall take into account the wishes of the Cabinet, the Corporate Management Team, external stakeholders and the interests of residents. Particular regard shall be given to Members on the Committee who are not Members of the controlling political group on the

Council. The Committee will adjust its Work Programme to accommodate any changes in priorities and circumstances which may emerge during the year.

Except for years in which ordinary elections take place, an informal annual Scrutiny Work Programming meeting will take place, after the Annual Council meeting but prior to the first scheduled meeting of the Scrutiny Committee. This allows the Committee to consider its priorities and work programme for the year in consultation with the Corporate Management Team in an informal meeting which is not open to the public. In an election year, this consultation will form part of the Members' Induction Day.

## **8. Agenda Items**

- (a) Any Member of the Council shall be entitled to give notice to the Head of Paid Service that they wish an item relevant to the functions of the Overview and Scrutiny Committee or sub-committee to be included on the agenda for the next available meeting of the Committee or sub-committee. On receipt of such a request, which shall indicate whether or not the matter has been raised as a Councillor Call for Action (CCfA) in accordance with the provisions of Section 119 of the Local Government and Public Involvement in Health Act 2007, the Head of Paid Service will include it on the next available agenda. The CCfA provides Councillors with a mechanism to formally request a relevant overview and scrutiny committee to consider an issue in their ward, if all other options to resolve it have failed.
- (b) The Overview and Scrutiny Committee shall also respond, as soon as its work programme permits, to requests from the Council and the Cabinet to review particular areas of Council activity. Where it does so, the Overview and Scrutiny Committee shall report its findings and any recommendations back to the Cabinet and/or Council. The Council and/or the Cabinet shall consider the report of the Overview and Scrutiny Committee within six weeks of receiving it.

## **9. Speaking Rights at Meetings of the Overview and Scrutiny Committee / Sub-Committees / Task and Finish Groups**

- (a) Any Member of the Council (who is not a substantive Member of any of the above) may speak at such meetings on an issue which alone affects the Ward which the Member represents on the Council.
- (b) Any Member of the Cabinet who has been invited to address the Overview and Scrutiny Committee may only speak on an item of relevance to their Cabinet Portfolio.
- (c) Any other Member of the Council (who is not a substantive Member of any of the above) may speak at such by invitation of the Chair of the Committee. Any such request should not be unreasonably refused by the Chair, provided that the Member does not seek to unduly influence or dominate the discussion on the issue.
- (d) Any other non-members of the Council appointed to any sub-committee / task and finish groups may speak.

- (e) Any member of the public, stakeholders, staff side and Members and officers in other parts of the public sector invited to address the Overview and Scrutiny Committee / sub-committees / task and finish group may speak, but not engage with debate or decision making, as provided for at Rule 15 below.

## **10. Policy Review and Development**

- (a) The role of the Overview and Scrutiny Committee in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules (See Part 4.3 of this Constitution).
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, the Overview and Scrutiny Committee may make proposals to the Cabinet for developments in so far as they relate to matters within its functions (See Part 3 of this Constitution).
- (c) The Overview and Scrutiny Committee may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. It may go on approved site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. It may ask witnesses to attend to address the Committee on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so. All such actions shall be subject to the costs being met from within the approved revenue budget or any budget that may be specifically provided by the Council for the Committee.

## **11. Reports from the Overview and Scrutiny Committee**

- (a) Once it has formed recommendations, the Overview and Scrutiny Committee will prepare a formal report and submit it to the Head of Paid Service for decision by the Cabinet (if the proposals are consistent with the existing budget and policy framework), or via Cabinet for decision by the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- (b) If the Overview and Scrutiny Committee cannot agree on one single final report to the Council or Cabinet as appropriate, then minority reports may be prepared and submitted for consideration by the Council or Cabinet with the majority report.
- (c) The Council or Cabinet shall normally consider the report of the Overview and Scrutiny Committee within six weeks of it being submitted to the Head of Paid Service.

## **12. Making Sure that Overview and Scrutiny Reports are Considered by the Cabinet**

- (a) Once an overview and scrutiny report on any matter which is the responsibility of the Cabinet has been completed, it shall be included on the agenda of the next available meeting of the Cabinet, unless the matter which is the subject



of the report is scheduled to be considered by the Cabinet within a period of 12 weeks from the date the report adopted by the Overview and Scrutiny Committee. In such cases, the report of the Overview and Scrutiny Committee shall be considered by the Cabinet when it considers that matter. If for any reason the Cabinet does not consider the Overview and Scrutiny report within 12 weeks then the matter will be referred to the next meeting of Council for review and consideration and Council will make a recommendation to the Cabinet.

- (b) The Overview and Scrutiny Committee will in any event have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from the Overview and Scrutiny Committee following a consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

### **13. Rights of the Overview and Scrutiny Committee Members to Documents**

- (a) In addition to their rights as Councillors, Members of the Overview and Scrutiny Committee have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the Cabinet and the Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

### **14. Members and Officers Giving Account**

- (a) The Overview and Scrutiny Committee or any sub-committees may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any Member of the Cabinet, the Corporate Management Team or such other officers as may be determined by the Chief Executive to attend before it to explain in relation to matters within their remit:
  - i) any particular decision or series of decisions;
  - ii) the extent to which the actions taken implement Council policy; and/or
  - iii) their performance,

and it is the duty of those persons to attend if so required.

- (b) Where any Member of the Cabinet or officer is required to attend a meeting of the Overview and Scrutiny Committee under this provision, the Chair of the Committee will inform the Head of Paid Service. The Head of Paid Service shall inform the Member of the Cabinet or officer in writing giving at least 10 working days' notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.

- (c) Where, in exceptional circumstances, the Member or officer is unable to attend on the required date, the Overview and Scrutiny Committee shall in consultation with the Member or officer, arrange an alternative date for attendance.

## **15. Attendance by Others**

The Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 14 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders, Staff Side and Members and officers in other parts of the public sector and may invite such people to attend, provided that they should be under no obligation to do so.

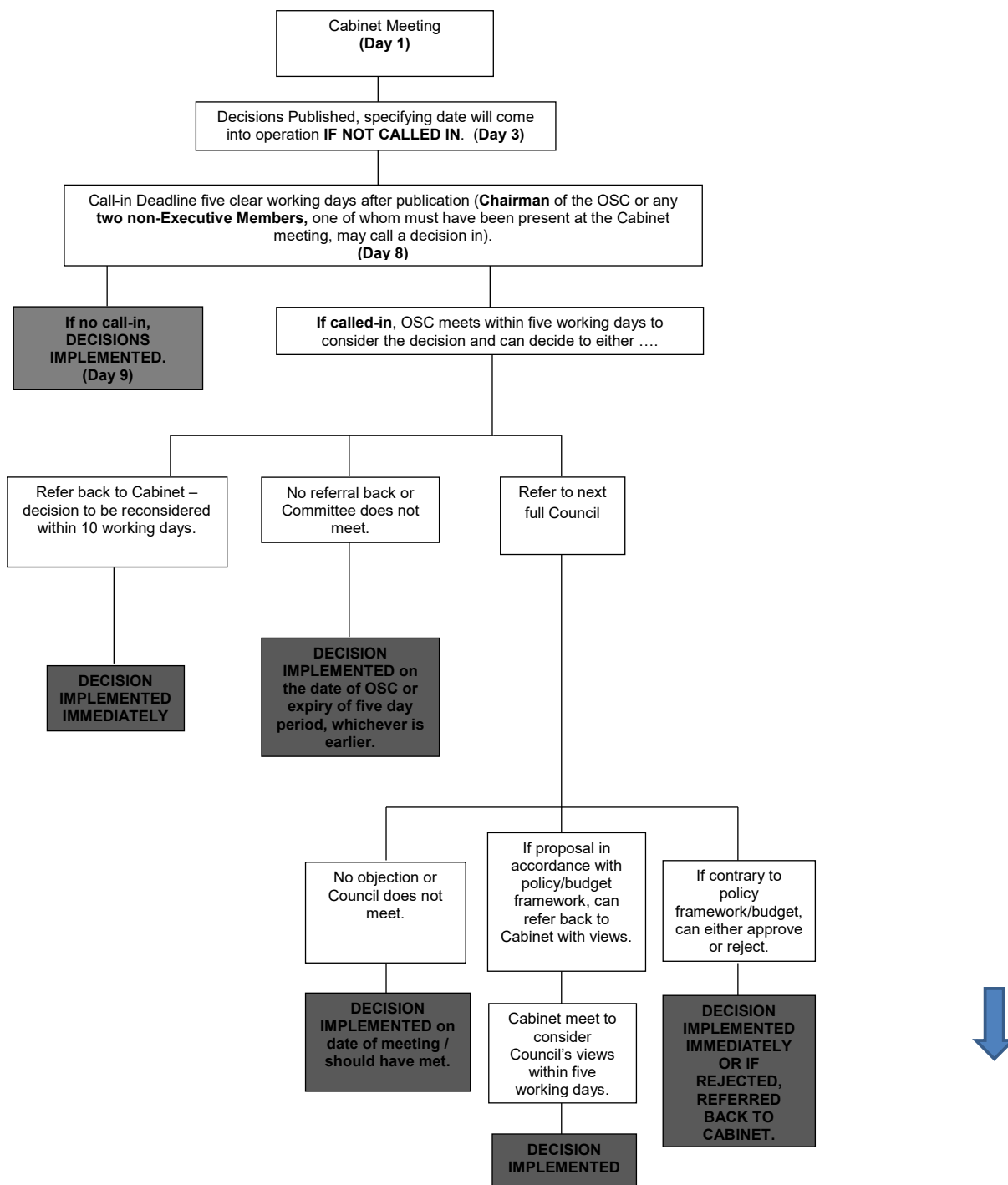
## **16. Call-In**

A flow-chart setting out the following process can be found at the end of this section.

- (a) When a decision is made by the Cabinet or a key decision is made by an officer with delegated authority from the Cabinet, or an area committee or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. The person responsible for publishing the decision will send all Members of the Council copies of the records of all such decisions within the same timescale.
- (b) That record of the decisions will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the Overview and Scrutiny Committee or any two non-Executive Members objects to it and calls it in.
- (c) During that period, the Head of Paid Service shall call-in a decision for scrutiny by the Committee if so requested by the Chair or any two non-Executive Members, one of whom must have been present at the Cabinet meeting and shall then notify the decision-taker of the call-in. The request for the call-in must state the reasons for the call-in. The Head of Paid Service shall call a meeting of the Scrutiny Committee on such date as they may determine, where possible after consultation with the Chair of the Committee, and in any case within five working days of the decision to call-in.
- (d) If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to Council. If referred to the decision maker they shall then reconsider within a further 10 working days, amending the decision or not, before adopting a final decision.
- (e) If following an objection to the decision, the Overview and Scrutiny 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 Overview and Scrutiny meeting, or the expiry of that further five working day period, whichever is the earlier.

- (f) No further action is necessary if the matter has been referred to Council and the Council has not objected; and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of an Executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Cabinet as a whole, a meeting will be convened to reconsider within five working days of the Council request. Where the decision was made by an individual, the individual will reconsider within five working days of the Council request.
- (g) If the Council does not meet, or if it does but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.
- (h) Any decision referred back by the Overview and Scrutiny Committee or by Council for reconsideration by Cabinet or the decision-taker(s) shall not be subject to further call-in, whether or not it is altered or adjusted to accommodate some or all of the concerns of the original call-in request.

**Call-in Flow Chart**



**17. Call-In and Urgency**

- (a) The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would 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, and therefore not subject to call-in. The Chair of the Council must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chair, the Vice-Chair’s consent shall be required. In the absence of both, the Head of Paid Service or their nominee’s consent shall be

required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

- (b) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted, via the Overview and Scrutiny Committee, to Council with proposals for review if necessary.

## **18. Procedure at Overview and Scrutiny Committee Meetings**

- (a) The Overview and Scrutiny Committee shall consider the following business:
  - i) minutes of the last meeting;
  - ii) declarations of interest;
  - iii) consideration of any matter referred to the Committee for a decision in relation to call-in of a decision;
  - iv) responses of the Cabinet to reports of the Overview and Scrutiny Committee;
  - v) consideration of any matter referred to it by the Cabinet;
  - vi) any recommendations or reports from the committee's task and finish groups; and
  - vii) the business otherwise set out on the agenda for the meeting.
- (b) Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the Committee may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:
  - i) that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - ii) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

## **19. Crime and Disorder Matters**

- 19.1 The Council shall designate the overview and scrutiny committee as the Council's Crime and Disorder Committee with responsibility for scrutinising crime and disorder and community safety matters and the designated committee shall meet in this capacity at least once a year, or as required. The committee may:
  - a) consider the decisions and actions undertaken by the responsible authorities involved in the Community Safety Partnership and make any recommendations or reports to the Partnership;
  - b) request information from the responsible authorities;

- c) request attendance of officers or employees of the responsible authorities to answer questions or to provide information; and
- d) receive Councillor Calls for Action under Rule 14.2 below in relation to crime and disorder and community safety issues in accordance with the Police and Justice Act 2006.

19.2 Any member of the Council may give notice to the Monitoring Officer to include an item that they consider to be a crime and disorder matter (see note 4 below) relating to their Ward to be included on the agenda for discussion at a meeting of the overview and scrutiny committee responsible for crime and disorder.

19.3 On receipt of the request, the Monitoring Officer shall notify the Chair of the committee of the receipt of the item and ensure that the item is included on the next available or subsequent agenda for consideration by the committee.

19.4 If the relevant committee decides not to make a report or recommendation in relation to the matter, it shall notify the member who referred the matter of its decision and the reasons for it.

19.5 Where the committee makes a report or recommendations it shall, as it considers appropriate:

- (a) provide a copy of the report or recommendations to the member who referred the matter to the committee; and
- (b) provide a copy of the report or recommendations to the responsible authorities (within the meaning of Section 5 of the Crime and Disorder Act 1998) and the co-operating persons and bodies (i.e. those persons and bodies with which the responsible authorities have a duty to co-operate under Section 5(2) of the Crime and Disorder Act 1998).

[Note 4: "Local crime and disorder matter" in relation to a member means a matter concerning:

- (i) crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment); or
- (ii) the misuse of drugs, alcohol and other substances, which affects all or part of their Ward.]

## **20. Party Whip**

In recognition of the importance and legitimacy of the overview scrutiny function afforded by the law, created to act as a check and balance on the executive, the use of a party whip, by any political party in the committee's deliberations is forbidden. Members are encouraged to contact the Council's Monitoring Officer should they become aware of its use.

## 21. Task and Finish Group Operating Guidelines

Operating guidelines for Task and Finish Groups set up by the Overview and Scrutiny Committee:

|                                      |  |
|--------------------------------------|--|
| <b>Formal Agenda</b>                 | Optional   |
| <b>Informal minutes / notes</b>      | Yes, and not routinely publicly available.   |
| <b>Lead Officer(s)</b>               | Lead Officer(s) from the relevant service area with support from a dedicated Democratic Services Officer.  |
| <b>Action points</b>                 | To be compiled by the Democratic Services Officer as part of minutes and circulated to all relevant officers and reviewed from meeting to meeting.   |
| <b>External / public involvement</b> | Each Task and Finish Group to determine whether meetings shall or shall not be public. Stakeholders shall be invited to attend and to contribute to the group's work programmes, including co-option to the group, as appropriate.   |
| <b>Politically balanced</b>          | Not essential, but there is an expectation that task and finish groups shall include representatives from each political group, as far as reasonably practicable.  |
| <b>Composition</b>                   | Appointed by the Overview and Scrutiny Committee from non-executive members with the relevant experience / interest.<br><br>The lead Cabinet member may be invited to contribute in an advisory capacity to reviews.   |
| <b>Size</b>                          | This shall vary according to the matter under discussion; however, groups should not normally comprise more than five members of the Council.  |
| <b>Terms of Reference</b>            | Terms of Reference shall be set and agreed by the Overview and Scrutiny Committee at the point of establishment and shall include: <ul style="list-style-type: none"> <li>(a) The specific issue to be considered;</li> <li>(b) A timescale and deadline;</li> <li>(c) Principal aims and objectives.</li> </ul> |

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# PART 4 - 6

## FINANCIAL PROCEDURE RULES

### 1. FINANCIAL MANAGEMENT

#### A. Financial Management Standards

##### **Why is this important?**

All staff and Members have a duty to abide by the highest standards of probity in dealing with financial issues. This is facilitated by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met.

##### **General**

A.1 The inclusion of items in the approved revenue estimates shall constitute authority to incur such expenditure save to the extent to which the Council shall have placed a reservation on any item or items. Expenditure on such reserved items may be incurred only when Council approval is given following a report by an officer of the Corporate Management Team to Cabinet.

##### **Responsibilities of the Chief Finance Officer**

A.2 To ensure proper professional practices are adhered to and to act as head of profession in relation to the standards, performance and development of finance staff throughout the Authority.

A.3 To be responsible for providing the Council, Cabinet and Committees with advice on all financial and economic matters.

##### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service<sup>1</sup>**

A.4 To promote the financial management standards set by the Chief Finance Officer in their departments and to monitor adherence to the standards and practices, liaising as necessary with the Chief Finance Officer.

A.5 To promote sound financial practices in relation to the standards, performance and development of staff in their services.

A.6 To be responsible for the accountability and control of staff and for the security, custody and control of all resources including plant, buildings, materials, cash and stores within their services.

A.7 To be responsible for informing the Chief Finance Officer of all contracts, agreements, etc. involving financial implications for the Council, and to also forward to the Chief Executive, Deputy Chief Executive or Director - Place and Climate Change all consents, approvals, regulations, circulars, etc. in any way relating to finance.

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<sup>1</sup> Including all 3<sup>rd</sup> tier officers/managers

## **B. Managing Expenditure**

### **(a) Virement**

#### **Why is this important?**

The scheme of virement is intended to enable Cabinet, Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service and their staff to manage budgets with a degree of flexibility within the overall budget and policy framework determined by the Council, and therefore to optimise the use of resources.

#### **General**

- B.1 The use of virement must not create additional liability. Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service are expected to exercise their discretion in managing their budgets responsibly and prudently.
- B.2 Where an approved budget is a lump-sum budget or contingency intended for allocation during the year, its allocation will not be treated as a virement, provided that the amount is used in accordance with the purposes for which it has been established. Earmarked Reserves are considered to be part of the approved budget and therefore its use will not be treated as a virement provided it is used for the purposes for which it has been established.

#### **Responsibilities of Cabinet**

- B.3 Cabinet may vire to other purposes amounts provided within the approved annual revenue estimates, except that where the amount of any single diversion exceeds £250,000, the approval of Council is required.

#### **Responsibilities of the Chief Finance Officer**

- B.4 To have authority to vire to other purposes amounts provided within the approved annual revenue estimates provided that the amount of any single virement shall not exceed £50,000.
- B.5 To make regular reports to Cabinet detailing all virements exceeding £25,000.

#### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

- B.6 Chief Executive, Deputy Chief Executive, Director - Place and Climate Change to have authority, within the approved revenue estimates coming under their responsibility, to vire up to £25,000 for any single diversion. Heads of Service to have authority, within the approved revenue estimates coming under their responsibility, to vire up to £10,000 for any single diversion. All virements subsequently must be notified to the Chief Finance Officer. All requests for virements over £50,000 must be submitted to the Chief Finance Officer for Cabinet and/or Council approval.

**(b) Treatment of year-end balances**

**Why is this important?**

The treatment of year-end balances is administered by the Chief Finance Officer within guidelines set by the Council. Any variation from the scheme of virement (as set out above) requires the approval of the Council. The rules below cover arrangements for the transfer of resources between accounting years, i.e. a carry-forward. For the purposes of this scheme, a budget heading is a line in the estimates report.

**Responsibilities of the Chief Finance Officer**

B.7 To administer the scheme of carry-forward within the delegated authority approved by the Council.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

B.8 All internal business unit surpluses shall be retained for the benefit of the Authority and their application shall require the approval of Cabinet unless legislation requires otherwise.

B.9 The carrying forward of underspendings will only be considered following a review of the Council's overall financial position.

**(c) Emergency Expenditure**

**Why is this important?**

The Council needs to have in place a procedure for meeting immediate needs in the case of an emergency situation arising in the District.

**General**

B.10 The Chief Executive, or Chief Finance Officer shall have authority to approve expenditure on any item which is essential to meet any immediate needs created by an emergency or which is referable to Section 138 of the Local Government Act 1972, subject to a subsequent report to Cabinet and/or Council depending on whether or not the expenditure can be met from within the current budget framework.

B.11 The Chair or Vice-Chair of the Council together with the Leader or Deputy Leader of Council, having received a report from the Chief Executive or Chief Finance Officer, shall have power to incur expenditure which is essential to meet any immediate needs created by an emergency or which is referable to Section 138 of the Local Government Act 1972 (or other subsequent legislation) which is not otherwise authorised or where it is necessary in the Council's interest to settle legal proceedings which have been commenced against the Council. A subsequent report shall be submitted to Cabinet and/or Council depending on whether or not the expenditure can be met from within the current budget framework.

## C. Accounting Policies

### Why is this important?

The S151 Officer is responsible for the preparation of the Authority's statement of accounts, in accordance with proper practices as set out in the format required by the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC), for each financial year ending 31 March.

### Responsibilities of the Chief Finance Officer

- C.1 To select suitable accounting policies and to ensure that they are applied consistently. The accounting policies are set out in the statement of accounts, which is prepared as at 31 March each year.

### Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service

- C.2 To adhere to the accounting policies and guidelines approved by the Chief Finance Officer.

## D. Accounting Records and Returns

### Why is this important?

Maintaining proper accounting records is one of the ways in which the Authority discharges its responsibility for stewardship of public resources. The Authority has a statutory responsibility to prepare its annual accounts to present fairly its operations during the year. These are subject to external audit. This audit provides assurance that the accounts are prepared properly, that proper accounting practices have been followed and that quality arrangements have been made for securing economy, efficiency and effectiveness in the use of the Authority's resources.

### Responsibilities of the Chief Finance Officer

- D.1 To maintain satisfactory accounting arrangements for all financial transactions of the Council in consultation where necessary with the Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service*.
- D.2 To separate the duties of officers providing information about sums due to or from the Authority and calculating, checking and recording these sums from those of the officers responsible for collecting or disbursing them.
- D.3 To ensure that employees with the duty of examining or checking the accounts of cash transactions are not themselves engaged in these transactions.
- D.4 To make proper arrangements for the external audit of the Authority's accounts in accordance with the latest applicable Accounts and Audit Regulations.
- D.5 To ensure that all claims for funds including grants are made by the due date.

- D.6 To prepare and publish the audited accounts of the Authority for each financial year, in accordance with the statutory timetable and with the requirement for the Audit and Standards Committee to approve the statement of accounts before the statutory deadline.
- D.7 To administer the Authority's arrangements for underspendings to be carried forward to the following financial year.
- D.8 To ensure the proper retention of financial documents in accordance with the requirements set out in the Authority's document retention schedule.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- D.9 To consult and obtain the approval of the Chief Finance Officer before making any changes to accounting records and procedures.
- D.10 To comply with the principles outlined in paragraphs D.2 and D.3 above, when allocating accounting duties.
- D.11 To maintain adequate records (as determined by the Chief Finance Officer) to provide a management trail leading from the source of income/expenditure through to the accounting statements.
- D.12 To supply information required to enable the statement of accounts to be completed in accordance with guidelines issued by the Chief Finance Officer.

**E. The Annual Statement of Accounts**

**Why is this important?**

The Authority has a statutory responsibility to prepare its own accounts to present fairly its operations during the year. The Audit and Standards Committee is responsible for approving the statutory annual statement of accounts.

**Responsibilities of the Chief Finance Officer**

- E.1 To select suitable accounting policies and to apply them consistently.
- E.2 To make judgements and estimates that are reasonable and prudent.
- E.3 To comply with the Statement of Recommended Practice (SORP).
- E.4 To sign and date the statement of accounts, stating that it presents fairly the financial position of the Authority at the accounting date and its income and expenditure for the year ended 31 March.
- E.5 To draw up the timetable for final accounts preparation and to advise staff and external auditors accordingly.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- E.6 To comply with accounting guidance provided by the Chief Finance Officer and to supply the Chief Finance Officer with information when required.

## 2. FINANCIAL PLANNING

### F. Performance Plans and Strategies

#### **Why is this important?**

It is good practice for local authorities to publish forward or business plans, including corporate performance plans, and community plans. The purpose of these plans is to explain overall priorities and objectives, current performance, and proposals for further improvement and demonstrate good Use of Resources and Value for Money. Rother District Council has chosen to base its performance framework on a pyramid of connected plans.

The *Corporate Plan* sets out the Council's vision and objectives.

The *Annual Performance Plan* sets out key targets for improvement.

*Service Plans* set out the key activities and improvements for each Rother Service on an annual basis.

*Individual Action Plans*, based on the Performance Appraisal Scheme, set out individual staff members objectives on an annual basis.

#### **Responsibilities of the Chief Executive**

F.1 To advise and supply the financial information that needs to be included in performance plans and strategies etc. in accordance with statutory requirements and agreed timetables.

#### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

F.2 To contribute to the development of performance plans.

F.3 To contribute to the development of corporate and service targets and objectives and performance information.

F.4 To ensure that performance plan information is monitored sufficiently frequently to allow corrective action to be taken if targets are not likely to be met.

### G. Budgeting

#### **(a) Format of the budget**

#### **Why is this important?**

The format of the budget determines the level of detail to which financial control and management will be exercised. The format shapes how the rules around virement operate, the operation of cash limits and sets the level at which funds may be reallocated within budgets.

#### **Responsibilities of the Chief Finance Officer**

G.1 To advise Cabinet on the format of the budget that is to be approved by the Council.

## **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

G.2 To comply with accounting guidance provided by the Chief Finance Officer.

### **(b) Revenue budget preparation, monitoring and control**

#### **Why is this important?**

Budget management ensures that once the budget has been approved by the Council, resources allocated are used for their intended purposes and are properly accounted for. Budgetary control is a continuous process, enabling the Authority to review and adjust its budget targets during the financial year. It also provides the mechanism that calls to account managers responsible for defined elements of the budget.

By continuously identifying and explaining variances against budgetary targets, the Authority can identify changes in trends and resource requirements at the earliest opportunity. The Authority itself operates within an annual cash limit, approved when setting the overall budget. To ensure that the Authority in total does not overspend, each service is required to manage its own expenditure within the cash-limited budget allocated to it. For the purposes of budgetary control by managers, a budget will normally be the planned income and expenditure for a service area or cost centre.

### **Responsibilities of the Chief Finance Officer**

G.3 To submit reports to Cabinet and to the Council, in consultation with the Chief Executive, where the Deputy Chief Executive, Director - Place and Climate Change or *Heads of Service* is unable to balance expenditure and resources within existing approved budgets under their control.

G.4 To prepare and submit reports on the Authority's projected income and expenditure compared with the budget to Corporate Management Team (CMT), Cabinet and Overview and Scrutiny Committee (or delegated sub-committee thereof) on a regular basis.

G.5 To establish an appropriate framework of budgetary management and control that ensures that:

- (a) budget management is exercised within annual cash limits unless the Council agrees otherwise;
- (b) each Head of Service has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers to fulfil their budgetary responsibilities;
- (c) expenditure is committed only against an approved budget head;
- (d) all officers responsible for committing expenditure comply with relevant guidance, Financial Procedure Rules and Procurement Procedure Rules
- (e) each cost centre has a single named manager, determined by the relevant Head of Service. As a general principle, budget responsibility

- should be aligned as closely as possible to the decision-making processes that commits expenditure; and
- (f) significant variances from approved budgets are investigated and reported by budget managers in accordance with the monitoring timetable.

G.6 To administer the Authority's scheme of virement (Refer to section B(a)).

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

G.7 To consult with the Chief Finance Officer with respect to any matter which is liable materially to affect the finances of the Council before any provisional or other commitment is incurred or before reporting thereon.

G.8 To maintain budgetary control within their departments, in adherence to the principles in G.3 above, and to ensure that all income and expenditure are properly recorded and accounted for.

G.9 To ensure that an accountable budget manager is identified for each item of income and expenditure under the control of the Head of Service (grouped together in a series of cost centres). As a general principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure.

G.10 To ensure that spending remains within the service's overall cash limit, and that individual budget heads are not overspent, by monitoring the budget and taking appropriate corrective action where significant variations from the approved budget are forecast and to report these to the Chief Finance Officer in accordance with the monitoring timetable. This regulation shall also apply to any action or decision, which will give rise to a reduction in income.

G.11 To ensure that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and is operating effectively within the guidelines set down by the Chief Finance Officer.

G.12 To ensure prior approval by the Council for new proposals outside of the budget and policy framework, of whatever amount, that:

- (a) create financial commitments in future years;
- (b) change existing policies, initiate new policies or cease existing policies; and
- (c) materially extend or reduce the Authority's services.

G.13 To ensure compliance with the scheme of virement (See section B(a))

G.14 To agree with Corporate Management Team, where it appears that a budget proposal, including a virement proposal, may impact materially another services area, prior to any action being taken.



### **(c) Budgets and medium-term planning**

#### **Why is this important?**

The authority is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the Authority's plans and policies.

The revenue budget must be constructed so as to ensure that resource allocation properly reflects the service plans and priorities of the Council. Budgets (spending plans) are needed so that the Authority can plan, authorise, monitor and control the way money is allocated and spent. It is illegal for an authority to budget for a deficit.

Medium-term planning (or a three-to-five-year planning system) involves a planning cycle in which managers develop their own plans. As each year passes, another future year will be added to the medium-term plan. This ensures that the Authority is always preparing for events in advance.

#### **Responsibilities of the Chief Finance Officer**

- G.15 To prepare and submit reports on budget prospects for Cabinet, including resource constraints set by the Government. Reports should take account of medium-term prospects, where appropriate.
- G.16 To determine the detailed form of revenue estimates and the methods for their preparation.
- G.17 To prepare and submit reports to Cabinet on the budget and policy framework, identifying, where appropriate, the implications for the level of Council tax to be levied. After making any necessary amendment, Cabinet shall submit them to the Overview and Scrutiny Committee for comment. Following receipt of these comments, Cabinet shall submit the proposals to the Council for approval with a recommendation of the Council Tax to be levied for the ensuing financial year.
- G.18 To advise on the medium-term implications of spending decisions.
- G.19 To encourage the best use of resources and value for money by working with the Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service* to identify opportunities to improve economy, efficiency and effectiveness; by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.
- G.20 To ensure reports are made to the Council on Cabinet proposals in accordance with their responsibilities under Section 151 of the Local Government Act 1972.

#### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- G.21 To prepare detailed draft revenue and capital budgets for consideration, in consultation with the Chief Finance Officer, to be submitted to Cabinet, and thereafter consulted with the appropriate committee.

- G.22 To prepare budgets that are consistent with any relevant cash limits, with the Authority's annual budget cycle and with guidelines issued by Cabinet. The format should be prescribed by the Chief Finance Officer in accordance with the Council's general directions.
- G.23 To integrate financial and budget plans into service planning, so that budget plans can be supported by financial and non-financial performance measures.
- G.24 When drawing up draft budget requirements, to have regard to the budget requirements as set out by the Chief Finance Officer.

**(d) Capital programmes**

**Why is this important?**

Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Authority, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs. This means that capital expenditure should form part of an investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources.

**General**

- G.25 The inclusion of any item with an estimated value less than £100,000 within the approved capital expenditure programme shall constitute authority to incur such expenditure.
- G.26 Cabinet may vire to other purposes money from one project to another in the approved capital expenditure programme, except that where the amount of any single diversion exceeds £100,000, the approval of the Council is required.

**Responsibilities of the Chief Finance Officer**

- G.27 To have authority to vire money from one project to another within the approved capital expenditure programme provided that the amount of any single diversion shall not exceed £50,000.
- G.28 To prepare capital estimates jointly with the Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service*, in accordance with the procedure set out in the Capital Strategy and to report them to Cabinet for approval. Cabinet will make recommendations on the capital estimates and on any associated financing requirements to the Council.
- G.29 To be responsible for ensuring that the Chief Finance Officer has adequate procedures in place to properly control capital spending.
- G.30 To prepare and submit reports to Corporate Management Team, Cabinet and Overview and Scrutiny Committee (or delegated sub-committee) on the projected income, expenditure and resources compared with the approved estimates.

- G.31 To issue guidance concerning capital schemes and controls, for example, on project appraisal techniques. The definition of 'capital' will be determined by the Chief Finance Officer having regard to government regulations and accounting requirements.
- G.32 To obtain authorisation from Council for individual schemes where the estimated expenditure exceeds the capital programme provision.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- G.33 To comply with guidance concerning capital schemes and controls issued by the Chief Finance Officer.
- G.34 To ensure that all capital proposals have undergone a project appraisal in accordance with guidance issued by the Chief Executive.
- G.35 Before procuring a service contract which is estimated to exceed £250,000 per annum in value or amount, to firstly report to Cabinet the draft specification, likely cost and form of tendering; Cabinet will then ask Overview and Scrutiny Committee to review and comment on the draft specification to be recommended to Cabinet for final approval; and to ensure that the proposal is included on the Council's Forward Plan of Key Decisions, if appropriate.
- G.36 Prepare a return for the quarterly capital monitoring group in accordance with the agreed timetable, of estimated final costs of schemes in the approved capital programme for submission to Corporate Management Team.
- G.37 To consult with the Chief Finance Officer when a potential overspending or significant underspending is identified on a capital scheme which is under their control.
- G.38 To ensure that adequate records are maintained for all capital contracts.
- G.39 To proceed with projects only when there is adequate approved provision in the capital programme and with the agreement of the Chief Finance Officer, where required.
- G.40 If at any time it is believed that the cost of any capital scheme is likely to exceed the estimate as shown in the approved capital expenditure programme by more than £25,000 of the approved amount, the Chief Finance Officer shall report the anticipated overspend to Cabinet. For variations under £25,000 but exceeding 10% of the approved capital scheme cost, these shall be reported to Chief Finance Officer.
- G.41 To ensure that credit arrangements, such as leasing agreements, are not entered into without the prior approval of the Chief Finance Officer and, if applicable, approval of the scheme through the capital programme.

## H. MAINTENANCE OF RESERVES

### **Why is this important?**

The Local Authority must decide the level of general reserves it wishes to maintain before it can decide the level of Council tax. Reserves are maintained as a matter of prudence. They enable the Authority to provide for unexpected events and thereby protect it from overspending, should such events occur. Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items.

### **Responsibilities of the Chief Finance Officer**

H.1 To advise Cabinet and/or the Council on prudent levels of reserves for the Authority, and to take account of the advice of the external auditor in this matter.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

H.2 To ensure that reserves are used only for the purposes for which they were intended.

## 3. RISK MANAGEMENT AND CONTROL OF RESOURCES

### J. Risk Management

### **Why is this important?**

All organisations, whether private or public sector, face risks to people, property and continued operations. Risk is the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk. Its objectives are to secure the assets of the organisation and to ensure the continued financial and organisational well-being of the organisation. In essence it is, therefore, an integral part of good business practice. Risk management is concerned with evaluating the measures an organisation already has in place to manage identified risks and then recommending the action the organisation needs to take to control these risks effectively.

It is the overall responsibility of the Audit and Standards Committee to approve the Authority's risk management strategy, and together with the Corporate Management Team promote a culture of risk management awareness throughout the Authority.

### **Responsibilities of the Chief Finance Officer**

J.1 To include all appropriate employees of the Authority in a suitable fidelity guarantee insurance.

J.2 To be responsible for arranging all necessary insurance cover and keeping appropriate records.

### **Responsibilities of the Head of Internal Audit**

J.3 To prepare and promote the Authority's risk management policy statement and ensure the Corporate Risk Register is maintained and regularly reported to Audit and Standards Committee.

- J.4 To advise the Corporate Management Team on the identification and evaluation of risk and suggest improvements to controls.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- J.5 To notify the Chief Finance Officer immediately of any loss, liability or damage that may lead to a claim against the Authority, together with any information or explanation required by the Chief Finance Officer or the Authority's insurers.
- J.6 To identify the key strategic and operational risks facing Council services and to document them in a risk register. The likelihood and potential impact of each risk shall be evaluated and recorded in the register along with the measures taken to reduce the risks to an acceptable level. Risk registers shall be maintained for both corporate and service level risks and their content regularly reviewed and updated. Separate risk registers shall also be kept for major projects.
- J.7 To ensure that there are regular reviews of risk within their departments.
- J.8 To notify the Chief Finance Officer promptly of all new risks, equipment, properties or vehicles that require insurance and of any alterations affecting existing insurances.
- J.9 To consult the Chief Finance Officer and the Monitoring Officer on the terms of any indemnity that the Authority is requested to give.
- J.10 To ensure that employees, or anyone covered by the Authority'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.
- J.12 To ensure that a Business Continuity Plan exists and is maintained and followed as appropriate.

### **K. Internal Controls**

#### **Why is this important?**

The Authority is complex and therefore requires internal controls to manage and monitor progress towards strategic objectives and to monitor compliance with statutory obligations.

The Authority faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to manage these risks.

#### **Responsibilities of the Chief Finance Officer**

- K.1 To put in place an appropriate control environment and effective internal controls which provide reasonable assurance of effective and efficient operations, financial stewardship, probity and compliance with laws and regulations.

## **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

- K.2 To ensure that the principles of internal control as defined by the Chief Finance Officer shall be observed as far as practicable in the allocation of all accounting duties, and to be responsible for maintaining these principles for all areas of work under their control.
- K.3 To manage processes to check that established controls are being adhered to and to evaluate their effectiveness, in order to be confident in the proper use of resources, achievement of objectives and management of risks.
- K.4 To review existing controls in the light of changes affecting the Authority and to establish and implement new controls in line with guidance from the Chief Finance Officer and Head of Internal Audit. Heads of Service shall not remove existing controls without consultation with the Head of Internal Audit.
- K.5 To ensure staff have a clear understanding of the consequences of lack of internal control.

### **L. Audit Requirements**

#### **(a) Internal audit**

##### **Why is this important?**

The requirement for an internal audit function for local authorities is implied by Section 151 of the Local Government Act 1972, which requires that authorities “make arrangements for the proper administration of their financial affairs”. The Accounts and Audit Regulations 2015 (SI 2015/184), Regulation 5, more specifically require that a “relevant authority must undertake an effective Internal Audit to evaluate the effectiveness of risk management, control and governance processes, taking into account public sector internal auditing standards or guidance

Accordingly, internal audit is an independent and objective appraisal function established by the Authority for reviewing the system of internal control. It examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.

### **Responsibilities of the Chief Finance Officer**

- L.1 To maintain an adequate and effective internal audit of all financial activities of the Council to the satisfaction of the Chief Finance Officer, which shall be carried out independently of the management and be operated in accordance with, the Public Sector Internal Audit Standards as interpreted by, amended or supplemented by nationally approved guidance on professional practice. The Head of Internal Audit, in carrying out these activities on behalf of the Chief Finance Officer, shall have a direct right of access to the Audit and Standards Committee, and/or Cabinet and Council if the circumstances so warrant.
- L.2 To ensure that the Head of Internal Audit shall have authority to visit any Council establishment and have access to such records and documents as required. They shall also have authority to visit any premises, after reasonable notice has been given, where a Contractor who is subject to these Procedure Rules and/or Procurement Procedure Rules is carrying out or

performing a Service Contract. They may require the production of cash, stores and other Council property, and shall be entitled to receive such explanations as they considers necessary.

- L.3 To approve the annual audit plans prepared by the Head of Internal Audit, which take account of the characteristics and relative risks of the activities involved.
- L.4 To regularly review, appraise and report upon the adequacy of all financial systems together with the control of the Council's assets and interests and shall submit an Annual Governance Report thereon to the Audit and Standards Committee.

#### **Responsibilities of Head of Internal Audit**

- L.5 To prepare a risk-based annual audit plan ensuring good coverage of the Council's key financial risks and to report a summary of all internal audit activity to the Audit and Standards Committee on a quarterly basis.
- L.6 To report their overall opinion on the Council's control environment, together with a summary of the work that supports that opinion, to the Audit and Standards Committee on an annual basis
- L.7 To ensure that effective procedures are in place to investigate promptly any fraud or irregularity.
- L.8 To ensure that there is effective liaison between internal and external audit.

#### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- L.9 To ensure that internal auditors are given access at all reasonable times to all premises, personnel, documents, records and assets that the auditors consider necessary for the purposes of their work.
- L.10 To ensure that internal auditors are provided with any information and explanations that they seek in the course of their work.
- L.11 To consider and respond promptly to recommendations in audit reports.
- L.12 To ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.
- L.13 The Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service* or Contractor who is subject to these Procedure Rules, shall notify the Chief Finance Officer or Head of Internal Audit immediately of any circumstances which suggest the possibility of any irregularity affecting cash, stores or other property of the Council, or any other suspected irregularity in the exercise of the functions of the Authority.
- L.14 To ensure that new systems for maintaining financial records, or records of assets, or significant changes to such systems, are discussed with and agreed by the Head of Internal Audit prior to implementation.

## **(b) External Audit**

### **Why is this important?**

The Local Government Finance Act 1982 set up the Audit Commission, which until 31 March 2015 was responsible for appointing external auditors to each local authority in England and Wales. The Council opts in to the contract management arrangements operated by the Public Sector Audit Appointments Ltd under the local audit framework established by the Local Audit and Accountability Act 2014.

The external auditor has rights of access to all documents and information necessary for audit purposes.

The code of audit practice issued in April 2020 sets out the auditor's objectives to review and report upon the financial aspects of the audited body's corporate governance arrangements and also the audited body's financial statements including arrangements to secure the economic, efficient and effective use of resources.

### **Responsibilities of the Chief Finance Officer**

- L.15 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets that the external auditors consider necessary for the purposes of their work.
- L.16 To ensure there is effective liaison between external and internal audit.
- L.17 To work with the external auditor and advise the Council, Audit and Standards Committee, Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service* on their responsibilities in relation to external audit.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- L.18 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for the purposes of their work.
- L.19 To ensure that all records and systems are up to date and available for inspection.

## **M. Preventing Fraud and Corruption**

### **Why is it this important?**

The Authority will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Authority. The Authority's expectation of propriety and accountability is that elected Members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices. The Authority also expects that individuals and organisations (e.g. suppliers, contractors, service providers) with whom it comes into contact will act towards the Authority with integrity and without thought or actions involving fraud and corruption.



## **Responsibilities of the Chief Finance Officer**

- M.1 To maintain adequate and effective internal control arrangements.
- M.2 To ensure that all suspected irregularities are reported to the Head of Internal Audit

## **Responsibilities of the Head of Internal Audit**

- M.3 To develop and maintain an anti-fraud and anti-corruption policy.

## **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

- M.4 To ensure that all suspected irregularities or financial improprieties are reported to the Head of Internal Audit or Chief Finance Officer who will advise on the most appropriate course of action.
- M.5 To be responsible for maintaining the internal control system and the prevention and detection of fraud and other illegal acts.
- M.6 To instigate the Authority's disciplinary procedures where the outcome of an Internal Audit or similar investigation indicates improper behaviour.

## **Responsibilities of the Monitoring Officer**

- M.7 To maintain and regularly update the officer register of gifts and hospitality (all officers) and the officer register of interests (management grade holders).

## **N. Assets**

### **(a) Security of Property (Tangible and Intangible Assets)**

#### **Why is this important?**

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

## **Responsibilities of the Chief Finance Officer**

- N.1 To ensure that an Asset Register is maintained in accordance with good practice for all fixed assets with a value in excess of £10,000. The function of the asset register is to provide the Authority with information about fixed assets so that they are:
- safeguarded,
  - used efficiently and effectively, and
  - adequately maintained.
- N.2 To receive the information required for accounting, costing and financial records from each Head of Service.

- N.3 To ensure that assets are valued in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice (CIPFA/LASAAC)*.

### **Responsibilities of Director - Place and Climate Change**

- N.4 To maintain a property database for all land and property currently owned or used by the Authority. Any use of property by a service or establishment other than for direct service delivery should be supported by documentation identifying terms, responsibilities and duration of use.
- N.5 To be responsible for maintaining a terrier of Council properties.
- N.6 To ensure that upon the termination of any lease, concession, grazing right or other agreement, a report upon the future use of the property shall be submitted to Cabinet unless a relevant delegation is in place.
- N.7 To be responsible for ensuring that all title deeds are held in a secure manner.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

- N.8 To be responsible for the security and safe keeping of all cash, equipment, stores and other property under their control in accordance with procedures approved by the Chief Finance Officer.
- N.9 To keep inventories (as per proforma attached as Appendix 1) of Council-owned plant, equipment, furniture etc. in a manner approved by the Chief Finance Officer, where the value exceeds £50. Attractive and portable items such as computers, cameras and video recorders should be identified with security markings as belonging to the Authority.
- N.10 To notify the Chief Finance Officer of all new assets acquired for insurance and asset register purposes.
- N.11 To consult the Chief Finance Officer in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.
- N.12 To ensure cash holdings on premises are kept within insured limits.
- N.13 To ensure that keys to safes and similar receptacles are held securely by those responsible at all times; loss of any such keys must be reported to the Chief Finance Officer as soon as possible.
- N.14 To make arrangements for the disposal of surplus assets or writing-off of stores and inventory items subject to approval in writing by the Chief Finance Officer. Such disposals must be recorded and should normally be by competitive tender or public auction unless the Chief Finance Officer agrees otherwise in writing.
- N.15 To ensure that all employees are aware that they have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be

sensitive or privileged, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Authority in some way.

- N.16 To be responsible for the recording and control of assets, stocks, stores and inventories in their service and to notify the Chief Finance Officer of any discrepancies.
- N.17 To regularly review and physically check all assets, stocks, stores and inventories at least annually, or otherwise as agreed by the Chief Finance Officer.
- N.18 To make sure that all assets are only used in the course of the Authority's business, unless the Chief Executive, Deputy Chief Executive, Director - Place and Climate Change or relevant *Head of Service* concerned has given permission otherwise.

**(b) Intellectual property**

**Why is this important?**

Intellectual property is a generic term that includes inventions and writing. If these are created by the employee during the course of employment, then, as a general rule, they belong to the employer, not the employee.

Certain activities undertaken within the Authority may give rise to items that may be patentable, for example, software development. These items are collectively known as intellectual property.

**Responsibilities of the Chief Finance Officer**

- N.19 To develop and disseminate good practice through the Authority's intellectual property procedures.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

- N.20 To ensure that controls are in place to ensure that staff do not carry out private work in Council time and that staff are aware of an employer's rights with regard to intellectual property.

**O. Treasury Management, Banking and Petty Cash**

**Why is this important?**

Many millions of pounds pass through the Authority's books each year. This led to the establishment of codes of practice. These aim to provide assurances that the Authority's money is properly managed in a way that balances risk with return, but with the overriding consideration being given to the security of the Authority's capital sum.

## **General**

- O.1 The Council has adopted CIPFA's "Treasury Management in the Public Services: Code of Practice (the Code) as described in Section 4 of that Code.
- O.2 Accordingly, the Council has created and will maintain, as the cornerstones of effective Treasury Management:
- A Treasury Management Policy Statement (TMPS), stating the policies and objectives of its treasury management activities.
  - Suitable Treasury Management Practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives.

## **Responsibilities of Chief Finance Officer**

- O.3 To be responsible for all necessary borrowings, repayments of loans and investments which shall be within the Council's policy and in the name of the Council.
- O.4 All money in the hands of the Council shall be aggregated for the purposes of treasury management and be under the control of the Chief Finance Officer.
- O.5 To report to Audit and Standards Committee and Cabinet on the treasury management policies, practices and activities including, as a minimum, an annual strategy and plan in advance of the year, and an annual report after its close in the form prescribed in its TMPs.
- O.6 To be responsible for the implementation and monitoring of the Council's treasury management policies and practices and for the execution and administration of delegated treasury management decisions and to act in accordance with the Council's Policy Statement, TMPs and CIPFA's Standard of Professional Practice on Treasury Management.
- O.7 To be responsible for the operation and terms of all the Council's banking, giro and investment accounts and for the ordering, use and control of cheques, payment forms and other payment media.
- O.8 To advance such sums by way of imprest accounts as they deems reasonable and to approve the nature and amounts of payments which can be made from the account and the records which need to be kept.

## **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- O.9 To follow the instructions on banking and imprest accounts issued by the Chief Finance Officer.
- O.10 To ensure that loans are not made to third parties and that interests are not acquired in companies, joint ventures or other enterprises without the approval of the Council, following consultation with the Chief Finance Officer.

- O.11 To arrange for all trust funds to be held, wherever possible, in the name of the Authority. All officers acting as trustees by virtue of their official position shall deposit securities, etc., relating to the trust with the Chief Finance Officer, unless the deed otherwise provides.
- O.12 To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Chief Finance Officer, and to maintain written records of all transactions.
- O.13 To ensure that trust funds are operated within any relevant legislation and the specific requirements for each trust.
- O.14 To ensure that employees operating an imprest account:
- (a) obtain and retain vouchers to support each payment from the imprest account. Where appropriate, an official receipted VAT invoice must be obtained;
  - (b) make adequate arrangements for the safe custody of the imprest account;
  - (c) produce upon demand by the Chief Finance Officer cash and all vouchers to the total value of the imprest amount;
  - (d) record transactions promptly;
  - (e) reconcile and balance the account at least monthly; reconciliation sheets to be signed and retained by the imprest holder;
  - (f) provide the Chief Finance Officer with a certificate of the value of the account held at 31 March each year;
  - (g) ensure that the petty cash float is never used to cash personal cheques or to make personal loans and that the only payments into the account are the reimbursement of the float and change relating to purchases where an advance has been made; and
  - (h) on leaving the Authority's employment or otherwise ceasing to be entitled to hold an imprest advance, an employee shall account to the Chief Finance Officer for the amount advanced to them.

#### **4. FINANCIAL SYSTEMS AND PROCEDURES**

##### **P. General**

###### **Why is this important?**

Services have many systems and procedures relating to the control of the Authority's assets, including purchasing, costing and management systems. Services are reliant on computers for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.

The Chief Finance Officer, who has a professional responsibility to ensure that the Authority's financial systems are sound, should therefore be notified of any new developments or changes.

### **Responsibilities of the Chief Finance Officer**

- P.1 To make arrangements for the proper administration of the Authority's financial affairs, including to:
- (a) issue advice, guidance and procedures for officers and others acting on the Authority's behalf;
  - (b) determine the accounting systems, form of accounts and supporting financial records;
  - (c) establish arrangements for audit of the Authority's financial affairs;
  - (d) approve any new financial systems to be introduced; and
  - (e) approve any changes to be made to existing financial systems.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- P.2 To ensure that accounting records are properly maintained and held securely.
- P.3 To consult with the Chief Finance Officer concerning controls on new systems and on proposed changes to existing systems.
- P.4 To ensure that vouchers and documents with financial implications are not destroyed, except in accordance with arrangements approved by the Chief Finance Officer.
- P.5 To ensure that a complete management trail, allowing financial transactions to be traced from the accounting records to the original document, and vice versa, is maintained.
- P.6 To incorporate appropriate controls to ensure that, where relevant:
- (a) all input is genuine, complete, accurate, timely and not previously processed;
  - (b) all processing is carried out in an accurate, complete and timely manner; and
  - (c) output from the system is complete, accurate and timely.
- P.7 To ensure that the organisational structure provides an appropriate segregation of duties to provide adequate internal controls and to minimise the risk of fraud or other malpractice.
- P.8 To ensure that systems are documented and staff trained in operations.
- P.9 To establish a scheme of delegation identifying officers authorised to act upon the Chief Executive, Deputy Chief Executive or Director - Place and Climate Change behalf in respect of payments, income collection and placing orders, including variations, and showing the limits of their authority.

- P.10 To ensure that the list of officers included in the “purchasing roles” document produced from the financial system is correct, before approval by the Chief Finance Officer, on an annual basis and as otherwise may be required as a result of changes in staff.
- P.11 To ensure that, where appropriate, computer systems are registered in accordance with Data Protection / General Data Protection Regulation legislation and that staff and Members are aware of their responsibilities in accordance with the Council’s Data Protection Policy.
- P.12 To ensure that the Council’s ICT Strategy covering the future use of computing facilities, is followed.
- P.13 To ensure that standards and guidelines set out in the Council’s ICT Policy, governing the use and security of information and communications technology facilities, and in particular intranet, email and copyright, designs and patents legislation are followed.

## **Q. Income and Expenditure**

### **(a) Income**

#### **Why is this important?**

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 Authority’s cashflow and also avoids the time and cost of administering debts.

#### **Responsibilities of the Chief Finance Officer**

- Q.1 To be responsible for maintaining a system for recording and collecting all credit income.
- Q.2 To approve all arrangements for the collection, receipt, recording, banking and safe-keeping of Council income.
- Q.3 To satisfy himself regarding the arrangements for the control, order and supply of all receipt forms, order books or tickets and similar items issued direct to the departments.
- Q.4 For local taxation debts to delegate to the Revenues and Benefits Head of Service or equivalent to agree write off of debts up to £100,000 for the following reasons:
- (a) Insolvency – Liquidation and Bankruptcy
  - (b) Debt Relief Orders
  - (c) Individual Voluntary Arrangement
  - (d) Absconded – no trace of debtor including no longer residing in UK
  - (e) Adjustments required to Council tax accounts relating to administrative error in awarding discounts under the Council Tax Reduction Scheme, up to the value of the error.
  - (f) Uneconomic to collect – dormant debts of £100 or less

- Q.5 For Housing Benefit Overpayment debts to delegate to the Revenues and Benefits Head of Service to write off Debts up to £25,000. For all other amounts and types of debt, the Chief Finance Officer to agree write offs up to £100,000. Write off of debts above £100,000 require the prior approval of Cabinet.
- Q.6 To submit as part of the annual financial outturn report to Cabinet, a summary of all debts written off during the financial year by type of debt, i.e. local taxation (council tax and business rates, housing benefit and sundry debts.
- Q.7 To approve the waiver or variation of any charge in respect of individual transactions and to seek approval of Cabinet to waivers or variations in excess of the approved write-off limit.
- Q.8 To ensure that appropriate accounting adjustments are made following write-off action. To cancel any debt that has been raised in error and make the necessary accounting adjustments. Such changes are not to be treated as a write off and are not subject to the approval and reporting limitations set out above. The Chief Finance Officer must maintain adequate records to justify taking such action.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- Q.9 To review all scales of charges annually in conjunction with the Chief Finance Officer or at such other times as the Chief Finance Officer deems necessary. No alteration to such scales may be made, or new scales introduced, except upon a report by the appropriate officer to Cabinet unless such powers of alteration have been previously delegated to an officer.
- Q.10 To separate the responsibility for identifying amounts due and the responsibility for collection, as far as is practicable.
- Q.11 To establish and initiate appropriate recovery procedures, in connection with the Chief Finance Officer, including legal action where necessary, for debts that are not paid promptly. The Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service* have a responsibility to assist the Chief Finance Officer in collecting debts that they have originated, by providing any further information requested by the debtor, and in pursuing the matter on the Authority's behalf.
- Q.12 To be responsible for making satisfactory and secure arrangements for the order, control and supply of all receipt forms, order books or tickets and similar items obtained direct from the Reprographics Unit.
- Q.13 To issue official receipts or to maintain other documentation for income collection.
- Q.14 To ensure that at least two employees are present when post is opened so that money received by post is properly identified and recorded.
- Q.15 To hold securely receipts, tickets and other records of income for the appropriate period as specified by the Chief Finance Officer.



- Q.16 To lock away all income, tickets etc., to safeguard against loss or theft, and to ensure the security of cash handling all to be within agreed insurance safe limits.
- Q.17 To ensure that income is paid fully and promptly into the Cashiers or appropriate authority bank account in the form in which it is received. Appropriate details should be recorded on to paying-in slips to provide an audit trail.
- Q.18 To ensure income is not used to cash personal cheques or other payments.
- Q.19 To supply the Chief Finance Officer with details relating to work done, goods supplied, services rendered or other amounts due, to enable the Chief Finance Officer to record correctly the sums due to the Authority and to ensure accounts are sent out promptly.
- Q.20 Revisions to the rent payable under the terms of any lease, concession or grazing right or other agreement shall be approved by Cabinet following a report to them unless specifically delegated to an Officer to determine.
- Q.21 To keep a record of every transfer of money between employees of the Authority. The receiving officer must sign for the transfer and the transferor must retain a copy.
- Q.22 To recommend to the Chief Finance Officer all debts to be written off and to keep a record of all sums written off up to the approved limit. Once raised, no bona fide debt may be cancelled, except by full payment or by its formal writing off. A credit note to replace a debt can only be issued to correct a factual inaccuracy or administrative error in the calculation and/or billing of the original debt.
- Q.23 To notify the Chief Finance Officer of all debts, which it is recommended are written off.
- Q.24 To record all sums written off and to adhere to the requirements of the latest applicable Accounts and Audit Regulations.
- Q.25 To notify the Chief Finance Officer of outstanding income not invoiced relating to the previous financial year as soon as possible after 31 March in line with the timetable determined by the Chief Finance Officer and not later than 15 April.

**(b) Ordering and paying for work, goods and services**

**Why is this important?**

Public money should be spent with demonstrable probity and in accordance with the Authority's policies. Authorities have a statutory duty to achieve best value in part through economy and efficiency. The Authority's procedures should help to ensure that services obtain value for money from their purchasing arrangements and comply with all relevant national regulations.

## **General**

- Q.26 For all procurement related rules please refer to the Council's Procurement Procedure Rules. For procurement of capital items please additionally refer to section G. Budgeting (d) capital programmes.

## **Responsibilities of the Chief Finance Officer**

- Q.27 To ensure that all the Authority's financial systems and procedures are sound and properly administered and to approve any changes to existing financial systems and to approve any new systems before they are introduced.
- Q.28 To approve the form of Official Order to be used.
- Q.29 To ensure that a budgetary control system is established that enables commitments incurred by placing orders to be shown against the appropriate budget allocation so that they can be taken into account in budget monitoring reports.
- Q.30 To make payments from the Authority's funds on the Head of Service's authorisation that the expenditure has been duly incurred in accordance with Financial Procedure Rules.
- Q.31 To make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order.
- Q.32 To make payments to contractors on the certificate of the appropriate Head of Service, which must include details of the value of work, retention money, amounts previously certified and amounts now certified.
- Q.33 To ensure compliance with relevant transparency requirement as detailed in Appendix 3.

## **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

- Q.34 To ensure that purchase orders in the Council's finance system are used for all goods and services, other than the exceptions specified by the Chief Finance Officer.
- Q.35 To ensure that orders are only used for goods and services provided to the department and that staff are aware that they must not use official orders to obtain goods or services for their private use.
- Q.36 To ensure that only those staff agreed by them and authorised by the Chief Finance Officer under P.10 authorise orders, maintain an up-to-date list of such authorised staff, identifying in each case the limits of their authority and to supply a copy to the Chief Finance Officer.
- Q.37 To ensure that before authorising an order the responsible officer shall be satisfied that the Council's Financial Procedure Rules and Procurement Procedure Rules have been followed throughout the procurement exercise.

- Q.38 To ensure that goods and services are checked on receipt to verify that they are in accordance with the order. This check should, where possible, be carried out by a different officer from the person who authorised the order. Appropriate entries should then be made in inventories or stores records.
- Q39 To ensure their departments comply with the requirements of the relevant Transparency requirements detailed in Appendix 3.

### **Invoices without Orders**

- Q.40 To ensure that payment is not made unless a proper VAT invoice has been received, checked, coded and certified for payment, confirming:
- (a) that the goods or services have been received;
  - (b) that the invoice has not previously been paid.
  - (c) that expenditure has been properly incurred and is within budget provision except expenditure under the provision of Q.30;
  - (d) that prices and arithmetic are correct and accord with quotations, tenders, contracts or catalogue prices;
  - (e) that tax has been correctly accounted for;
  - (f) that the invoice is correctly coded;
  - (g) that discounts have been taken where available; and
  - (h) that appropriate entries will be made in accounting records.
- Q.41 To ensure that:
- (a) the receipt of goods or services,
  - (b) the checking of the prices and arithmetic, and
  - (c) the authorisation for payment of invoices are carried out by different persons.
- Q.42 to ensure that any invoice received without a PO will be returned to the supplier for a PO to be added. Where this is not possible due to the nature of the services supplied (e.g. utility bills) ensure the invoice is checked and the relevant coding added and returned to the Accounts Payable Team.
- Q.43 Where goods or services have been paid for in advance, the Chief Executive, Deputy Chief Executive, Director - Place and Climate Change or relevant *Heads of Service* shall be responsible for ensuring that the goods or services are subsequently received and that any subsequent invoice is clearly marked "paid" and sent to the Chief Finance Officer to support the original payment.
- Q.44 To be responsible for maintaining a system to prevent duplicate payments of invoices.
- Q.45 To ensure that payments are not made on a photocopied or faxed invoice or a statement unless certified by the Chief Finance Officer.
- Q.46 To ensure that loans, leasing or rental arrangements are not entered into without prior agreement from the Chief Finance Officer.
- Q.47 To notify the Chief Finance Officer of outstanding expenditure relating to the previous financial year as soon as possible after 31 March in line with the

timetable determined by the Chief Finance Officer and, in any case, not later than 30 April.

- Q.48 With regard to contracts for construction and alterations to buildings and for civil engineering works, to document and agree with the Chief Finance Officer the systems and procedures to be adopted in relation to financial aspects, including certification of interim and final payments, checking, recording and authorising payments, the system for monitoring and controlling capital schemes and the procedures for validation of subcontractors' tax status.
- Q.49 To notify the Chief Finance Officer immediately of any expenditure to be incurred as a result of statute/court order where there is no budgetary provision.
- Q.50 To ensure that all appropriate payment records are retained and stored for the defined period, in accordance with the document retention schedule.

**(c) *Payments to employees and members***

**Why is this important?**

Staff costs are the largest item of expenditure for most authority services. It is therefore important that payments are accurate, timely, made only where they are due for services to the Authority and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and that Members' allowances are authorised in accordance with the scheme adopted by the Council.

**Responsibilities of the Head of Human Resources**

- Q.51 To be responsible for the calculation and payment of salaries, wages and all other emoluments unless other arrangements are agreed by the Chief Finance Officer.
- Q.52 To record and make arrangements for the accurate and timely payment of tax, superannuation and other deductions.
- Q.53 To make arrangements for payment of all travel and subsistence claims to staff.
- Q.54 To make arrangements for paying Members travel or other allowances upon receiving the prescribed form, duly completed and authorised.
- Q.55 To ensure that there are adequate arrangements for administering superannuation matters on a day-to-day basis.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- Q.56 To ensure appointments are made in accordance with the procedure rules of the Authority and approved establishments, grades and scale of pay and that adequate budget provision is available including provision for equipment and training where appropriate.

- Q.57 To notify the Head of Human Resources of all appointments, terminations or variations which may affect the pay or pension of an employee or former employee, in the form and to the timescale required by the Head of Human Resources.
- Q.58 To be responsible for the accuracy of all information passed to the Head of Human Resources, which is used for making such payments to staff.
- Q.59 To send an up-to-date list of the names of officers authorised to approve or sign timesheets, etc., to the Head of Human Resources, together with specimen signatures if required.
- Q.60 All overtime must be agreed in advance in writing by the relevant Head of Service.
- Q.61 To ensure that payroll transactions are processed only through the payroll system. The Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service* should give careful consideration to the employment status of individuals employed on a self-employed consultant or subcontract basis. HM Revenue and Customs applies a tight definition for employee status, and in cases of doubt, advice should be sought from the Head of Human Resources.
- Q.62 To certify travel and subsistence claims and other allowances. Certification is taken to mean that journeys were authorised and expenses properly and necessarily incurred, and that allowances are properly payable by the Authority, ensuring that cost-effective use of travel arrangements is achieved. Due consideration should be given to tax implications and that the Head of Human Resources is informed where appropriate.
- Q.63 To ensure that the Head of Human Resources is notified of the details of any employee benefits in kind, to enable full and complete reporting within the income tax self-assessment system.
- Q.64 To ensure that all appropriate payroll documents are retained and stored for the defined period in accordance with the document retention schedule.

**(d) *Appointment of Consultants***

**Why is this important?**

The cost of consultants is considered to be an expensive commitment. It is important that a proper decision is taken before these are engaged.

**General**

- Q.65 Appointments of consultants should be made in accordance with Procurement Procedure Rules.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- Q.66 The appropriate Head of Service must consult with the Head of Human Resources on fees to be paid to and the insurance status of any consultants before the appointment is made.

- Q.67 It shall be a condition of the appointment of any consultant who is responsible to the Council for services in respect of works on its behalf that in relation to those works they shall:
- (a) comply with the Council's Financial Procedure Rules relating to Financial Systems and Procedures and also the Council's Procurement Procedure Rules as though they were an Officer of the Council;
  - (b) at any time the carrying out of the works, produce to the appropriate Head of Service, or their representative, on request, all the records maintained by him in relation to the works; and
  - (c) on completion of the works, transmit all such records or copies thereof to the appropriate Head of Service.

## **R Taxation**

### **Why is this important?**

Like all organisations, the Authority is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe. It is therefore very important for all officers to be aware of their role.

### **Responsibilities of the Head of Human Resources**

- R.1 To complete all HM Revenue and Customs returns regarding PAYE by the appropriate deadlines.

### **Responsibilities of the Chief Finance Officer**

- R.2 To complete monthly returns of VAT inputs and outputs to HM Revenue and Customs by the appropriate deadlines.
- R.3 To provide details to HM Revenue and Customs regarding the construction industry tax deduction scheme.
- R.4 To maintain up-to-date guidance for authority employees on taxation issues in the accounting manual and the VAT tax manual.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- R.5 To ensure that the correct VAT liability is attached to all income due in liaison with the Chief Finance Officer and that all VAT recoverable on purchases complies with HM Revenue and Customs regulations.
- R.6 To ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements.
- R.7 To ensure that all persons employed by the Authority are added to the Authority's payroll and tax deducted from any payments, except where the individuals are bona fide self-employed or are employed by a recognised staff agency.

R.8 To follow the guidance on taxation issued by the Chief Finance Officer.

## **S Trading Accounts**

### **Why is this important?**

Trading accounts have become more important as local authorities have developed a more commercial culture. Under the CIPFA best value accounting code of practice, authorities are required to keep trading accounts for services provided on a basis other than straightforward recharge of cost.

### **Responsibilities of the Chief Finance Officer**

S.1 To advise on the establishment and operation of trading accounts and business units.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and Heads of Service**

S.2 To consult with the Chief Finance Officer where a business unit wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of their main contract with the Authority. In general, such contracts should not be entered into unless they can be terminated within the main contract period without penalty.

S.3 To observe all statutory requirements in relation to business units, including the maintenance of a separate revenue account to which all relevant income is credited and all relevant expenditure, including overhead costs, is charged, and to produce an annual report in support of the final accounts.

S.4 To ensure that the same accounting principles are applied in relation to trading accounts as for other services or business units.

S.5 To ensure that each business unit prepares an annual business plan.

## **5. EXTERNAL ARRANGEMENTS**

### **T Partnerships**

#### **Why is this important?**

Partnerships are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. Local authorities are working in partnership with others – public agencies, private companies, community groups and voluntary organisations. Local authorities still deliver some services, but their distinctive leadership role is to bring together the contributions of the various stakeholders. They therefore need to deliver a shared vision of services based on user wishes.

Local authorities will mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations. Local authorities will be measured by what they achieve in partnership with others.

### **General**

T.1 The main reasons for entering into a partnership are:

- (a) the desire to find new ways to share risk;
- (b) the ability to access new resources;
- (c) to provide new and better ways of delivering services.

T.2 A partner is defined as either:

- (a) an organisation (private, public or third sector\*) undertaking, part funding or participating as a beneficiary in a project, or
- (b) a body whose nature or status give it a right or obligation to support the project.
- (c) an individual whose contribution gives them a right or obligation to support the project.

*\*third sector – this incorporates voluntary or community groups and social enterprise.*

T.3 Partners participate in projects by:

- (a) acting as a project deliverer or sponsor, solely or in concert with others;
- (b) acting as a project funder or part funder; or
- (c) being the beneficiary group of the activity undertaken in a project.
- (d) planning and/or monitoring partnership deliverables and outcomes.

T.4 Partners have common responsibilities:

- (a) to be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation;
- (b) to act in good faith at all times and in the best interests of the partnership's aims and objectives;
- (c) be open about any conflict of interests that might arise;
- (d) to encourage joint working and promote the sharing of information, resources and skills between public, private and community sectors;
- (e) to hold confidentially any information received as a result of partnership activities or duties that is of a confidential or commercially sensitive nature; and
- (f) to act wherever possible as ambassadors for the project.

### **Responsibilities of the Chief Finance Officer**

T.5 To advise on effective controls that will ensure that resources are not wasted for e.g.:

- (a) Terms of Reference
- (b) Clear forward plans
- (c) Monitoring reports

T.6 To advise on the key elements of funding a project. They include:

- (a) a scheme appraisal for financial viability in both the current and future years;
- (b) risk appraisal and management;
- (c) resourcing, including taxation issues;
- (d) audit, security and control requirements; and
- (e) carry-forward arrangements.



- T.7 To ensure that the accounting arrangements are satisfactory.
- T.8 To maintain a register of all partnerships entered into with external bodies in accordance with procedure specified by the Chief Finance Officer.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- T.9 To notify the Chief Finance Officer of any partnership entered into in the format agreed by the Chief Finance Officer.
- T.10 To ensure that, before entering into partnerships, a risk management appraisal has been prepared for the Chief Finance Officer.
- T.11 To ensure that such agreements and arrangements do not impact adversely upon the services provided by the Authority.
- T.12 To ensure that all agreements and arrangements are properly documented.
- T.13 To provide appropriate information to the Chief Finance Officer to enable a note to be entered into the Authority's statement of accounts concerning material items.

**U Subsidiary Companies**

**Why is this important?**

Increasingly Councils are creating wholly or partly owned companies in order to deliver specific priorities, such as housing. The use of companies gives greater freedoms to operate and trade than would be the case if delivered directly by the Council. However it is important that the Council as shareholder maintains an oversight of the operations of the company(ies) to ensure that public funding is not at put at unacceptable levels of risk.

**Responsibilities of the Chief Finance Officer**

- U.1 to ensure suitable accounting arrangements are in place.
- U.2 to ensure the company adopt suitable procurement procedures to ensure best value.
- U.3 to ensure that any taxation implications resulting from the operations of the company are properly considered and managed.
- U.4 to ensure the recovery of costs of services delivered to the company by the Council.
- U.5 to ensure proper funding agreements are in place as required to ensure the security and recovery of the funding.

**Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- U.6 to notify the Chief Finance Officer of the expected creation of a company by the Council as sole or joint shareholder.

- U.7 to assess the level of risk on the Council as a result of establishing the company.
- U.8 to assure a proper business plan is in place for the Company and accepted by the Council.
- U.9 to assure adequate governance arrangements are in place.
- U.10 to ensure an adequate Service Level Agreement is in place covering all services provided to the company by the Council.

## **V External Funding**

### **Why is this important?**

External funding is potentially a very important source of income, but funding conditions need to be carefully considered to ensure that they are compatible with the aims and objectives of the Authority. Local authorities are increasingly encouraged to provide seamless service delivery through working closely with other agencies and private service providers. Funds from external agencies such as the National Lottery provide additional resources to enable the Authority to deliver services to the local community. However, in some instances, although the scope for external funding has increased, such funding is linked to tight specifications and may not be flexible enough to link to the Authority's overall plan.

### **Responsibilities of the Chief Finance Officer**

- V.1 To ensure that all funding notified by external bodies is received and properly recorded in the Authority's accounts.
- V.2 To ensure that the match-funding requirements are considered prior to entering into the agreements and that future revenue budgets reflect these requirements.
- V.3 To ensure that all specified audit requirements are met.

### **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

- V.4 To ensure that all claims for funds are made by the due date.
- V.5 To ensure that the project progresses in accordance with the agreed project plan and that all expenditure is properly incurred and recorded and to ensure that all expenditure complies with any terms and conditions attached to grant funding.

## **W Work For Third Parties**

### **Why is this important?**

Current legislation enables the Authority to provide a range of services to other bodies. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements should be in place to ensure that any risks associated with this work is minimised and that such work is *intra vires* (i.e. legal).

## **Responsibilities of Chief Finance Officer**

W.1 To issue guidance as appropriate with regard to the financial aspects of third party contracts.

## **Responsibilities of Chief Executive, Deputy Chief Executive, Director - Place and Climate Change and *Heads of Service***

W.2 To ensure that the approval of Cabinet where necessary is obtained before any negotiations are concluded to work for third parties.

W.3 To maintain a register of all contracts entered into with third parties in accordance with procedures specified by the Chief Finance Officer.

W.4 To ensure that appropriate insurance arrangements are made.

W.5 To ensure that the Authority is not put at risk from any bad debts.

W.6 To ensure that no contract is subsidised by the Authority.

W.7 To ensure that, wherever possible, payment is received in advance of the delivery of the service.

W.8 To ensure that the service/unit has the appropriate expertise to undertake the contract.

W.9 To ensure that such contracts do not impact adversely upon the services provided for the Authority.

W.10 To ensure that all contracts are properly documented.

W.11 To provide appropriate information to the Chief Finance Officer to enable a note to be entered into the statement of accounts.

## EXAMPLES OF INCOME/EXPENDITURE RECORDS

### Income

- **Payments Received by Post** – Post opening must be performed in the presence of another person. All cash received should be recorded in a book and witnessed by a second person. Cheques should be listed and totalled with each item cross-referenced to the relevant customer account. A separate record must also be kept of post-dated cheques and any items returned to the payee for amendment.
- **Receipt Books** – All copy receipts should be retained in the book of issue. The top copy of any spoilt receipts should also be retained to ensure that they can be accounted for. All receipts should be dated, show the payee name, amount received, method of payment (i.e. cash or cheque) and contain sufficient information for the transaction to be traced to the relevant customer account/file.
- **Other Receipts** – Copy receipts should be attached to any relevant documentation and filed in a logical order for future reference. For example, the copy receipt might be kept in the customers file or retained separately with other receipts in date order. All receipts should be dated, show the payee name, amount received, method of payment and contain sufficient information for the transaction to be traced to the relevant customer account/file.
- **Income Returns** – All income returns should be dated and retained in date/number order. The items recorded on the return should contain sufficient information for each transaction (or group of transactions) to be traced to the relevant receipt numbers of customer accounts.

### Expenditure

- **Payment of Invoices** – Each Service should maintain a summary record of all invoices passed for payment. This may take the form of a paper record or computer spreadsheet. Only the briefest of information needs to be kept for each invoice but the following details should be kept as a minimum:
  - Purchase order number (where applicable)
  - Supplier name
  - Invoice date
  - Invoice number
  - Brief description of goods/services
  - Invoice total
  - Date passed for payment

**Any previous entries for the same supplier should be referred to before each invoice is processed to ensure that the same goods/services are not paid for twice.**



**OVERVIEW OF PROCUREMENT RELATED TRANSPARENCY REQUIREMENTS  
APPLICABLE TO UK LOCAL AUTHORITIES**

| <b>1. Expenditure exceeding £500</b>  |   |  |
|---|---|--|
| <b>Minimum requirements</b>   | <b>Recommended</b>  | <b>Required by</b>                             |
| <p><b>QUARTERLY</b><br/>Publish details of each individual item of expenditure that exceeds £500, including items of expenditure, consistent with Local Government Association guidance, such as:</p> <ul style="list-style-type: none"> <li>• individual invoices</li> <li>• grant payments</li> <li>• expense payments</li> <li>• payments for goods and services</li> <li>• grants</li> <li>• grant in aid</li> <li>• rent</li> <li>• credit notes over £500</li> <li>• transactions with other public bodies.</li> </ul> <p>For each individual item of expenditure the following information must be published:</p> <ul style="list-style-type: none"> <li>• date the expenditure was incurred</li> <li>• local authority department which incurred the expenditure</li> <li>• beneficiary</li> <li>• summary of the purpose of the expenditure</li> <li>• amount</li> <li>• Value Added Tax that cannot be recovered</li> <li>• merchant category (eg. computers, software etc).</li> </ul> | <ul style="list-style-type: none"> <li>• Publish information on a monthly instead of quarterly basis, or ideally, as soon as it becomes available and therefore known to the Authority (commonly known as 'real-time' publication)</li> <li>• Publish details of all transactions that exceed £250 instead of £500 (same individual information items)</li> <li>• Publish the total amount spent on remuneration over the period being reported on</li> <li>• Classify expenditure using the Chartered Institute of Public Finance and Accountancy Service Reporting Code of Practice to enable comparability between local authorities.</li> </ul> | <p>Local Government Transparency Code 2015</p> |

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**2. Government Procurement Card transactions**

| <b>Minimum requirements</b>   | <b>Recommended</b>  | <b>Required by</b>                             |
|---|---|--|
| <p><b>QUARTERLY</b><br/>           Publish details of every transaction on a Government Procurement Card. For each transaction, the following details must be published:</p> <ul style="list-style-type: none"> <li>• date of the transaction</li> <li>• local authority department which incurred the expenditure</li> </ul> | <p>Publish all transactions on all corporate credit cards, charge cards and procurements, including those that are not a Government Procurement Card (same individual information items).</p> | <p>Local Government Transparency Code 2015</p> |

|  |  |  |
|--|--|--|
| <ul style="list-style-type: none"> <li>• beneficiary</li> <li>• amount</li> <li>• Value Added Tax that cannot be recovered</li> <li>• summary of the purpose of the expenditure</li> <li>• merchant category (eg. computers, software etc).</li> </ul> |  |  |
|--|--|--|

### 3. Invitations to Tender over £5,000

| Minimum requirements  | Recommended   | Required by                                    |
|---|---|--|
| <p><b>QUARTERLY</b><br/>Publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000. For each invitation, the following details must be published:</p> <ul style="list-style-type: none"> <li>• reference number</li> <li>• title</li> <li>• description of goods and/or services sought</li> <li>• start, end and review dates</li> <li>• local authority department responsible.</li> </ul> | <p>Place on Contracts Finder, as well as any other local portal, every invitation to tender or invitation to quote for contracts to provide goods and/or services with a value that exceeds £10,000.</p> <p>Publish:</p> <ul style="list-style-type: none"> <li>• information on a monthly instead of quarterly basis, or ideally, as soon as it is generated and therefore becomes available (commonly known as 'real-time' publication)</li> <li>• every invitation to tender for contracts to provide goods and/or services with a value that exceeds £500 instead of £5,000</li> <li>• details of invitations to quote where there has not been a formal invitation to tender</li> <li>• details of invitations to tender or invitations to quote that are likely to be issued in the next twelve months</li> </ul> | <p>Local Government Transparency Code 2015</p> |

### 4. Contracts, commissioned activity, purchase orders and other legally enforceable agreements with a value which exceeds £5,000

| Minimum requirements  | Recommended  | Required by                                    |
|---|--|--|
| <p><b>QUARTERLY</b><br/>Publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000.</p> | <p>Publish:</p> <ul style="list-style-type: none"> <li>• all contracts in their entirety where the value of the contract exceeds £5,000</li> <li>• company registration number at Companies House</li> <li>• details of the geographical (eg.</li> </ul> | <p>Local Government Transparency Code 2015</p> |



|  |  |  |
|--|--|--|
| <p>For each contract, the following details must be published:</p> <ul style="list-style-type: none"> <li>• reference number</li> <li>• title of agreement</li> <li>• local authority department responsible</li> <li>• description of the goods and/or services being provided</li> <li>• supplier name and details</li> <li>• sum to be paid over the length of the contract or the estimated annual spending or budget for the contract</li> <li>• Value Added Tax that cannot be recovered</li> <li>• start, end and review dates</li> <li>• whether or not the contract was the result of an invitation to quote or a published invitation to tender</li> <li>• whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number.</li> </ul> | <ul style="list-style-type: none"> <li>• by ward) coverage of contracts entered into by the local authority</li> <li>• details of performance against contractual key performance indicators</li> <li>• information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association, etc)</li> <li>• details of existing waste collection contracts, at the point they first publish quarterly contract information under Part 2 of the Code.</li> </ul> |  |
|--|--|--|

**5. Publication on Contracts Finder of Advertised contract opportunities with values of £25,000 and above**

| <b>Minimum requirements</b>  | <b>Required by</b>  |
|--|---|
| <p>A contracting authority must publish information about the opportunity on Contracts Finder, regardless of what other means it uses to advertise the opportunity.</p> <p>It must do so within 24 hours of the time when it first advertises the contract award opportunity in any other way.</p> <p>The following details must be published:</p> <ul style="list-style-type: none"> <li>• The time by which any interested economic operator must respond if it wishes to be considered</li> <li>• How and to whom such an economic operator is to respond</li> <li>• Any other requirements for participating in the procurement</li> <li>• Internet address where relevant contract documents are accessible free of charge (where offered)</li> </ul> | <p>Public Contract Regulations 2015 (Chapter 8, para 110)</p> |

**6. Publication of information on Contracts Finder about contracts awarded (value £25,000 and above)**

| <b>Minimum requirements</b>  | <b>Required by</b>                 |
|--|------------------------------------|
| <p>The contracting authority shall, within a reasonable time, publish on Contracts Finder at least the following:</p> <ul style="list-style-type: none"> <li>• The name of the contractor</li> </ul> | <p>Public Contract Regulations</p> |

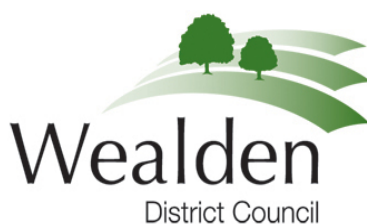
|  |   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li>• The date on which the contract was entered into</li> <li>• The value of the contract</li> <li>• Whether the contractor is a SME or VCSE</li> </ul> <p>The contracting authority may withhold information from publication in certain circumstances</p>  | <p>2015,<br/>(chapter 8,<br/>para 112)</p>  |  |
| <p><b>7. Grants to voluntary, community and social enterprise organisations</b></p>  |   |  |
| <p><b>Minimum requirements</b></p>   | <p><b>Recommended</b></p>   | <p><b>Required by</b></p>                      |
| <p><b>ANNUALLY</b></p> <p>Publish details of all grants to voluntary, community and social enterprise organisations. This can be achieved by either:</p> <ul style="list-style-type: none"> <li>• tagging and hence specifically identifying transactions which relate to voluntary, community and social enterprise organisations within published data on expenditure over £500 or published procurement information or,</li> <li>• by publishing a separate list or register.</li> </ul> <p>For each identified grant, the following information must be published as a minimum:</p> <ul style="list-style-type: none"> <li>• date the grant was awarded</li> <li>• time period for which the grant has been given</li> <li>• local authority department which awarded the grant</li> <li>• beneficiary</li> <li>• beneficiary's registration number</li> <li>• summary of the purpose of the expenditure</li> <li>• amount.</li> </ul> | <ul style="list-style-type: none"> <li>• Publish information on a monthly instead of annual basis where payments are made more frequently than a single annual payment, or ideally, as soon as the data becomes available and therefore known to the Authority (commonly known as 'real-time' publication).</li> <li>• information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association etc).</li> </ul> | <p>Local Government Transparency Code 2015</p> |

# Part 4 - 7

## Rules of Procedure

### Procurement Procedure Rules

REVISED



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## **1. An Introduction to the Procurement Procedure Rules**

- 1.1.** These Procurement Procedure Rules (hereafter referred to as ‘the Rules’) are intended to promote good purchasing practice, public accountability and deter corruption. Following the Rules will result in open and transparent procurement practices that will contribute towards excellence in financial management and also provide a full audit trail to counter any allegations that a purchase has been made unfairly, incorrectly or fraudulently.
- 1.2.** The Rules must be followed by the Council and its strategic partners where contractually binding. The Rules must also be followed by arms length organisations when they are entering into contracts on behalf of the Council.
- 1.3.** The Rules include grants, however, the Service also has to be aware of any further procurement requirements which the funding body may require within the terms and conditions of the grant.
- 1.4.** These Rules must be considered along with the Council’s Financial Procedure Rules and Scheme of Delegation.
- 1.5.** The Chief Finance Officer and the Monitoring Officer are responsible for keeping the Rules under review and may make amendments to them from time to time subject to the correct approval. The Chief Finance Officer is also responsible for monitoring compliance with the Rules and for undertaking an annual review of the Rules.

**Supporting documents (as well as these Rules) referred to in the Rules can be found on the East Sussex Procurement Hub Website as follows:**

- **Procurement Initiation Document A**
- **Procurement Initiation Document B**
- **Exemption and Variation Form**

[www.wealden.gov.uk/procurementhub](http://www.wealden.gov.uk/procurementhub)

## Further information

The East Sussex Procurement Hub (ESPH) is a Procurement Service delivered by Wealden District Council creating maximum value for a partnership which includes Hastings Borough, Rother and Wealden District Councils. Collectively we spend £65m+ on goods, services and works each year.

Our Objectives are:

- Achieve efficiencies and savings from the spend with 3rd party suppliers through joint procurement and contract management.
- Offer a Centre of Excellence for procurement practice for its members which is recognised at regional and national level;
- Deliver corporate policy and objectives through Procurement activity, and
- Engage with local businesses and small and medium sized businesses to remove barriers to working with our members.

The ESPH is not a contracting authority or a purchasing organisation and is subject to the Procurement Procedure Rules of the Councils it serves.

Further advice regarding the rules and good procurement practice can be sought from either The East Sussex Procurement Hub or from Rother District Council Finance:

East Sussex Procurement Hub email: [esph@wealden.gov.uk](mailto:esph@wealden.gov.uk)

tel: 01323 443322

Finance

email: [finance@rother.gov.uk](mailto:finance@rother.gov.uk)

tel: 01424 787717

*March 2018*

## **2. Basic Principles and Responsibilities**

### **2.1. Basic Principles**

2.1.1. All purchasing and disposal procedures and contracts must be compliant with the latest European Union (EU), National and Council policies and regulations, including:

- Achieving value for money for all public money spent;
- Adopting the highest standards of integrity;
- Following the Council's Anti-Bribery Policy and Anti Fraud and Corruption Policy;
- Ensuring fairness, equal treatment and transparency in allocating public contracts;
- Complying with UK and EU law and all other legal requirements;
- Ensuring that non-commercial considerations do not influence any contracting decision;
- Supporting the Council's corporate aims and policies;
- Meeting the Council's Data Protection, Information Security and Freedom of Information standards.

2.1.2. This list is indicative but not exhaustive and it is the officer's responsibility to ensure compliance against the areas listed above and any further service specific requirements.

2.1.3. All amounts quoted are exclusive of VAT. Any tenders or quotes sourced should also be exclusive of VAT.

### **2.2. The Role of Officers Undertaking Procurement Activity**

2.2.1. Officers responsible for any purchasing activity must comply with the Rules, along with any guidance and updates provided by the East Sussex Procurement Hub. The latest information is available on the East Sussex Procurement Hub webpages. The Financial Procedure Rules, the Scheme of Delegation and all National and EU requirements must also be met before entering into any binding legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply with these Rules.

2.2.2. Officers must:

- Follow the Rules when purchasing goods, services and works;
- Have proper regard to all necessary legal, financial and professional advice;
- Declare any personal interest in a contract, financial or otherwise;
- Obtain all requisite approvals and ensure budgetary provision is in place before placing an order or raising a purchase order for any supplies, services or works;
- Check whether there is an existing corporate contract that can be used before seeking to award another contract; where a

suitable contract exists this must be used unless there is a justifiable reason not to and an exemption has been approved; See Section 5 of these Rules for further information;

- Give due regard to the local economy, the economic, social and environmental wellbeing and value for the council area and any other sustainability factors;
- Ensure that, where appropriate, whole life cost consideration is given to the goods, service or works to be purchased.
- Match all orders with an official Purchase Order and all other requirements of the Financial Procedure Rules from the Council's Financial Management System.

## **2.3. The Role of Executive Directors and Senior Management in Managing those Undertaking Procurement Activity**

2.3.1. Directors and Senior Management must ensure that their staff:

- Comply with the Procurement Procedure Rules; the Financial Procedure Rules and the Scheme of Delegation to Officers;
- For all Type C & D contracts, send electronic copies of all signed contracts and any incidental documentation to the East Sussex Procurement Hub for storage on the SE Shared Services tender portal;
- Keep records of any exemptions to the Procurement Procedure Rules and:
- For ALL variations to Type C & D contracts send electronic copies of all signed contracts and any incidental documentation to the East Sussex Procurement Hub for storage on the SE Shared Services tender portal.

## **2.4. The Role of Members**

2.4.1. Members should refer to these Procurement Procedure Rules, Financial Procedure Rules and Code of Conduct for Members at their Council.



### **3. Relevant Contracts**

#### **3.1. What is a relevant contract?**

3.1.1. A relevant contract is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. All relevant contracts for goods, services or works must comply with the Rules. These include arrangements for, but not limited to:

- Works;
- The supply or disposal of products or goods;
- The hire, rental or lease of goods or equipment;
- The provision of consultancy or other professional services;
- The delivery of services.

3.1.2. Relevant contracts **do not** include:

- Contracts of employment which makes an individual a direct employee of the authority;
- Agreements regarding the acquisition, disposal, or transfer of land.

## **4. The Procurement Process**

### **4.1. Steps prior to purchase**

- 4.1.1. The Officer must confirm that they have the requisite authority to advertise, award the contract, (please see Summary Table (Appendix B)) and have the contract signed and sealed if appropriate (please see Section 7.2).
- 4.1.2. The Officer must appraise the purchase in a manner commensurate with its complexity and value, by:
- Considering value for money and the Council's Aims;
  - Appraising the need for the expenditure and its priority;
  - Defining the objectives of the purchase;
  - Assessing any risks associated with the purchase and how to manage them;
  - Considering what procurement method is most likely to achieve the purchasing objectives;
  - Determining whether an existing arrangement or contract can be used for the purchase, see note below.
  - Considering whether the goods, service, or works can be delivered in-house. (The “make or buy” assessment).
  - Assessing whether other neighbouring authorities, particularly members of the East Sussex Procurement Hub, have a similar requirement and where there is a potential for joint purchase.
  - Drafting a detailed scope of services/ specification;
  - Using the Council's standard terms and conditions where possible or a recognised industry standard template document including the Council's additional public sector clauses or seeking legal advice for a bespoke contract;
  - Giving consideration to the economic, social and environmental benefits that are required or desirable from the competitive process and which the resulting contract can bring to the community.

The Officer must also take into account any guidance provided by East Sussex Procurement Hub

*NOTE - Where a strategic partnership is in place advice must be sought from the Chief Finance Officer and Monitoring Officer on how to proceed with the award and/or any tender process for the same or similar services as those specified under the strategic partnership contract.*

### **4.2. Calculating the Total Value of a Contract**

- 4.2.1. For the purposes of these Rules, contracts are referred to as Contract Types A, B, C, and D according to the value of the contract. This value shall be the total value payable over the period of the contract.

| <b>Contract type A</b> | <b>Contract Type B</b> | <b>Contract Type C</b>                           | <b>Contract Type D</b>              |
|------------------------|------------------------|--|-------------------------------------|
| < £5,000               | £5,000 to £49,999      | £50,000 to < EU threshold for goods and services | EU threshold for goods and services |

4.2.2. The Public Contract Regulations stipulate particular obligations for contracts valued above the EU threshold for services and supplies, regardless of whether that contract is for supplies, services or works. Therefore the above Contract Types refer to the value of the contract regardless of requirement.

4.2.3. The process for each Contract Type is described in full below, and summarised in the tables in appendix B.

4.2.4. These thresholds apply to the aggregate (total) value of the contract. The aggregate value is determined as follows:

**Annual value x contract period in years (including options to extend) = Aggregate value.**

4.2.5. The EU Threshold for goods and services is currently set at £181,302 (1st Jan 2018). It is reviewed every two years and officers should check the current thresholds in place here:

[www.wealden.gov.uk/procurementhub](http://www.wealden.gov.uk/procurementhub)

4.2.6. These Rules apply where there are no other procedures which take precedence over these Rules, e.g. existing contracts or where external funding has been obtained with supporting contractual requirements. If in doubt, Officers must seek the advice of the East Sussex Procurement Hub or Finance.

### **4.3. Supporting Local Businesses**

4.3.1. Officers are required to use their purchasing power to work with local businesses wherever possible where this provides equal or better Value for Money for the Council than alternatives. However it must also be noted that the EU public procurement legislation requires that any procurement activity should not discriminate, favour or show bias.

4.3.2. Officers should carefully review the required specifications of any Contract to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council.

4.3.3. For large value contracts (Contract type D), Officers must also consider whether the contract should be divided into Lots in order that small and medium sized enterprises can bid for local work. The decision not to divide into Lots should be clearly documented on the Procurement Initiation Document B (PID B).

4.3.4. Where a contract is to be divided into Lots the process followed should still be in line with the total value of all requirements. For example a contract for services which is divided into 4 Lots of approx. £50,000 each would still

be subject to the process for Type D Contracts as the total value of the contract exceeds EU thresholds. (See also 4.3.5)

- 4.3.5. An Officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these Rules. Please refer to Section 4.2 for further information.

#### **4.4. Pre-Tender Market Engagement and Consultation**

- 4.4.1. Prior to undertaking a competitive procurement exercise, carrying out Market Engagement and Consultation (also known as Soft Market Testing) can be a valuable tool in understanding changes in the market since any similar previous contract was let, how the packaging of the contract can stimulate the market to deliver better or added value and how innovative or alternative solutions can be included within the tender process.
- 4.4.2. Prior consultation also encourages interest in supplying the Council and thus creates greater competition and supplier diversity.
- 4.4.3. The Officer responsible for the purchase may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential candidate, but the Officer must not seek or accept technical advice on the preparation of an Invitation to Tender or quotation from anyone who may have a commercial interest in the tender, as this may prejudice the equal treatment of all potential candidates or distort competition.
- 4.4.4. The Officer must seek advice from East Sussex Procurement Hub in all instances prior to carrying out a Market Engagement and Consultation exercise.

#### **4.5. Purchase of Goods/Services/Works**

- 4.5.1. The following relates to all purchases of goods and services and works that have adequate budget provision, where value for money can be demonstrated and, where necessary, Cabinet has approved both the advertising of the tender and award or variation through the Council's procurement process. For any expenditure not in budget or for which approval from Cabinet has not been granted, the Service must obtain the relevant approval before commencing any tender or quote.
- 4.5.2. On occasions where there are not enough suitably qualified suppliers to meet the requirements, all suitably qualified candidates must be invited to quote or tender. So for example, for a goods contract of £10,000, if only two suitable suppliers can be found, both must be invited and a note made to evidence the research undertaken. An exemption to the Rules will be need to be sought (see section 6).
- 4.5.3. If the minimum number of bids is not received, please consult the East Sussex Procurement Hub or Finance for further advice.
- 4.5.4. For all contract Types C & D, the Officer shall consult the East Sussex Procurement Hub.
- 4.5.5. Where the EU procedure is required, the Officer shall consult the East Sussex Procurement Hub.

## **4.6. First Steps**

- 4.6.1. Officers should ensure they have calculated and anticipated the complete requirements of the purchase, service or project, in many cases it may not be possible to revise a contract or increase the goods or services bought without seeking new quotes or tenders.
- 4.6.2. Officers should ensure good time is allowed for commissioning, procurement, contract and project design and involvement in order to help protect the Council from additional costs or delays.
- 4.6.3. Any interest which may affect the award of a contract under these Rules must be declared. Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must record their interest or any interest held by a close family member.
- 4.6.4. Where an officer has an interest which could influence their judgement in contracting matters, they must not take part in the procurement process and report the interest to the Council's Monitoring Officer.
- 4.6.5. Budget approval by the Council is necessary before any procurement/contract process can commence. In certain cases it is not sufficient to have budget to commence a project and further member approval may be required, for example, a scheme with a high political profile.
- 4.6.6. As well as the process relevant to a particular contract type (A,B,C or D) Officers should read the GENERAL CONSIDERATIONS section (section 5).

## **4.7. The Process - Contract Type A**

- 4.7.1. Contract Type A applies to purchases valued below £5,000.
- 4.7.2. A minimum of 1 quote is required. Preferably quotes should be received and accepted in writing - email is acceptable for this purpose.
- 4.7.3. Officers should firstly consider if any current corporate contracts should be used for the purchase.
- 4.7.4. Alternatively the purchase may be called off from a compliant Framework (see Framework Agreements).
- 4.7.5. Officers should prioritise the use of local companies when soliciting a quote, except where this would not provide value for money.
- 4.7.6. Purchase Order terms and conditions should be used and a Purchase Order raised for the purchase.
- 4.7.7. Authority to accept the quote lies with the appropriate Service Manager.

## **4.8. The Process – Contract Type B**

- 4.8.1. Contract Type B applies to purchases valued between £5,000 and £49,999.
- 4.8.2. A minimum of 3 written quotes are required.

- 4.8.3. Officers should firstly consider if any current corporate contracts should be used for the purchase.
- 4.8.4. Procurement Initiation Document A (PID A) should be completed as a record of quotes being sought in accordance with these rules.
- 4.8.5. Officers are required to use their purchasing power to work with local businesses wherever possible and where the rules allow. Therefore Officers are required to source a minimum of one of the three quotes from a local supplier.
- 4.8.6. A local supplier is defined as a suitably qualified supplier whose main / registered office is located within the boundaries of the Council, if there are no suitably qualified suppliers within the Council boundary this may be extended across East Sussex.
- 4.8.7. If a suitable local supplier cannot be found after following 4.8.5 and 4.8.6, officers must record the reason why on PID A. This is not considered a variation from the rules but non-compliance must be reported to ESPH.
- 4.8.8. On occasions where there are not enough suitably qualified contractors to meet the requirements. For example, for a goods contract of £10,000, if only two suitable suppliers can be found, both must be invited. An exemption to the Rules will be need to be sought (see section 6).
- 4.8.9. Alternatively the purchase may be called off from a compliant Framework (see Framework Agreements).
- 4.8.10. For most purchases, Purchase Order terms and conditions may be used, but for consultancy services, works and all purchases over £24,999 the Council's standard terms and conditions, bespoke or industry terms and conditions should be used. Advice should be taken from Legal Services.
- 4.8.11. A Purchase Order must be raised.
- 4.8.12. For purchases over £24,999 the quotation acceptance details should be completed in PID A and sent to the East Sussex Procurement Hub within 28 days of the quote being accepted as per instructions in the PID.
- 4.8.13. The Public Contract Regulations 2015, require details of all contracts awarded of £25,000 or more to be placed on the Government's Contracts Finder website. Completion of PID A (point 4.8.11, above) will allow the Council to comply with this requirement.
- 4.8.14. Quotations may be received directly by the Officer seeking quotes (see Summary Table Appendix B). When possible and practical quotes must not be opened until after the deadline set for receipt of quotations and must be opened in the presence of two officers. The relevant section of Procurement Initiation Document (PID A) (Quotation Record Form) must be completed.
- 4.8.15. Authority to accept the quote lies with the appropriate Service Manager. Details of quotes received and accepted are to be recorded in the Procurement Initiation Document A (PID A).
- 4.8.16. For contracts over £25,000 a signed original is kept by Legal. See Section 7 for further information.

## **4.9. The Process - Contract Type C**

- 4.9.1. Contract Type C applies to all purchases valued between £50,000 and the EU threshold for supplies and services, regardless of whether the contract is for supplies, services or works.
- 4.9.2. The EU threshold for supplies and services is reviewed every two years and changes are effected from 1st January. For the current threshold for supplies and services please follow this link:  
[www.wealden.gov.uk/procurementhub](http://www.wealden.gov.uk/procurementhub)
- 4.9.3. An open tender exercise is required. Officers should first consider if any current corporate contracts should be used for the purchase.
- 4.9.4. Selection or shortlisting of suppliers (for example the use of a Pre-Qualification Questionnaire (PQQ)) is not allowed, except in the following circumstances;
  - Where the contract is for works, a minimum of 5 contractors may be invited to tender using the Constructionline service, or
  - Where suppliers can be approached through a relevant and compliant framework.
- 4.9.5. In order to define the requirements, procurement route and assess how best value can be achieved for the contract, Procurement Initiation Document B (PID B) must be completed and signed off by The Procurement Hub or Legal, prior to starting any competitive exercise.
- 4.9.6. The purchase may require discussions or engagement with providers and suppliers prior to undertaking a tender. This can help define the specification, objectives and capacity of the market or inform budget considerations. Officers should ensure that the East Sussex Procurement Hub are involved before any such engagement begins.
- 4.9.7. In addition to the Procurement Initiation Document B (PID B) the following documents should be prepared in advance of undertaking any procurement. These should be developed in consultation with the East Sussex Procurement Hub and Legal:
  - Review of current provision and outcomes required for new contract.
  - Draft specification and award criteria. (See Award Criteria)
  - Evaluation criteria, including basis for calculating total cost of bid.
  - Form of Contract, terms and conditions.
- 4.9.8. The contract opportunity must be advertised on the Government's Contracts Finder website.
- 4.9.9. It is recommended that Contract Type C tenders are conducted electronically using the Council's e-Tendering facilities. This will ensure that point 4.9.8 (above) is complied with and that the tender process is conducted in an open, fair and transparent manner, providing an auditable record of the process.
- 4.9.10. As selection or shortlisting is not allowed for Type C Contracts it is imperative that the Council's mandatory requirements are clearly defined in the tender documents. These are minimum standards that a bidder must

achieve to be considered for evaluation of the quality and price of the offer. These will include:

- Grounds for Exclusion from Public Contracts.
- Financial Standing.
- Minimum Insurance Requirements (please note that a contractor is not required to hold the minimum levels of insurance, just confirm that should they be successful that these insurances will be provided upon starting the contract). Officers should not enter into contract, or allow the service, supply or works to commence until these insurances have been provided.
- Compliance with all relevant Health and Safety, Equalities and Environmental legislation and regulation.
- Completed Forms of Tender.
- Form of Tender
- Anti Collusion Certificate
- Bona-Fide Declaration

4.9.11. If relevant to the provision of supplies, services or works, minimum standards may also include accreditations, professional membership, or compliance with industry standards or regulatory bodies. These should be clearly defined within the Invitation to Tender.

4.9.12. Mandatory requirements will be assessed on a pass/fail basis. All bidders who achieve a pass in these areas must have their tender fully assessed against the award criteria.

4.9.13. Communication during the tender should be conducted in a transparent and fair manner, ensuring that all clarifications and additional information is available to all parties who have expressed an interest in the Contract at the earliest opportunity.

4.9.14. Amendments and changes to either the specification or award criteria once the tender process has begun should be avoided. However, if necessary, minor changes may be made up until the deadline for receipt of tenders. It is important that officers treat all bidders equally throughout the process and communicate any changes in a transparent manner to all bidders. If necessary consideration of extensions to the deadline for receipt of tenders should be made to ensure these changes can be incorporated and responded to fully.

4.9.15. Changes to the specification, evaluation method or award criteria **must not** be made after tenders have been received.

4.9.16. All Type C Contracts should include instructions for the return of tenders, whether hard copy or electronic. It should clearly state the time and date on which tenders must be received, and Tenders received after this time and date should be rejected.

4.9.17. If hard copy tenders are required the tender must be submitted in a plain sealed envelope, supplied by the Council. The envelopes provided should be addressed to the Chief Finance Officer and bear the words "Tender for (Name of Contract) – Do Not Open". The envelope must not bear any mark which could identify the tenderer.



- 4.9.18. If a bidder gives advanced notice that a tender has been delayed and will not be received by the deadline, advice must be sought from the Procurement Hub as to whether the tender may be accepted. Ordinarily a late tender may only be accepted if no advantage could be derived by the bidder by its acceptance (ie they will have had a longer period to complete the tender).
- 4.9.19. The use of the Council's e-Tendering system will ensure that a fair, transparent and compliant receipt process is in place.
- 4.9.20. A minimum of three compliant\* tenders must be received. If three compliant tenders are not received authority must be gained from the Chief Finance Officer to proceed with the evaluation.
- \* Compliant in this instance means tenders which meet all of the mandatory requirements of the tender and can be evaluated against the award criteria.
- 4.9.21. Tenders must be stored securely and a formal tender opening arranged. Tenders must not be opened in advance of the formal opening ceremony.
- 4.9.22. Tenders must be opened in the presence of the Chief Finance Officer and Procurement Partnership Manager or their nominated officers. Receipt of tenders must be recorded in the relevant section of PID B.
- 4.9.23. Tenders must then be evaluated in accordance with the published evaluation method and award criteria. Evaluation of mandatory requirements must be completed before full evaluation is undertaken.
- 4.9.24. A written record of scores and justification of scores for all bids should be kept.
- 4.9.25. Authorised Officers (see Appendix B) may accept a tender if they have delegated authority to do so, and have complied with the Rules. In some instances further delegation may be required from Members, and it is normal to keep Members informed when dealing with high profile or strategic contracts.
- 4.9.26. It is good practice to offer feedback to unsuccessful bidders if requested. Feedback should be kept only to those areas relevant for the decision to award and avoid details which may be considered commercially confidential. It is good practice to provide the unsuccessful bidders scores or weighting and those of the successful bidder.
- 4.9.27. Prior to acceptance of a tender, the tender acceptance section of PID B should be completed, and the fully completed PID B be sent to the Procurement Hub (email) and Legal (hard copy).

#### **4.10. The Process – Contract Type D**

- 4.10.1. Contract Type D applies to all purchases valued at, or above the EU threshold for supplies and services, regardless of whether the contract is for supplies, services or works. However there are some differences to works contracts due to the different EU threshold in place for these types of contracts, as described below.
- 4.10.2. All Contracts classified as Type D must be undertaken by the Procurement Hub unless otherwise agreed by the Chief Finance Officer.

4.10.3. The EU threshold for goods and services is reviewed every two years and changes are effected from 1st January. For the current threshold for supplies, services and works please follow this link:

[www.wealden.gov.uk/procurementhub](http://www.wealden.gov.uk/procurementhub)

4.10.4. All Contract Type D procurements must be conducted in accordance with the Public Contract Regulations 2015. These regulations set out the types of procurement procedures allowed.

4.10.5. The types of procedures are as follows:

- Open Procedure
- Restricted Procedure
- Competitive Procedure with Negotiation
- Competitive Dialogue
- Innovation Partnership

4.10.6. Each Procedure has a number of requirements which the Council must adhere to, such as:

- Minimum time allowed for each stage of the process
- Publication of opportunity in the Official Journal of the European Union (OJEU)
- All procurement documents to be available at the start of the procedure
- Assessment of social, economic or environmental benefit
- Use of award criteria and selection criteria
- Division of contracts into Lots
- Electronic tendering
- Technical specifications
- Award and standstill procedures.

4.10.7. All Type D tenders must be conducted in an open, transparent manner which allows for equal treatment and does not discriminate against a particular economic operator or group of economic operators.

4.10.8. Type D contracts must be conducted electronically, this means that the advertisement and all procurement documents are available electronically and tenders are accepted in a secure electronic environment. The Council has an e-Tendering system to allow for this.

4.10.9. It is vital that all Type D contracts allow for early involvement from Procurement and Legal, ideally at the business case or project initiation stage.

4.10.10. For works contracts valued between £181,302 and £4,551,413 (the current EU threshold for works – January 2018), not all of the requirements for EU tendering apply, however the principles of the rules, with regard to transparency, equal treatment and non-discrimination must be followed and in most cases the level of detail and care required for specifications, award criteria and evaluation will be the same.

- 4.10.11. Authorised Officers (see Appendix B) may accept a tender if they have delegated authority to do so, and have complied with the Rules. In some instances further delegation may be required from Members, and it is normal to keep Members informed when dealing with high profile or strategic contracts.
- 4.10.12. Contract Management is a crucial part in the procurement lifecycle and ensures the ongoing success and sustainability of a contract. All Type D contracts should have a defined governance structure for contract management and defined Key Performance Indicators, relevant to the successful performance and monitoring of a contract.
- 4.10.13. All Type D contracts must have a named Client Contract Manager (CCM), the CCM will be reviewing, monitoring and evaluating the contract to ensure that its provisions and services are being followed.
- 4.10.14. During the life of the contract, the CCM must monitor the contract in respect to the following:
- Performance
  - Compliance with specification and contract terms
  - Cost
  - Any Best Value requirements
  - User satisfaction and;
  - Risk management.
- 4.10.15. Where this contract is due to be re-let, this information should be available and reviewed to inform the procurement approach.
- 4.10.16. Contract terms should allow for continuous improvement and the ability for the Council to benefit from changes in technology and market innovation during the life of the contract. The contract should also allow for demand to be varied within reasonable thresholds.
- 4.10.17. Any changes to contracts must not constitute a material change to the scope or value of the contract. Advice should be sought from Legal if there is any doubt about the changes sought.
- 4.10.18. For the avoidance of doubt, variations cannot be agreed if they result in additional expenditure beyond the approved budget. In these circumstances, appropriate approvals must be obtained.

## **5. General Considerations for all Contract Types**

### **5.1.1. Frameworks, Consortia and Collaboration**

- 5.1.2. Frameworks and Consortia arrangements can offer opportunities to secure value for money. However, such arrangements must be investigated to ensure that they are open for use by the Council and that they do meet Council requirements and offer value for money.
- 5.1.3. Frameworks will have specific procedures that have to be followed in order to make a purchase or enter into a contract (call off). This may range from direct order to mini competition. Officers must comply with all terms, including award procedures, of the framework agreement.
- 5.1.4. The Procurement Hub must be consulted before using (calling off a Contract from) any framework agreement.
- 5.1.5. The relevant PID (A or B) must also be completed.
- 5.1.6. Using an existing framework agreement may reduce the need to follow a competitive procedure. A Contract is still required and Legal Services must be consulted on the form of the framework Contract before any commitment is made.
- 5.1.7. Any frameworks used or set up by the Council must comply with all relevant legislation, including the length of Contracts called-off from the framework and the Procurement Hub will advise in this regard.
- 5.1.8. Where the Council sets up a framework arrangement for use by other public bodies, the Council must be protected, so far as possible, from liabilities arising as a result of third party use of that framework agreement.
- 5.1.9. When it is proposed that the Council will undertake a collaborative procurement with another authority or authorities, the relevant PID (A or B) shall be required even in cases where budgetary provision has already been made and that the cost of resources have been identified, considered, and recouped where possible and appropriate.
- 5.1.10. Where collaboration is authorised, the lead organisation's Contract Procedure Rules may be followed and will be deemed to be in compliance with these Procurement Procedure Rules so long as the lead purchasing organisation's Procurement Procedure Rules are in compliance with all applicable procurement legislation. Legal Services will advise in this regard. The lead organisation will indemnify other local authorities against any claims resulting from non-compliance with the current procurement legislation.
- 5.1.11. Collaborative procurements and contracts should, where possible, include the ability for the Council to request details and information relating to the procurement process necessary for audit purposes
- 5.1.12. A Contract is still required and the Legal Services must be consulted on the terms and conditions of the collaborative Contract before any commitment is made.
- 5.1.13. For all Contracts called off from a framework or collaborative arrangements, including the Council's own frameworks, authority to commit/enter Contract is still required at the relevant thresholds for Contract authorisation.

## **5.2. Award Criteria**

- 5.2.1. All contract Types B, C and D must have clear instructions detailing on what basis a quote or tender will be accepted. This is known as the award criteria.
- 5.2.2. Most Type B contracts will not require a complex or long award criteria, and it is acceptable to accept Type B quotes on a lowest price basis. If any other quality criteria (such as experience, method statement, timescales), are to be used to determine the best value quote these must be detailed in the quote so that organisations know what elements are important to the council.
- 5.2.3. Type C & D contracts can only be awarded on the basis of either Most Economically Advantageous Tender (M.E.A.T) or M.E.A.T and Whole Life Cost considerations.
- 5.2.4. M.E.A.T involves a combination of factors including price, quality and other factors (such as social, economic or environmental benefits) to determine the best value offer.
- 5.2.5. Whole Life Cost will combine those factors in M.E.A.T above with consideration about the total cost of ownership, such as cost of acquisition, usage, disposal and lifecycle costs.
- 5.2.6. Officers must define Award Criteria that are appropriate and relevant to the purchase. The Award Criteria must be designed to secure the outcome representing the best Value for Money for the Council (which may or may not be the lowest price).
- 5.2.7. Any award criteria used should not discriminate against bidders or be designed to restrict competition.
- 5.2.8. The Procurement Hub should be consulted on the use of any award criteria used for Contract Types C & D. A guide to the use of award criteria is available on the Procurement Hub website.

## **5.3. Clarifications, Errors and Discrepancies**

- 5.3.1. Discussions with bidders after submission of a tender and before the award of a contract can only be with a view to clarifying mistakes or errors in the tender submitted, confirm operational provision, terms and conditions of contract or requesting information for due diligence.
- 5.3.2. **If mistakes in pricing are discovered and it is clear that this is due to miscalculation then the bidder may be given the opportunity to revise the mistake as long as it does not lead to the total tender price which was submitted from being increased or decreased. Where the mistake or error is in relation to the total price the bidder should be given the opportunity of confirming the price submitted or be allowed to withdraw the tender. No other form of amendment to price is allowed.**
- 5.3.3. Where such discussions are to take place with a supplier, all bidders involved in the respective exercise must be notified and given the opportunity to clarify their bid if necessary, to ensure equal treatment.

- 5.3.4. Discussions with bidders after submission of a Tender and before the award of a contract with a view to obtaining adjustments in scope, price, delivery or content (i.e. post-Tender negotiations) must not be conducted - this is a distortion of competition.
- 5.3.5. Where post-Tender clarification results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-Tendered, following guidance from the East Sussex Procurement Hub.

## 5.4. Transfer of Services / TUPE

- 5.4.1. When any employee either of the Council or a current service provider may be affected by any transfer arrangement, for example, when a contract is retendered or service outsourced or brought in-house, officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain advice from Legal and Human Resources (HR) before proceeding with invitations to tender or quote.
- 5.4.2. Officers should ensure that sufficient time, particularly with regards to mobilisation of the new arrangements is given in instances where TUPE applies.

## 5.5. Opening Tenders and Quotations

- 5.5.1. Tenders for Contract Types C & D **must not** be opened until the deadline for receipt has passed. This applies whether the quote or tender is received electronically or as hard copy. Quotations for Contract Type B should be treated in the same way when possible and practical.
- 5.5.2. Tenders are to be opened in accordance with the following table:

| Value                                | Officers to be present   | Timescale                             |
|--------------------------------------|--|---------------------------------------|
| Under £5,000                         | Officer conducting the procurement   | As agreed by Service Manager          |
| £5,000 to £49,999                    | Officer conducting the procurement and another Officer   | As agreed by Service Manager          |
| £50,000 to EU Procurement Thresholds | Procurement Partnership Manager or nominated deputy, Chief Finance Officer or nominated deputy | Within 5 days of deadline for receipt |
| EU Procurement Thresholds and above  | Procurement Partnership Manager or nominated deputy, Chief Finance Officer or nominated deputy | Within 5 days of deadline for receipt |

## 5.6. Contract Award

- 5.6.1. For all supplies, works and most service contracts tendered under Public Procurement Regulations (Type D contracts), a ten-day 'standstill period' must be observed between the decision to award and contract conclusion. Once the decision to award a contract is made, **after you have received all necessary approvals**, each bidder must be notified in writing on the outcome of the tender process. If a pre-qualification questionnaire (PQQ) or an expression of interest prior to PQQ was used, all those bidders must be given feedback at the relevant stage. Advice on the use of PQQ and

expressions of interest can be provided by the East Sussex Procurement Hub. Please see Section 5.7 regarding de-briefing bidders.

- 5.6.2. The East Sussex Procurement Hub and Legal will provide advice and support with regards to Contract award letters, feedback to bidders and the contract Terms and Conditions, including any incidental documentation.
- 5.6.3. Officers may accept quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Rules and in respect of the Scheme of Delegation (see Appendix B Summary Table).
- 5.6.4. The East Sussex Procurement Hub and / or Legal will be responsible for sending out the contract award letter and contract for signing by the winning contractor. Once signed, the Procurement Partnership Manager or Legal will arrange for the contract to be signed by the Council having checked that the appropriate authorisation is in place.
- 5.6.5. The Service must ensure any contract documentation is stored electronically on the SE Shared Services e-Portal and for contracts over £25,000 a signed original is kept by Legal. See Section 7 for further information.
- 5.6.6. A Purchase Order must be raised in the Council's Financial System or the eProcurement system, as applicable, for all orders. A quotation and a purchase order will create a legally binding contract for contracts whose total value is under £5,000. The purchase order is used to formalise the terms of the contract. Please see Section 7 for further details.
- 5.6.7. If the amount of the tender proposed to be accepted exceeds the amount of the budgetary provision, the tender should not be accepted until the Chief Finance Officer is satisfied that budget provision has been made for the additional cost.

## **5.7. De-briefing of Bidders**

- 5.7.1. The confidentiality of quotations, Tenders and the identity of candidates must be preserved at all times and information about one candidate's Tender submission must not be given to another candidate.
- 5.7.2. The Officer must notify all candidates simultaneously and as soon as possible of the intention to award the contract to the successful candidate.
- 5.7.3. Advice must be sought from The East Sussex Procurement Hub in all instances before de-briefing bidders. Feedback must provide sufficient justification for the Council's decision making process. All feedback should provide an objective analysis of the bidder's response to the relevant criteria and the relative advantages of the successful bidder by way of comparison.
- 5.7.4. Any request for face to face or telephone debriefing or feedback must be referred to Legal and/or the East Sussex Procurement Hub.

## **5.8. Complaints and Challenges**

- 5.8.1. If a complaint is received or if any of the bidders challenge any decisions made under these rules, Legal and the East Sussex Procurement Hub

should be notified **immediately**. No further communication should be made without approval from Legal.



## **6. Variations to the Rules**

### **6.1. Overview**

- 6.1.1. In order to maximise the Council's efficiency through the procurement process and to avoid any resulting contractual delays which could impact upon project delivery, delegated authority from Cabinet should always be sought to advertise, award and authorise signatures to the contracts.
- 6.1.2. In addition delegated authority from Cabinet may also be required for existing contracts which require variations, extensions or an exemption from these Rules. For operational reasons, a variation, extension or exemption may be required to minimise costs and allow the Service to consider longer term requirements given the high level of change which the Council is currently facing.
- 6.1.3. In these circumstances, the following may apply:
- A contract may be awarded or extended through an existing framework agreement or collaborative agreement where it offers value for money and efficient use of resources by avoiding a full EU procurement process. **No awards of this nature should be sought without considering the local economy and opening up the market to small and medium enterprises first.**
  - Extensions/variations/exemptions will only be applied where the following criteria are fulfilled. The request must be:
    - Compliant with EU directives and National legislation and the Council's Procurement Procedure Rules;
    - Within an existing budget and value for money can be demonstrated;
    - Approved by the relevant Service Manager(s) and a relevant exemption from the Contract Procedure Rules is agreed in advance with the Chief Finance Officer and / or Executive Director and / or Cabinet Portfolio Holder, as appropriate.
    - Consideration has been given to the local economy and the ability for the market to be opened up to small and medium enterprises.

**NOTE - no exemptions from EU legislation are possible.**

### **6.2. Procedure**

- 6.2.1. To apply for an exemption or an extension to a contract, you must fill in the Exemption Form available on the Council's Intranet. This form **MUST** be signed in accordance with the Council's Scheme of Delegation. It should be sent to those with authority to approve exemptions as set out in the Council's Scheme of Delegation before forwarding to Finance.
- 6.2.2. All officers must ensure that the form provides full details of the request and any supplementary documentation to support the request. Incomplete forms will be returned and could result in a delay in the request being considered.
- 6.2.3. Applications for exemptions where the value is under £24,999 can be signed by the Chief Finance Officer. Applications where the value is over

£25,000 must be signed by an Executive Director and the Chief Finance Officer.

- 6.2.4. No commitment should be made to the supplier, prior to authorisation and an exemption or extension cannot be given where this would contravene EU procurement rules.
- 6.2.5. Contracts awarded above £24,999 as a result of an exemption must still be published on the Contracts Finder website and included on the Council's Contract Register.
- 6.2.6. A record of the decision approving an exemption and the reasons for it will be stored electronically on the Council's tender portal, for ALL requests and a hard copy of the relevant contract and incidental documentation for contracts over £50,000 must be kept by Legal.
- 6.2.7. If an exemption has been granted to these rules, the Rules relating to Contract Documentation and Financial Procedures must still be followed and a Purchase Order raised accordingly. Failure to do so could be a disciplinary offence. For further guidance please refer to the Financial Procedure Rules.
- 6.2.8. The Chief Finance Officer is responsible for holding a complete record of all exemptions and is expected to report to the council's Audit Committee annually.

### **6.3. Exemptions**

- 6.3.1. Exemptions will only be considered for the following reasons:
  - The nature of the market for the works to be carried out, or the goods or services to be provided, has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable, for example, if there is no real competition;
  - The contract offered by a supplier is to undertake investigative spend and/or contract analysis with the intention of achieving savings;
  - Where the subject matter of the contract can only be arranged through one supplier.
  - The contract is for works, supplies or services which are required in circumstances of extreme urgency which a diligent contracting authority could not have foreseen;
  - Extending an existing contract; it must be in our interests to negotiate with the existing supplier and must be tied to the Scheme of Delegation;
  - Price control- if the price is controlled by trade organisations or government order and there is no reasonable alternative;
  - Repairs or parts — if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier;
  - Purchase is to be made by auction (including online auctions);
  - Purchase is for a patented article;
  - The Purchase has been agreed by the Cabinet or Strategic Management Team to be for the good of the Authority; or

- There are other circumstances that are truly exceptional.

6.3.2. To apply for a variation or extension, please see Section 6.2, above.

#### **6.4. Variations and Extensions**

6.4.1. Subject to any statutory restrictions and compliance with these Rules, a Service Manager, in conjunction with the East Sussex Procurement Hub, may authorise the following extensions and variations to an existing contract, either:

- An extension for a particular period provided for within the terms and conditions of the contract (but subject to satisfactory outcomes of contract monitoring); or
- A single extension of the contract by up to six months, or half the contract term (whichever is less); and
- Any other variation, and, if relevant a consequent change in price, determined in accordance with the contract terms.

6.4.2. In any other circumstances the Service Manager may vary or extend a contract, providing that to do so is consistent with the provisions of Financial Procedure Rules.

**6.4.3. Contracts procured under the EU Regulations must not be extended or varied without consulting the East Sussex Procurement Hub and Legal.**

6.4.4. It is good practice to detail within the original contract if it can be extended, along with details of how long the extension is in place for. However the length or number of extensions detailed should not be made in order to avoid competitive process and the contract should only include extensions which are appropriate to the life cycle of the product/service and would not harm competition or value for money.

6.4.5. To apply for a variation or extension, please see Section 6.2, above.

## **7. Contracts**

### **7.1. Documentation**

7.1.1. All relevant contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from Legal as to the form of contract.

7.1.2. All relevant contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when). The use of interim certificates and practical completion certificates may be appropriate for works contracts.
- The time, or times, within which the contract is to be performed
- The provisions for the Council to terminate the contract including break clauses.
- The provisions for managing performance such as incentives, defaults and determination.
- The provision for collateral warranties from sub contractors.
- Provisions for any payment due from the contracting authority to the contractor under the contract to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed
- Provisions that any subcontract awarded by the contractor imposes a similar requirement for payment to be made.
- Provisions for sharing confidential procurement information with other public sector organisations.

*For examples of suitable clauses please refer to Legal or the East Sussex Procurement Hub.*

7.1.3. The Council's terms and conditions of contract must be used wherever possible rather than the suppliers. If you intend to use the suppliers terms advice must be sought from Legal.

7.1.4. The formal advice of Legal must be sought for the following contracts:

- Where the Total Value exceeds £50k
- Contracts involving leasing arrangements
- Where it is proposed to use a supplier's own terms
- Contracts that are complex in any other way

7.1.5. All Type D contracts must include performance indicators and an appropriate formal review structure.

7.1.6. The East Sussex Procurement Hub will provide further advice on contract specific specifications.

## 7.2. Contract Formalities

- 7.2.1. Once the Executive Director or delegated Officer has accepted the winning bidder, all agreements shall be completed as follows in the Table below:

| Value               | Method of Completion | By who                            |
|---------------------|----------------------|-----------------------------------|
| Under £5,000        | Purchase Order       | Line Manager                      |
| £5,000 to £24,999   | By Signature         | Service Manager                   |
| £25,000 to £49,999  | By Signature         | Legal                             |
| £50,000 to £172,513 | Under Seal           | Executive Director                |
| £172,514 and above  | Under Seal           | Executive Director and any Member |

- 7.2.2. All relevant contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the prior approval from the Chief Finance Officer, Legal and Monitoring Officer. A letter of intent is insufficient.
- 7.2.3. All orders must be matched with a Purchase Order and be in line with the Council's Financial Procedure Rules.

## 7.3. Contracts under Signature

- 7.3.1. The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it. The Officer signing the contract on behalf of the Council must check to ensure that they have the relevant authorisation to sign the contract.

## 7.4. Contracts under Seal

- 7.4.1. A contract must be sealed where:
- The Council wishes to extend the liability period under the contract and enforce its terms for up to 12 years;
  - The price to be paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
  - There is any doubt about the authority of the person signing for the other contracting party; and/or
  - The total value of the contract is £50,000 or over
- 7.4.2. Where contracts are completed by each side adding their formal seal, such contracts shall be attested by an officer so authorised under the Council's Constitution.
- 7.4.3. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the Monitoring Officer, acting under delegated powers.

## 7.5. Transfer of Contracts

- 7.5.1. In appropriate circumstances, the Council may agree to transfer a contract by way of a novation agreement.

- 7.5.2. This decision must be taken by the Cabinet for contracts of an initial value in excess of £250,000 (or the relevant Committee for non-executive functions), and by the relevant Executive Directors for contracts of a value of up to £250,000. Agreement must also be obtained from the Chief Finance Officer and the Monitoring Officer.
- 7.5.3. The Chief Finance Officer must hold a complete record of all transfers.

## **8. Managing Risks**

### **8.1. Prevention of Corruption/ Anti-Bribery**

8.1.1. Officers must comply with the Officer Code of Conduct, Anti- Bribery Policy and Anti-Fraud and Corruption Policy and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory; it will be for the Officer to prove that anything received was not received corruptly. Corrupt behaviour will lead to dismissal.

### **8.2. Declaration of Interest**

8.2.1. Any interest which may affect the award of a contract under these Rules must be declared. Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest or any interest held by a close family member.

8.2.2. Where an officer has an interest which could influence their judgment in contracting matters, they must not take part in the procurement process.

8.2.3. No gifts or hospitality should be accepted from any bidders to any contract being let by the Council, and to do so is a disciplinary offence. You must inform the Chief Finance Officer and the Monitoring Officer if you are dealing with a contract for the Council and have been offered such a gift or hospitality.

8.2.4. All officers involved in contracting matters must have regard to the Officer Code of Conduct.

### **8.3. Guarantees, Bonds and Damages**

8.3.1. Certain contracts, mainly for works, will require guarantees, bonds and other performance measures to protect the Council against delays, increased cost, loss of revenue or contractor performance.

8.3.2. When a Contractor is the subsidiary of a parent company a Parent Company Guarantee (PCG) will be requested if the following conditions are met:

- The Candidate does not meet the minimum financial requirements of the assessment process.
- The Parent company has been assessed and meets the minimum financial requirements.

8.3.3. A Performance Bond is needed:

- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract, and
- The contract value is in excess of £500,000.

8.3.4. Liquidated damages should be included for all works contracts. These should be calculated at an appropriate daily rate to cover any potential loss of revenue, income or additional associated costs concerned with the delay.

8.3.5. Retentions of contract sums of minimum 2.5% should be included on all works contracts Type C & D.

8.3.6. Finance must be consulted for advice on the use of all of the above.

## **9. Records**

9.1. The following records must be kept for a period of six years:

- Invitations to quote and quotations;
- A record of any exemptions to the procurement process and the reasons for them;
- A record of the reason if the most economically advantageous tender is not accepted;
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced;

9.2. The original signed or sealed contract along with all tender documents should be stored electronically on the SE Shared Services e-Portal, and all contracts over £50k should be stored in the archive for a period of 20 years.

## **10. Disposal of Assets**

10.1. Please consult the Chief Finance Officer before disposing of any goods or assets to ensure the latest guidance is followed.

10.2. All disposals must be in line with Financial Procedure Rules.

## **11. Contracts of no cost to the Council**

11.1. There may be a circumstance where a contract arises that involves no cost to the Council but a commercial advantage would be gained from it by the company who is awarded the contract. In such circumstances advice must be sought from the East Sussex Procurement Hub and Legal.



## **12. State Aid**

### **12.1. Definition**

**12.2.** State aid can be defined as any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and / or Suppliers or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

**12.3.** Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

**12.4.** For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is given by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

**12.5.** Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

**12.6.** Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

### **12.7. Exemptions for State Aid**

**12.8.** Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period;
- Aid in favour of Small, Medium Enterprises, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection;
- Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

**12.9.** Such Aid must still be notified to the European Commission and as a result Council Officers are advised to seek the advice and guidance of the Legal Services and / or Monitoring Officer where State Aid may be said to exist on a particular project or procurement.

## **13. Development Agreements**

### **13.1. Definition**

- 13.2.** A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would otherwise be considered commercially undesirable, which becomes commercially desirable as a result of incentivisation by the public sector body.
- 13.3.** Where the Council wishes to establish a development agreement that meets the definition above, again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or Concession Contract and may therefore be subject to the legislation on public procurement. Advice must be sought from Legal in all cases.
- 13.4.** For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:
- 13.5.** The proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);
- 13.6.** The development agreement is ancillary or incidental to a transfer or lease of land or property from the Council to the developer, and is intended to protect the interests of the Council which is the lessor or otherwise retains an interest in the land or property;
- 13.7.** The development agreement is based on proposals put forward by the developer, rather than requirements specified by the Council, albeit that these proposals may be sought, and the “winner” chosen by the Council;
- 13.8.** There is no pecuniary interest passing from the Council to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer;
- 13.9.** The development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);
- 13.10.** The development does not consist of or contain works for the direct economic benefit of the Council. The involvement of the Council consists only in the exercise of statutory land-use planning powers.
- 13.11.** Where a development agreement cannot be said to meet the criteria defined above a public works or Concession Contract must be awarded in accordance with the public procurement legislation.

## **14. IT Software**

- 14.1.** IT software contracts will be let in accordance with the Rules.
- 14.2.** All contracts for software shall assume that the software shall remain in use by the Council until it determines that it no longer meets its business requirements. At that point a procurement process will commence in accordance with the Rules. All software should be reviewed for its fit with business requirements on a regular basis.
- 14.3.** All contracts for software shall assume that upgrades are taken for systems and there will be no requirement to retender the contract at that point nor to seek an exemption. In computing an upgrade is generally a replacement of hardware, software or firmware with a newer or better version, in order to bring the system up to date or to improve its characteristics.
- 14.4.** Companies usually make software upgrades for the following reasons:
- to support industry regulatory requirements;
  - to access emerging technologies with new features and tools;
  - to meet the demands of changing markets;
  - to meet user requests for enhancements;
  - to meet legislative changes imposed on users; and
  - to continue to receive comprehensive product support.
- 14.5.** Before agreement to major upgrades are made, Service areas must have consulted ICT and obtained agreement to the suitability of the upgrade for the Council's ICT environment and that resources are available in ICT to undertake the implementation within the required timescales.

## Appendix A. Glossary

|                                  |  |
|----------------------------------|--|
| Contracts Finder                 | Public Sector opportunities portal<br><a href="https://online.contractsfinder.businesslink.gov.uk/">https://online.contractsfinder.businesslink.gov.uk/</a>  |
| Data Protection                  | The Data Protection Act controls how your personal information is used by organisations, businesses or the government. Everyone responsible for using data has to follow strict rules called 'data protection principles'. |
| East Sussex Procurement Hub      | Shared Procurement Service hosted by Wealden District Council on behalf of Hastings, Rother and Wealden Councils   |
| Lots                             | The division of the contract or requirement into smaller chunks. Possible Lot options include geographical coverage, labour type or multi discipline.  |
| MEAT                             | Most Economically Advantageous Tender as combination of quality and cost to determine best value.  |
| PID                              | Project Initiation Document used to define requirements and objectives of the purchase   |
| PQQ                              | Pre Qualification Questionnaire  |
| Pre Qualification                | The process of shortlisting expressions of interest to create a tender list  |
| SE Shared Services Tender Portal | Online opportunities and tendering portal<br><a href="http://www.sesharedservices.org.uk/esourcing">http://www.sesharedservices.org.uk/esourcing</a>   |
| SME                              | Small and Medium Enterprises   |
| TED                              | Tenders Electronic Daily<br><a href="http://ted.europa.eu/">http://ted.europa.eu/</a>  |
| TUPE                             | Transfer of Undertaking Protection of Employment covers everything from equipment and premises as well as staff  |
| VCSO                             | Voluntary and Charitable Sector Organisation   |
| Whole Life Costs                 | Also known as Total Cost of Ownership. This considers all elements of the cost of a product or service such as acquisition and procurement, operation and management, end of life management and relevant indirect costs.  |

## Appendix B. Summary Tables.

| Contract Types                                      | Type A  | Type B  | Type C  | Type D  |
|---|---|---|---|---|
| <b>Value</b>  | Up to £4,999                                      | £5,000 to £49,999   | £50,000 to EU threshold for supplies and services   | EU Threshold for supplies and services  |
| <b>Procedure</b>                                    | Minimum of one written quote                      | Minimum of three written quotes   | Tender procedure  | EU compliant tender procedure   |
|   | Or suitable framework                             | Or suitable framework   | Or suitable framework   | Or suitable framework   |
| <b>Evaluation Criteria</b>                          | Lowest Cost                                       | Lowest Cost or Quality vs Cost (M.E.A.T)  | Quality vs Cost (M.E.A.T)   | Quality vs. Cost (M.E.A.T) and / or Whole Life Cost   |
| <b>Selection of Suppliers</b>                       | If possible quote should be from a local supplier | One quote must be from a local supplier   | No selection allowed except for works contracts where a minimum of 5 contractors may be invited from Constructionline | EU Compliant tendering procedure which may follow the restricted procedure.                     |
| <b>Minimum number of quotes or tenders required</b> | 1   | 3   | 3   | 3   |
| <b>Minimum Advertising Requirements</b>             | None  | None  | Contracts Finder  | OJEU (with the exception of works contracts under EU threshold for works) & Contracts Finder.   |
| <b>PID requirements</b>                             | None  | PID A   | PID B (relevant sections)   | PID B (all sections).   |
| <b>Form of Contract Required</b>                    | Purchase Order terms                              | Purchase order terms except for consultancy services, works and all purchases over £24,999 which should use Council's standard terms and conditions (seek legal advice) | Council's terms and conditions or industry standard. Advice must be sought from Legal.                                | Council's terms and conditions, bespoke or industry standard. Advice must be sought from Legal. |

|                             |  |  |  |   |
|-----------------------------|--|--|--|---|
| <b>Bonds and Guarantees</b> |  |  |  | Works contracts >£500,000<br>Performance Bond for 10%<br>of total contract sum.<br>Parent Company Guarantee<br>if applicable. |
| <b>Retentions</b>           |  |  | Works – min. 2.5% of contract<br>sum   | Works – min. 2.5% of<br>contract sum.   |
| <b>Liquidated Damages</b>   |  |  | Works – an appropriate daily<br>rate for liquidated damages<br>should be included. | Works – an appropriate daily<br>rate for liquidated damages<br>should be included.  |
|                             |  |  |  |   |
|                             |  |  |  |   |

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|                | <b>Type A</b>         | <b>Type B</b>                                | <b>Type C</b>  | <b>Type D</b>  |
|----------------|-----------------------|--|--|--|
| <b>Opening</b> | Officer seeking quote | Officer seeking quote and<br>another Officer | Chief Finance Officer and<br>Procurement Partnership<br>Manager or nominated<br>deputies | Chief Finance Officer and<br>Procurement Partnership<br>Manager or nominated<br>deputies |

|                   | <b>Type A</b> | <b>Type B</b>   | <b>Type C</b>                                | <b>Type D</b>                                   |
|-------------------|---------------|-----------------|--|---|
| <b>Acceptance</b> | Line Manager  | Service Manager | Chief Finance Officer and<br>Service Manager | Chief Finance Officer and<br>Executive Director |

|                            | <b>Type A</b>                       | <b>Type B</b>   | <b>Type C</b>                      | <b>Type D</b>                                     |
|----------------------------|-------------------------------------|---|------------------------------------|---|
| <b>Contract Completion</b> | Line Manager (PO terms<br>required) | Service Manager or<br>Contracts over £25,000 -<br>Legal | Executive Director (Under<br>Seal) | Executive Director and any<br>Member (Under Seal) |

# Appendix C. Guidance on setting Award Criteria and Evaluation (double click on the image below)

## East Sussex Procurement Hub Guidance for Buyers on Evaluating Tenders



### 1. Introduction

---

The purpose of a tender evaluation is to identify which bid offers the most economically advantageous proposal based on the criteria specified in the invitation to tender or quote document.

Depending on the value or complexity of the contract, evaluation of contractors can be done in two stages:

1. The Pre Qualifying (or selection) stage - This allows a selection of suppliers most suitable to bid for your requirements. It is seen as a tool to look at the companies past performances and current practices.
2. The Invitation to Tender stage - This is the chance to ask what a company will do to meet your needs and evaluate how much the service, goods or works will cost.

If you use a two stage process you cannot ask for solutions to your needs at stage 1, and conversely cannot ask for details of past performance or experience when you are asking them to provide a solution for you. However if you need them to back up a solution that is being offered then proof that it has worked or provided the necessary benefits can be requested.

In some instances, for example when running a low value procurement, or where the market has a small number of suppliers, a single stage (open) tender may be required to encourage bids through a quicker and simpler process. You should still use qualifying (or selection) questions which ensure that the company that you consider to supply to you is financially, technically and legally capable of fulfilling the contract, no matter how good the price / solution may be!

### 2. Pre Qualification Questionnaires

---

A Pre Qualification Questionnaire (PQQ) is an evaluation document used to identify a short-list of suitable companies to invite to tender when restricted and competitive dialogue procedures are used. The questionnaire should be used to identify if the applicants have the relevant capacity (financial and resources), experience and expertise to fulfill the contract. A PQQ must not be used to evaluate possible solutions that the company may offer and any criteria used at the pre-qualification stage should not be used again or revisited when evaluating the invitation to tender.

Many elements in a PQQ are Pass / Fail and may require input from specialist officers (such as Finance to undertake a financial assessment). Where sections of the PQQ are to be scored in order to rank bidders, please read the sections on applying weightings and scoring structures.

If references are required these must be obtained at PQQ stage as once a company is short listed, you can no longer assess their performance in this way. A more effective way of assessing a company's previous performance is for them to provide detailed case studies which you can then use to follow up with the original contractor.

When using an open tender procedure, the questions normally asked at PQQ should be included as part of the invitation to tender. The evaluation of the tenders should be undertaken in the same manner as a restricted procedure, first assessing the capability and capacity of all bidders (stage 1 -





# **PART 4-8**

## **OFFICER EMPLOYMENT PROCEDURE RULES**

### **1. Recruitment and Appointment**

#### **(a) Declarations**

- (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are closely connected to any existing Councillor or officer of the Council; or of the partner of such persons.
- (ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant Chief Officer or an officer nominated by them.

#### **(b) Seeking support for appointment.**

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) No Councillor will seek support for any person for any appointment with the Council.
- (iii) Nothing in paragraphs (i) and (ii) shall preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

### **2. Recruitment of Head of Paid Service and Chief Officers**

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

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) 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
- (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

### **3. Appointments**

#### **Head of Paid Service**

- (a) The Full Council will approve the appointment of the Head of Paid Service following the recommendation of the Senior Officer

Appointments Panel that will comprise of the Leader and Deputy Leader of the Council, Leader of the Major Opposition Group or their nominee plus relevant Cabinet Portfolio Holder related to the appointment and one other Member from a Minor Opposition Group.

- (b) The Council may only approve the appointment of the Head of Paid Service where no well-founded objection has been made by any Member of the Cabinet.

#### **4. Appointment of Other Chief Officers**

- (a) The Senior Officer Appointments Panel will appoint Chief Officers.
- (b) An offer of employment as a Chief Officer shall only be made where no well-founded objection from any Member of the Cabinet has been received.

#### **5. Other Appointments**

Appointment of officers below Chief Officers are the responsibility of the Head of Paid Service or their nominee and may not be made by Councillors.

The appointment process for other senior key officer roles will involve consultation and input with lead Members, at the discretion of the Chief Executive.

#### **6. Disciplinary Action**

- (a) The Head of Paid Service, Monitoring Officer and Section 151 Officer (Chief Finance Officer) may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months unless there are exceptional circumstances which are agreed by the Cabinet.
- (b) No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by an independent person designated under Regulation 2 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, (as amended).
- (c) Councillors will not be involved in the disciplinary action against any officer shown in section 7 below except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of disciplinary action.

## **7. Dismissals**

### **7.1 Head of Paid Service, Section 151 Officer (Chief Finance Officer), Monitoring Officer**

The Head of Paid Service, Section 151 Officer (Chief Finance Officer) or Monitoring Officer may not be dismissed by the Full Council unless the procedure set out in the following paragraphs is complied with:

- (a) The authority shall appoint the Independent Panel at least 20 working days before the relevant meeting.
- (b) The Independent Persons appointed by the Full Council under Section 28 (7) of the Localism Act 2011 shall comprise the Independent Panel.
- (d) Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority shall take into account, in particular:
  - (i) any advice, views or recommendations of the Independent Panel;
  - (ii) the conclusions of any investigation into the proposed dismissal; and
  - (iii) any representations from the relevant officer.
- (e) Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Independent Panel shall not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.

### **7.2 Any Other Director Post or Post Reporting Directly to the Chief Executive**

The Senior Officer Appointments Panel will consider appeals against dismissal from these posts. To comprise of five Members as identified in 3(a) above.

### **7.3 Other Employees**

Councillors will not be involved in the dismissal of any officer below the Chief Officers (save for those in 7.2 above) except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of dismissals.

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# MEMBERS' CODE OF CONDUCT

## 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 Local Government Association encourages the use of support, training and mediation prior to action being taken using the Code of Conduct. The fundamental aim of the Code of Conduct 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; and
- 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 of Conduct 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; and
- 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. Parish and Town 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:**

- 1.1 I treat other Councillors and members of the public with respect.**
- 1.2 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:**

- 2.1 I do not bully any person.**
- 2.2 I do not harass any person.**
- 2.3 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:**

#### **3.1 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:**

#### **4.1 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.**

#### **4.2 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.**

**4.3 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:**

**5.1 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 you 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:**

**6.1 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:**

**7.1 I do not misuse Council resources.**

**7.2 I will, when using the resources of the Local Authority or authorising**

**their use by others:**

- a. **act in accordance with the Local Authority's requirements; and**
- b. **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; and 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:**

- 8.1 I undertake Code of Conduct training provided by my Local Authority.**
- 8.2 I co-operate with any Code of Conduct investigation and/or determination.**
- 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 8.4 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:**

- 9.1 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:**

- 10.1 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.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

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.

**THE SEVEN PRINCIPLES OF PUBLIC LIFE**

The principles are:

**1. Selflessness**

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

**2. 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.

**3. Objectivity**

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

**4. 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.

**5. 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.

**6. Honesty**

Holders of public office should be truthful.

**7. 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.

## 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) 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](#).

| <b>SUBJECT</b>   | <b>DESCRIPTION</b>   |
|--|--|
| <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 him/her in carrying out his/her duties as a Councillor, or towards his/her 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>   | <p>Any contract made between the Councillor or his/her 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:</p> <p>a) under which goods or services are to be provided or works are to be executed; and</p> <p>b) which has not been fully discharged.</p> |
| <b>Land and Property</b>                                 | <p>Any beneficial interest in land which is within the area of the Council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the Councillor or his/her 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.</p>   |
| <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>                               | <p>Any tenancy where (to the Councillor's knowledge):</p> <p>a) the landlord is the council; and</p> <p>b) the tenant is a body that the Councillor, or his/her 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.</p>  |
| <b>Securities</b>  | <p>Any beneficial interest in securities* of a body where:</p> <p>a) that body (to the Councillor's knowledge) has a place of</p>  |

| SUBJECT | DESCRIPTION  |
|---------|--|
|         | <p>business or land in the area of the Council; and</p> <p>b) either:</p> <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 his/her 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 Registerable 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) Anybody
  - 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.



# Part 5 - 2

## Probity in Planning

### ADVICE FOR COUNCILLORS AND OFFICERS MAKING PLANNING DECISIONS

#### 1. BACKGROUND

1.1 Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way. The guidance has been written for officers and councillors involved in making planning decisions in their local authority. It is informed by contributions from councillors and officers and includes:

- a brief overview of the planning system and the role of decision makers;
- councillor and officer conduct;
- registration and disclosure of interests;
- predisposition, predetermination or bias;
- lobbying of and by councillors;
- discussions before a decision is taken;
- officer reports;
- public speaking at planning committees;
- decisions which differ from an officer's recommendation;
- committee site visits;
- reviewing past planning decisions and the outcomes; and
- complaints and record keeping.

1.2 Councillors and officers should be familiar with, and adhere to, their own local authority codes of conduct and guidance. This advice is not intended to be prescriptive. Local circumstances may necessitate local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

1.3 The Local Government Association (LGA) endorses the good practice of many councils who ensure their councillors receive training on planning when first appointed to the Planning Committee or Local Plan Steering Group. It is recommended that councillors receive regular ongoing training on probity in decision making and the local Code of Conduct as well as on planning matters. The Planning Advisory Service (PAS) can provide training to councillors.

1.4 The guidance does not constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of probity. Where there are any doubts or queries, advice should always be sought from the Council's Monitoring Officer.

#### 2. THE PLANNING SYSTEM AND ROLE OF DECISION MAKERS

2.1 The National Planning Policy Framework (NPPF) 2019 states that the purpose of the 'planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without

compromising the ability of future generations to meet their own needs'. Planning has a positive and proactive role to play at the heart of local government and local communities. It can:

- help councils stimulate growth and translate goals into action;
- balance social, economic and environmental needs to achieve sustainable development; and
- deliver important public benefits such as new housing, infrastructure and local employment opportunities.

2.2 Planning law requires that applications for planning permission be determined in accordance with the development plan (the 'local plan' document(s) and if relevant spatial development strategy), unless 'material considerations' indicate otherwise. National Planning Practice Guidance (NPPG) explains that a material planning consideration is one which is relevant to making a planning decision to grant or refuse an application for planning permission. It states that the 'scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations'.

2.3 Local planning authorities are tasked with both preparing the development plan that applications will be accessed against and making planning decisions. In England, the NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect other relevant international obligations and statutory requirements. Local planning decisions are made in this wider national and international context.

2.4 The determination of a planning application is a formal administrative process involving:

- the application of national and local planning policies;
- reference to legislation, case law and rules of procedure; and
- rights of appeal and an expectation that the Local Planning Authority will act transparently, reasonably and fairly.

2.5 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and land and property interests, particularly the financial value of landholdings, and the quality of their settings. Opposing views are often strongly held by those involved. Whilst councillors must take account of these views, they should not favour any person, company, group or locality, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.

2.6 Because planning decisions can be controversial, it is particularly important that the process is open and transparent. The risk of controversy and conflict is heightened by a system which invites public opinion before taking decisions. The legal and procedural nature of the planning system means

there is a risk of complaints to the Ombudsman for maladministration or a breach of the Authority's Code. There may also be a legal challenge, in the form of a judicial review in which a judge reviews the lawfulness of a decision or action made by a public body.

- 2.7 Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.
- 2.8 Officers prepare the Development Plan (the local plan document or documents) which must conform to the policies set out in the NPPF and be adopted by a meeting of the full Council. Applications for planning permission submitted to the Local Planning Authority are assessed by planning officers who will, based on the Development Plan and any material planning considerations, make recommendations to planning committees who then resolve to grant or refuse the application. Councillors can be involved in decisions on planning enforcement action or compulsory purchase orders.
- 2.9 Most councils also delegate powers to senior officers to determine a large proportion of planning applications, this advice and the Council's Code of Conduct as it relates to planning decisions will apply to these officers too. The applications that go to committee, or are determined by an officer, will be set out in the Local Authority's Scheme of Delegation. Effective delegation can help ensure that decisions on planning applications that raise no significant planning issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area. These will typically be larger or more complex applications and potentially controversial – and are defined locally through authority schemes of delegation.
- 2.10 Therefore, whilst councillors are ultimately responsible for decision making in local planning authorities, officers who have delegated authority to make decisions need to be aware of the issues covered in this document – and the advice and principles discussed apply to them too.

### **3. COUNCILLOR AND OFFICER CONDUCT**

- 3.1 The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019. These 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 declare and resolve any interests and relationships.

- **Objectivity:** holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

3.2 Section 27 of the Localism Act 2011 (as amended) requires local planning authorities to promote and maintain high standards of conduct and adopt a local code of conduct, which should reflect these principles. It must cover:

- the registration of pecuniary interests (explained in Section 4);
- the role of an 'independent person' to investigate alleged breaches; and
- sanctions, to be imposed on any councillors who breach the Code.

3.3 Parish and Town Councils (P&TC) are covered by the requirements to have a code of conduct and to register interests. They can choose to 'opt in' to the Code of Conduct adopted by their principal authority (the local district or unitary council).

3.4 The Local Government Ethical Standards Report published in 2019 suggests that many codes of conduct fail to adequately address important areas of behaviour, such as social media use and bullying and harassment.

3.5 It includes a number of recommendations for codes of conduct – some of which will require changes to primary or secondary legislation. It also includes a series of best practice recommendations, which they recommend are addressed in codes.

3.6 Many local planning authorities have also adopted their own codes relating specifically to planning, which should be read alongside the substantive Code of Conduct for the Council. In addition to these codes, a Council's Standing Orders also set down rules which govern the conduct of council business.

3.7 Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. The RTPI provides advice for planning professionals on matters of probity aimed at supporting planners in exercising their independent professional judgement, and promoting public confidence in the planning system.

- 3.8 Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.
- 3.9 In addition, officers must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 (as amended) enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.
- 3.10 Care needs to be taken in the use of social media, such as Twitter, Facebook or Instagram, by officers and councillors, where it relates to decision making functions (see Section 5 on predetermination and bias). The Local Government Ethical Standards Report 2019 also addresses issues related to social media use.

## **4. REGISTRATION AND DISCLOSURE OF INTERESTS**

### **Pecuniary Interests**

- 4.1 Decision makers must make known any pecuniary interests – that is any business or wider financial interests – and other personal interests their code requires them to disclose.
- 4.2 Councillors must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must also be registered with the Monitoring Officer within 28 days of the Councillor becoming aware of them.
- 4.3 Each Council's Code of Conduct should establish what interests need to be disclosed. The Council's Monitoring Officer should maintain a register of these disclosable interests, which should be made available to the public. Councillors should also disclose any interest orally at a committee meeting if it relates to an item under discussion.
- 4.4 Chapter 7 of the Localism Act 2011 (as amended) places explicit requirements on councillors to register and disclose their pecuniary interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.11 It is a criminal offence to:
- Fail to register a disclosable pecuniary interest within 28 days of election or co-option.
  - Give false or misleading information on registration.
  - Participate in discussion or vote in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest.

### **Personal Interests**

- 4.5 The Localism Act also includes the need to register and disclose personal interests with other councillors, officers, and the public.
- 4.6 A councillor with a disclosable pecuniary interest relating to an item under discussion must withdraw from the committee (or other decision forum) and

not participate in discussions and debate, nor vote. This applies to all planning decisions and not just on individual planning applications. For example, a development plan document might cover sites or property where a councillor has an interest in the land. Officers involved in making recommendations and decisions should adopt the same approach, and seek advice from the Authority's Monitoring Officer.

- 4.7 If a councillor has a non-pecuniary personal interest, including being a member of an outside body, they should disclose that interest, but then may still speak and vote on that particular item. However, the Local Government Ethical Standards Report (2019) highlights the potential for conflicts and potential need to withdraw from committee in relation to non-pecuniary interests as well.

### **Dispensation and Handling Relevant Interests**

- 4.8 In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business. A dispensation may be granted for any reason, but the Act specifies a number of scenarios where this might apply.
- 4.9 This includes the number of councillors having an interest being so great that the meeting cannot proceed, with the political balance of the meeting being substantially affected.
- 4.10 It is always best to identify a potential interest in a planning decision early on and raise this with the Monitoring Officer as soon as possible. Advice should always be sought from the Council's Monitoring Officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.
- 4.11 For comprehensive guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013.
- 4.12 The provisions of the Localism Act 2011 (as amended) seek to separate interests arising from the personal and private interests of the councillor from those arising from the Councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the Councillor's involvement would be appropriate or not.

## **5. PREDISPOSITION, PREDETERMINATION OR BIAS**

### **Predetermination**

- 5.1 Members of a Planning Committee, Local Plan Steering Group or full Council (when the Local Plan is being considered) need to avoid any appearance of bias or having 'predetermined' views when making a decision on a planning application or policy.
- 5.2 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a 'closed mind' approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.

## **Predisposition**

- 5.3 Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.
- 5.4 A councillor 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 councillor was biased. For example, a councillor who says or 'tweets' from their Twitter account: 'Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee' will be perceived very differently from a councillor who states: 'Many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area'.

## **Impartiality and Avoiding Bias**

- 5.5 Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer.
- 5.6 If a decision maker has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the Planning Committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).
- 5.7 Local planning authorities will usually have a Cabinet or Executive Member responsible for development and planning (sometimes known as the portfolio holder). PAS advise that the leader and portfolio holder of a local authority, who play an important role driving planning policies and proposals, should normally exclude themselves from decision making committees. This is to avoid the perception of a conflict of interests and predisposition.
- 5.8 In smaller councils it may be necessary for a portfolio holder to be on a Planning Committee. PAS suggest that in these situations they will need to be extremely careful and will need to withdraw when the Committee is considering the Council's own schemes or other applications that they have been seen to support previously.

## **6. DEVELOPMENT PROPOSALS**

- 6.1 Planning applications or proposals for changes to a Local Plan submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local guidance should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration;
- a system should be devised to identify and manage such proposals and ensure probity in decision making; and
- the Council's Monitoring Officer should be informed of such proposals.

6.2 A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should also not seek to improperly influence the decision.

6.3 Proposals for a Council's own development should be treated with the same transparency and impartiality as those of private developers.

## **7. LOBBY OF AND BY COUNCILLORS**

### **Reporting on Local Concerns**

7.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the Planning Committee.

7.2 As the Nolan Committee's 1997 report states: 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves'.

7.3 Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.

### **Expressing Opinions**

7.4 The common law permits predisposition. However it remains good practice that, when being lobbied, councillors (members of the Planning Committee in particular) should try to take care expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal.

7.5 In such situations, a councillor could restrict themselves to giving advice about the process and what can and cannot be taken into account. Councillors can raise issues which have been raised by their constituents with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after they have heard all the relevant arguments, and have taken into account all relevant material and planning considerations at committee.



## **Conduct at Committee**

- 7.6 If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision making committee, they would be well advised to withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the Committee may have been influenced by their continuing presence. This should be set out in the Authority's Code of Conduct for planning matters.
- 7.7 It is very difficult to convey every nuance of these situations and get the balance right between the duty to be an active local representative, and the need to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor. Again, where there are concerns, advice should immediately be sought from the Local Authority's Monitoring Officer.

## **Local Codes**

- 7.8 A local code on planning should also address the following more specific issues about lobbying:
- planning decisions cannot be made on a party political basis in response to lobbying – the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration;
  - Planning Committee or Local Plan Steering Group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors; and
  - councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- 7.9 Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the Planning Committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern. As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

## **Gifts and Hospitality**

- 7.10 Councillors and officers should be cautious about accepting gifts and hospitality in general and especially where offered by lobbyists. It is not enough to register such gifts. Any councillor or officer receiving offers over an agreed value should let the Council's Monitoring Officer know, in writing, and seek advice as to whether they should be accepted or declined. Councillors and officers involved in planning decisions should not accept over-frequent or over-generous hospitality, especially where from the same organisation. They should always ensure that acceptance of such hospitality does not constitute a conflict of interest. Guidance on these issues should be included in the local

Code of Conduct, and the Local Government Ethical Standards Report suggests adherence to consideration be given to the purpose of the hospitality, proportionality and the avoidance of any conflict of interest.

## **8. DISCUSSIONS BEFORE A DECISION IS TAKEN**

### **Early Engagement and Pre-application Discussions**

- 8.1 Early councillor engagement is encouraged to ensure that proposals for sustainable development will lead to settlements that communities need. This guidance is intended to reinforce councillors' community engagement role whilst maintaining good standards of probity to minimise the risk of legal challenges. It is also important to encourage good decision-making that is transparent and upholds public confidence in the planning system. Ultimately, the public are a critical part of the planning process and the role of councillors provides democratic legitimacy for decisions.
- 8.2 Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

### **Avoiding Predetermination**

- 8.3 Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. The Localism Act 2011 (as amended) acknowledges that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise along with an understanding of community views.
- 8.4 There is a difference between being predisposed to the planning policies set out in the NPPF or adopted development plan principles such as delivering housing, sustainable transport or good design and expressing views on this – and being predetermined in relation to a specific case.
- 8.5 Some local planning authorities have, or encourage, public planning forums to explore major pre-application proposals, with the developer outlining their ideas and inviting speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although such discussions still need to avoid predetermination.
- 8.6 Councillor involvement can help identify issues early on, help councillors lead on community issues, and help to make sure that issues do not come to light for the first time at committee. PAS recommends a 'no shocks' at committee approach.

### **Meetings and Discussions Before a Decision**

- 8.7 The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless,

in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

8.8 Discussions before a decision is taken should ensure:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- Consistent advice is given by officers based upon the Development Plan and material planning considerations.
- That councillors avoid giving separate advice on the Development Plan or other material planning considerations, as they may not be aware of all the issues at an early stage. Councillors should not become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the Authority's position is co-ordinated.
- A commitment is made that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

8.9 Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.

8.10 Councillors also talk regularly to constituents to gauge their views on matters of local concern – which can include planning applications. The Nolan Committee acknowledged that keeping a register of these conversations would be impractical and unnecessary; however, local planning authorities should think about when discussions should be registered and notes written.

### **Other Approaches to Early Engagement**

8.11 Local planning authorities have other mechanisms to involve councillors in preapplication discussions including:

- committee information reports by officers;
- discussions to enable councillors to raise issues, identify items of interest and seek further information;
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken); and
- ward councillor briefing by officers on preapplication discussions.

8.12 Similar arrangements can also be used when local planning authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

## **9. OFFICER REPORTS**

- 9.1 Officer reports are a critical part of the decision-making process. They can also be difficult to write, as officers have to grapple with complex and technical information such as viability and daylight and sunlight analysis along with matters such as any equalities impacts of the proposed development. Conclusions can be finely balanced, having exercised planning judgement as to the merits of a scheme.
- 9.2 Sometimes, the Local Planning Authority will engage external consultants to interrogate the Applicant's material on specialist areas of expertise, and advise the officer accordingly. The presentation of this information in the report is particularly important – along with the availability of any background papers. Whilst the Courts are generally reluctant to interfere in the exercise of planning judgement, officer reports can nonetheless be fertile ground for judicial review challenges. This is particularly so where there is a risk that the officer may have inadvertently misled the Committee, therefore tainting the resulting decision.
- 9.3 Careful reviews of draft reports, which may involve consultation with the Council's Legal Team, is always recommended. Similarly, appropriate interventions by the Legal Officer at the Committee meeting itself might be needed in order to correct any misconceptions on specific issues.
- 9.4 As a result of decisions made by the Courts and Ombudsman, officer reports on planning applications must have regard to the following:
- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
  - Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the NPPF, any local finance considerations, and any other material planning considerations.
  - Reports should have a written recommendation for a decision to be made.
  - Reports should contain, where relevant, technical appraisals which clearly justify the recommendation.
  - If the Report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but failure to do so may constitute maladministration or give rise to a Judicial Review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990.
  - Any oral updates or changes to the report should be recorded.

## **10. PUBLIC SPEAKING AT PLANNING COMMITTEES**

- 10.1 Whether to allow public speaking at a Planning Committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

- 10.2 Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.
- 10.3 In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the Local Planning Authority in writing.
- 10.4 New documents should not be circulated to the Committee as councillors may not be able to give proper consideration to the new information, and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. Late information might lead to a deferral. This should be made clear to those who intend to speak.
- 10.5 Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

## **11. DECISION WHICH DIFFER FROM A RECOMMENDATION**

- 11.1 The law requires that decisions should be taken in accordance with the Development Plan, unless material considerations (which specifically include the NPPF) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).
- 11.2 This applies to all planning decisions. Any reasons for refusal must be justified against the Development Plan and other material considerations.
- 11.3 The Courts have expressed the view that the Committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other non-material considerations which might cause local controversy, will rarely satisfy the relevant tests.
- 11.4 Planning committees can, and do, make decisions which are different from the officer recommendation. Sometimes this will relate to conditions attached to the permission or planning obligations secured through a legal agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended). S106 legal agreement, or undertaking, includes obligations entered into by the developer, landowner and other relevant parties to mitigate the impacts of a development proposal.
- 11.5 Sometimes the Committee's decision will change the outcome from an approval to a refusal, or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 11.6 Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:
  - If a councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.

- Recording the detailed reasons as part of the mover's motion.
  - Adjourning for a few minutes for those reasons to be discussed and then agreed by the Committee.
  - Where there is concern about the validity of reasons, considering deferring to another meeting to have the reasons tested and discussed.
- 11.7 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 planning obligations), a detailed minute of the Committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation, which should be set in the context of the Development Plan or the NPPF. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the Development Plan and the NPPF, and chances of a successful award of costs against the Local Authority, should one be made.
- 11.8 The decision is ultimately the Committee's; however, it is imperative that the decision is made with regard to relevant planning considerations.
- 11.9 All applications that are clearly contrary to the Development Plan must be advertised as such, and are known as 'departures' from the Development Plan. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the Development Plan must be clearly demonstrated.
- 11.10 The application may then have to be referred to the relevant Secretary of State, and/or the Mayor, depending upon the type and scale of the development proposed (Section 77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.
- 11.11 The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission.
- 11.12 Whilst a committee giving reasons for refusing an application might be common, it may also be sensible to give reasons for resolving to grant permission, and having those accurately captured in minutes of the meeting. This may be particularly so where there is an overturn of an officer recommendation and/or where the application is particularly controversial due to planning policy protections and/or weight of objections. Where the development is EIA development, there is, in any event, a separate statutory requirement to give reasons for the grant of permission.
- 11.13 It should always be remembered that the public have a stake in the planning process and are entitled to understand how decisions are reached.

## **12. COMMITTEE SITE VISIT**

- 12.1 National standards and local codes also apply to site visits. Local planning

authorities should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial. Officers will have visited the site and assessed the scheme against policies and material considerations already;
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit;
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply; and
- a record should be kept of the reasons why a site visit is called.

12.2 A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers;
- the comments of the applicant and objectors cannot be expressed adequately in writing; and
- the proposal is particularly contentious.

12.3 Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

12.4 Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

### **13. REVIEWING PAST PLANNING DECISIONS AND THE OUTCOMES**

13.1 It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development, ideally on an annual or more frequent basis. This should improve the quality and consistency of decision making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

13.2 Reviews should include visits to a range of developments such as major and minor schemes, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

13.3 Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

## 14. COMPLAINT AND RECORD KEEPING

- 14.1 All local planning authorities should have a complaints procedure which may apply to all of its activities. Local planning authorities should also consider how planning related complaints will be handled, in relation to the Code of Conduct adopted by the Authority.
- 14.2 So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

### LIST OF REFERENCES

The Localism Act 2011

<http://www.legislation.gov.uk/ukpga/2011/20/contents>

National Planning Policy Framework

Department for Communities and Local Government, March 2019

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Committee on Standards in Public Life (1995) First Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1

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Committee on Standards in Public Life (1997) Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336864/3rdInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336864/3rdInquiryReport.pdf)

Royal Town and Planning Institute Code of Professional Conduct

<https://www.rtpi.org.uk/press-releases/2020/january/code-of-professional-conduct/>

Royal Town and Planning Institute Guidance on Probity for Professional Planners

<https://www.rtpi.org.uk/probity>

Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013

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# Anti-Fraud and Corruption Framework

## Contents

- Anti-Fraud and Corruption Strategy
- Fraud Response Plan
- Anti-Bribery Policy
- Anti-Money Laundering Policy
- Whistleblowing Policy

# Anti-Fraud and Corruption Strategy



## 1.0 Introduction

Rother District Council aims to provide quality services that are accessible to all sections of the community and delivered fairly and efficiently. The Council is firmly opposed to fraud and corruption of any kind and will take prompt and decisive action to deal equally with perpetrators from inside and outside the Council. The community and our customers have a right to expect the highest possible standards of honesty and integrity from the Council, its officers and the individual Members elected to represent them, and that the actions of those persons are free of fraud and corruption. Equally, the Council expects all individuals and organisations with which it conducts business to act with integrity and without thought or actions involving fraud and corruption.

Like all local authorities, Rother District Council operates within a statutory framework which governs the behaviour of elected Members and officers, in addition to which, it has a well-established framework of guidance on best practice which is laid down in its Financial Procedure Rules, Procurement Procedure Rules, Delegations to Officers, staff Conditions of Service and the Members' Code of Conduct. The reference to 'Members' within this document includes both Members and co-opted Members (if any).

The aim of this document is that it should be a policy statement of the Council's strategy for combating and dealing with fraud and corruption both within and against the authority. As such, it provides an overview of the key principles to be observed by Members and officers. It does not seek, however, to detail the specific requirements which are contained in the Constitution, Members' Code of Conduct and the Conditions of Service, and thus avoids the potential for conflicting advice from different documents. Additionally, nothing in this document shall preclude the Monitoring Officer and Section 151 Officer from fulfilling their statutory responsibilities.

## 2.0 Anti-Fraud and Corruption Framework

To demonstrate its commitment to the prevention and detection of fraud the Council has devised an Anti-Fraud and Corruption Framework.

The Anti-Fraud and Corruption Framework is made up five separate but related documents, and this strategy is the highest level document within the Framework. The other documents are the Fraud Response Plan, the Anti-Bribery Policy, the Anti-Money Laundering Policy, and the Whistleblowing Policy.

Each document identifies whether it should be linked to or considered in conjunction with any other corporate document. There is a separate strategy for dealing with Benefit Fraud, therefore frauds by benefit claimants are not covered by this strategy.

The Anti-Fraud and Corruption Framework is designed to:

- encourage fraud deterrence and prevention;
- raise awareness of fraud, bribery and corruption and promote their detection; and
- provide guidance on how concerns should be reported and how they will be dealt with.

### **3.0 Culture**

The Council's elected Members (Councillors) and officers (staff) play an important role in creating and maintaining a culture of openness, honesty and opposition to fraud and corruption. The Council expects Members and officers at all levels to lead by example in ensuring adherence to legal requirements, rules, procedures and practices and to carry out their duties in accordance with the seven principles of public life (i.e. selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

Councillors, officers and members of the public are all important elements in the stance against fraud and corruption and are positively encouraged to raise any concerns they may have on these issues which impact on Council activities. The Council will ensure that any allegations received in any way, including by anonymous letters or telephone calls, will be taken seriously and investigated in an appropriate manner.

The Council will deal firmly with those who defraud or attempt to defraud the Council or who are corrupt or where there has been financial malpractice.

When fraud or corruption has occurred due to a breakdown in the Council's systems or procedures, it is the responsibility of management to ensure that appropriate improvements in systems of control are implemented to prevent a recurrence. This should be done in consultation with the Audit Manager who will review the control procedures to ensure that the opportunity to repeat the fraud is minimised.

### **4.0 Prevention**

#### **4.1 The Role of the Section 151 Officer**

The Chief Finance Officer (Section 151 Officer) is responsible for the proper administration of the authority's financial affairs, as defined by Section 151 of the Local Government Act 1972. The Council's Financial Procedure Rules state that the Chief Finance Officer is responsible for:

- the proper administration of the authority's financial affairs;
- setting and monitoring compliance with financial management standards;
- advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;
- providing financial information;
- preparing the revenue budget and capital programme; and
- Treasury Management.

Section 114 of the Local Government Finance Act 1988 requires the Chief Finance Officer to report to the full Council, Cabinet and the External Auditor if the authority or one of its officers:

- has made, or is about to make, a decision which involves incurring unlawful expenditure;
- has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the authority; and
- is about to make an unlawful entry in the authority's accounts.

#### 4.2 The Role of the Monitoring Officer

The Deputy Chief Executive is the 'Monitoring Officer' in accordance with section 5 (1) of the Local Government and Housing Act 1989. It is the responsibility of the designated Monitoring Officer 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. The role also contributes to the corporate governance of the Council, in particular, through the provision of professional legal and ethical advice.

The Monitoring Officer shall, under section 5 (2) of the Local Government and Housing Act 1989, make a report to the Cabinet and Council where it appears to them that the Cabinet or Council and/or officers appointed by them:

- has made or is about to make a decision which contravenes any enactment, or rule of law; and
- has made or is about to make a decision that would give rise to maladministration or injustice as is mentioned in Part III of the Local Government Act 1974.

#### 4.3 The Role of Management

The Chief Executive, Deputy Chief Executive, Director – Place and Climate Change, Chief Finance Officer, Heads of Service and other service managers are responsible for maintaining internal control systems and ensuring that the Council's resources and activities are properly applied in the manner intended. Management, with the assistance of Internal Audit, are responsible for identifying the risks to which systems and procedures are exposed and developing and maintaining effective controls to prevent and detect fraud. They must ensure that controls are complied with, and relevant training is provided for all employees.

Management is also responsible for the communication and implementation of the Anti-Fraud and Corruption Framework and ensuring that their employees are aware of staff policies and procedures, the Council's Constitution, Financial Procedure Rules and that the requirements of each are being met in their everyday business activities. In addition, managers must make their employees aware of the requirements of the Council's Conditions of Service through the induction process.

Management should create an environment in which their staff feel able to approach them with any concerns they may have about suspected irregularities. Where they are unsure of the procedures, they must refer to the

information included within the Fraud Response Plan and Whistleblowing Policy.

#### 4.4 The Role of Employees

Individual officers are responsible for their own conduct and for contributing towards the safeguarding of corporate standards. Each employee is governed in their work by the Council's Constitution, Financial Procedure Rules, Conditions of Service and other policies on conduct. These are available on the Council's intranet (Teams); employees must be aware of and abide by these policies. Employees are responsible for ensuring that they follow the instructions as detailed within policies and procedures, or provided by management, particularly in relation to income and expenditure, and the security of assets.

A key preventative measure in dealing with fraud and corruption is to use effective checks at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts. The Council has a formal recruitment procedure, which contains appropriate safeguards on matters such as written references and verifying qualifications held. A standard criminal background check in the form of a self-declaration is also undertaken and Disclosure and Barring Service (DBS) checks made where appropriate. Where contractors provide a service and employ their own staff, confirmation should be required that the above procedures are part of the contractor's recruitment process and have been undertaken.

Employees are expected to be aware of the possibility that fraud, corruption and theft may exist in the workplace, and they are required to make themselves familiar with and comply with the Council's Anti-Fraud and Corruption Framework. Employees must be aware of procedures to be followed if they suspect that fraudulent or corrupt acts have been committed.

#### 4.5 The Role of Elected Members

Elected Members are each responsible for their own conduct and contributing towards the safeguarding of corporate standards. As elected representatives, all Members have a duty to protect the Council and public money from any acts of fraud, bribery and corruption. This is done through a framework which includes the Anti-Fraud and Corruption Strategy, compliance with the Members' Code of Conduct and compliance with the Council's Constitution. Conduct and ethical matters are specifically brought to the attention of Members during induction and include the declaration and registration of interests. The Monitoring Officer advises Members of new legislative or procedural requirements.

#### 4.6 Conflicts of Interest

Both Members and officers must ensure that they avoid situations where there is potential for a conflict of interest (e.g. when undertaking external tendering of services, internal tendering, planning and land issues). Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

Declaration of interests should be recorded in accordance with the Code of Conduct and Constitution.

#### 4.7 Internal Control Systems

Management is required to establish and maintain systems of internal control which should prevent and detect fraud and corruption. However, internal controls are only effective if they are properly executed, and it is management's responsibility to ensure that the controls are properly applied so that the risk of fraud is minimised. Controls should therefore be regularly reviewed to ensure they remain appropriate and effective. The Internal and External Auditors assist management in this task by independently monitoring the existence, effectiveness and appropriateness of these controls.

The Council also expects its partners to have adequate controls in place to minimise fraud.

#### 4.8 Internal Audit

Internal Audit plays a vital preventative role in trying to ensure that systems and procedures are in place to prevent and deter fraud and corruption. Under the Accounts and Audit Regulations 2015 and its own professional standards, it has a duty to provide an independent and objective opinion on the Council's control environment. As part of this duty of care, Internal Audit will ordinarily investigate all cases of suspected financial irregularity, fraud or corruption (except for benefit fraud) in accordance with established procedures and relevant regulations. However, the responsibility for investigating may lie with one of our local authority partners in certain circumstances – see *4.10 Joint Working*.

#### 4.9 External Audit

External Audit is an essential safeguard of the stewardship of public money. It is not the External Auditor's function to prevent fraud and irregularities, but the integrity of public funds is at all times a matter of general concern. External Auditors are always alert to the possibility of fraud and irregularity and will act without undue delay if grounds for suspicion come to their notice. The External Auditor has a responsibility to review the Council's arrangements for preventing and detecting fraud and irregularities, and arrangements designed to limit the opportunity for corruption.

#### 4.10 Joint Working

Where fraud or corruption is suspected in an area of joint working with other local authorities (including shared services and joint projects) it will be the responsibility of the lead authority to investigate. Any such concerns regarding Rother District Council led activities should therefore be reported to the relevant Head of Service/service manager and/or the Audit Manager in the first instance to agree the way forward. All other cases should be reported to, and investigated by, the lead authority, and Rother District Council informed of the outcome (where appropriate). The Audit Manager may also act as go-between if the person raising the concern does not wish to contact the partner authority direct.

#### 4.11 Working with Others

Arrangements are in place, and continue to develop, to encourage the exchange of information with other organisations in respect of fraudulent and corrupt activities. These organisations include:

- Police
- Department for Work and Pensions
- HM Revenue and Customs
- Other outside agencies
- Suppliers and contractors

Where appropriate, the Council will also participate in data matching exercises and will share information using legislation or legal gateways available to us and our partners. For example, the Cabinet Office uses a Code of Data Matching Practice for its National Fraud Initiative (NFI), which is recognised by the Information Commissioner as complying with Data Protection legislation.

The Council will make full use of its statutory powers to obtain information and will utilise the services of the National Anti-Fraud Network (NAFN) to support such information gathering.

### 5.0 Detection and Investigation

In preventing and deterring fraud, the Council is committed to maintaining a culture which will not tolerate fraud, bribery and corruption and will deal swiftly and firmly with any persons who defraud or attempt to defraud the Council, or who are corrupt. Disciplinary action and prosecution will be invoked whenever fraud or corruption is found. Additional information detailing the raising, investigation and resolution of concerns can be found within the Fraud Response Plan and the Whistleblowing Policy.

All elected Members and employees have a vital role in the detection of fraud and corruption and must be vigilant against the possibility of fraudulent and corrupt activity. A confidential whistleblowing procedure has therefore been established to encourage anyone who wishes to raise concerns about such behaviour to do so with confidence.

Internal Audit also assists management in fulfilling their responsibility for the detection of fraud and corruption and may detect fraud or corruption as a result of work undertaken.

Any investigation undertaken by Internal Audit, or other appropriate officers, must comply with codes of practice and other regulated powers. All relevant interviews and gathering of evidence must be conducted in accordance with the Police and Criminal Evidence Act 1984 (PACE), the Regulation of Investigatory Powers Act 2000 (RIPA), the Human Rights Act 1998, the Criminal Procedure and Investigations Act 1996 and the Investigatory Powers Act 2016 to ensure that all evidence remains admissible in a court of law. The objective of any investigation will be to establish whether there is evidence that fraud or malpractice has occurred and to collate sufficient, relevant and reliable evidence to support a complaint to the Police and allow disciplinary action and/or legal action to take place.

Where financial impropriety is discovered, the Council's presumption is that the Police will be called in. The Crown Prosecution Service determines whether a prosecution will be pursued. The final decision whether to refer a case to the Police rests with the Chief Executive in consultation with Human Resources. Referral to the Police will not prohibit action under the Council's Disciplinary Procedures.

External Audit also has powers to independently investigate fraud and corruption, and the Council can use their services for this purpose too. Any cases of fraud or corruption over £10,000 must be reported to External Audit.

Investigations should not be undertaken without appropriate knowledge of relevant legislation, and the Audit Manager should be notified of all suspected occurrences, as detailed within the Fraud Response Plan.

## **6.0 Training and Awareness**

The Council recognises that the continuing success of its Anti-Fraud and Corruption Framework is largely dependent on the awareness of staff and Members throughout the Council. Managers must ensure that all staff receive training in fraud awareness and are made aware of the Anti-Fraud and Corruption Framework. The level and extent of this will depend on the work that individual employees carry out. When employees are an integral part of the control framework, it will be necessary for them to be regularly reminded of fraud issues. In other cases, it may be sufficient to include information in an induction pack or to refer them to key policies and procedures on the Council's intranet (Teams). The Audit Manager should be consulted as necessary to provide advice on this and refresher training will be provided as and when required. The Council is also committed to providing suitable training, where necessary, for staff that are involved in investigating fraud and corruption.

Employees, Councillors and members of the public also need to be kept informed about how they can notify the Council if they think something is wrong. The Whistleblowing Policy details the methods available for raising concerns.

## **7.0 Conclusion and Review**

This Strategy highlights the policies and procedures which the Council has put in place to assist in the prevention, detection and investigation of fraud and corruption.

Having established a strategy for dealing with fraud and corruption, the Council will ensure that these procedures continue to contribute to a strong control environment and good corporate governance within the authority, and that the arrangements remain appropriate and adequate for the prevention and detection of fraud and corruption.

Regular review of the Anti-Fraud and Corruption Framework will be undertaken by the Audit Manager so that it remains current and effective.

### **Version Control**

Version 5 – November 2022



# Fraud Response Plan



## 1.0 Introduction

Rother District Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It promotes a culture of honesty and will not tolerate fraud and corruption in the administration of its responsibilities.

This Fraud Response Plan forms part of the Council's Anti-Fraud and Corruption Framework and details how suspected instances of fraud and corruption can be reported, and how investigations into suspicions will be conducted and concluded.

## 2.0 Objectives and Scope

The purpose of this Fraud Response Plan is to reinforce the Council's approach to fraud by setting out the ways in which concerns about suspected fraud or corruption can be raised and to establish a protocol for investigating and responding to any such events. The reference to 'Members' within this document includes both Members and co-opted Members (if any).

The objectives of the Fraud Response Plan are to ensure that timely and effective action can be taken to:

- prevent further losses of funds or other assets where fraud has occurred and to maximise recovery of losses;
- minimise the effect of a fraud or corrupt act by taking appropriate and timely action at the earliest opportunity;
- ensure there is a clear understanding over the process and responsibilities for investigating suspected fraud or corruption;
- minimise the risk of inappropriate action or disclosure taking place which would compromise an investigation;
- identify the perpetrators and maximise the success of any disciplinary/legal action taken;
- ensure there is substance and evidence to support any allegation against an employee before that employee is subject to disciplinary action;
- minimise any adverse publicity for the Council, suffered as a result of fraud; and
- identify any lessons which can develop future fraud management and prevention; minimise any adverse impacts on the business of the Council.

This document applies to all Members, employees and volunteers and should be applicable to third parties such as agency staff, contractors, suppliers and partners (including shared service providers) as appropriate.

### **3.0 Definition of Fraud and Corruption**

Fraud is defined as ‘the intentional distortion of financial statements or other records by persons internal or external to the authority, which is carried out to conceal the misappropriation of assets or otherwise for gain, or to mislead or misrepresent’.

Corruption is defined as ‘the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person; or the failure to disclose an interest in order to enjoy financial or other pecuniary gain’.

### **4.0 Types of Fraud and Corruption**

In addition to the obvious frauds involving theft of assets or the misappropriation of funds, the following are examples of the types of activity that may also be regarded as fraud or corruption:

- Manipulation or misreporting of financial information.
- Misuse of the Council’s assets, including cash, stock and equipment.
- Deception (e.g. misrepresentation of qualifications to obtain employment).
- Offering or accepting bribes or inducements from third parties.
- Conspiracy to breach laws or regulations.
- Fraudulent completion of official documents (e.g. VAT receipts).
- Time recording fraud.
- Theft of intellectual property (e.g. unauthorised use of a brand name/logo, theft of customer data or product design).
- False mileage/expenses claims.
- Influencing procurement/planning/licensing decisions for personal gain (or for the benefit of family or friends).

Note - This list is not exhaustive.

### **5.0 What should an employee or Member do if they suspect fraud or corruption?**

It is the responsibility of all staff and Members to report fraud whenever they come across it within their work or in connection with their duties. Ignoring such acts is not acceptable. A confidential reporting procedure has therefore been established to encourage and enable staff and Members to raise serious concerns internally rather than overlooking the problem or informing the media or other external bodies. The reporting process is explained in more detail in the Council’s [Whistleblowing Policy](#).

Employees should initially raise any suspicions of fraud or corruption with their line manager or Head of Service. Concerns may be raised verbally or in writing. The officer receiving the allegation is then required to inform the Audit Manager and the Section 151 Officer and/or Monitoring Officer as appropriate, and agree any immediate action required to minimise any serious danger or risk.

Note - Any suspicions of fraud or corruption in areas of joint working (including shared services and joint projects) which are not managed by Rother District Council should be raised with the relevant lead authority.

Employees who suspect their line manager or Head of Service may be involved or do not think it appropriate to discuss the concern with them should contact one of the Designated Officers listed below. Members should approach one of the Designated Officers directly.

The nature and seriousness of the incident should be considered before deciding which of the Designated Officers to contact.

- Lorna Ford, Chief Executive
- Duncan Ellis, Interim Deputy Chief Executive (Section 151 Officer)
- Ben Hook, Director – Place and Climate Change
- Joe Powell, Head of Housing & Regeneration (Monitoring Officer)
- Aleksandra Janowicz, Interim Chief Finance Officer
- Gary Angell, Audit Manager

Alternatively, concerns may be reported to the Audit Manager direct by either completing an online [Whistleblowing Form](#), sending an email to [audit@rother.gov.uk](mailto:audit@rother.gov.uk) or by ringing the Council's confidential Fraud Hotline on **01424 787799**. These reports may be submitted anonymously if you prefer not to be identified.

You should never confront the suspected individual or act in a manner which might draw their attention to your suspicions. At the earliest opportunity you should clearly record all the activities you have witnessed and information you have received or are aware of. It is important to record as much information as possible to inform any subsequent management assessment or investigation, including dates, times and sequences of events.

The Council will support anyone who raises a genuine concern in good faith, even if it later turns out to be mistaken. While all suspected incidents of fraud and corruption should be reported, employees should note that disciplinary action will be taken if frivolous or malicious allegations are found to have been made.

## **6.0 What should managers do when suspected fraud or corruption is reported to them by a member of staff?**

- Listen to the concerns of your staff and treat every report you receive seriously and sensitively.
- Make sure that all staff concerned are given a fair hearing. You should reassure your staff that they will not suffer because they have told you of their suspicions.
- Get as much information as possible from the member of staff, write any information down and agree the content with the individual raising the concern. Do not interfere with any evidence and make sure it is kept in a safe place.

- Differentiate between a performance issue, non-compliance and a fraud or corrupt act. If either of the former two, then consult the Conditions of Service or Human Resources. If there is a possibility of fraud or corruption, then:
  - Do not investigate the matter yourself (or access the suspect's computer) in an attempt to determine the facts as this could prejudice any criminal investigation.
  - Report the matter immediately to the Audit Manager.
  - If unsure, please contact the Audit Manager for advice or a confidential discussion.

Following discussion with the Audit Manager, a decision will be made regarding the way forward. Managers are the responsible officers, although Internal Audit must be notified in all cases of suspected fraud or irregularity. In certain cases, Internal Audit will assume full responsibility for the fraud response. If the complaint involves a Member, then the Monitoring Officer should also be notified.

## **7.0 What should auditors do if they suspect fraud or corruption?**

If in the course of their duties a member of the Internal Audit Team suspects fraud or corruption, they should cease work on the assignment immediately and report it to the Audit Manager. If the Audit Manager is unavailable, then the Deputy Chief Executive should be informed.

## **8.0 What should a member of the public do if they suspect fraud or corruption?**

Members of the public who suspect fraud or corruption are encouraged to contact the Council.

If the issue relates to a Council employee or an individual working on behalf of the Council (including agency workers and contractors), the matter should be reported to the Audit Manager by either completing the online [Whistleblowing Form](#), sending an email to [audit@rother.gov.uk](mailto:audit@rother.gov.uk) or by ringing the Council's confidential Fraud Hotline on **01424 787799**. Complaints about the conduct of Members should be reported to the Monitoring Officer in the first instance.

If **benefit fraud** is suspected, we encourage you to report the matter either by completing the online [Report a fraud form](#) or by ringing the Benefit Fraud Hotline on **01424 787737**.

## **9.0 Investigating Allegations of Irregularities**

The objective of the investigation is to:

- establish whether there is evidence that a fraud has occurred;
- collect sufficient evidence to support any complaint to the Police; and
- provide sufficient evidence for disciplinary or legal action.

When a suspected fraud or corrupt act is reported, the relevant senior officer will initially discuss the matter with the Audit Manager. If the evidence indicates

potential wrongdoing, the Audit Manager will then undertake a detailed investigation keeping both Human Resources and the Chief Executive informed about progress as it proceeds.

All investigations will be conducted in accordance with the relevant Council policies and procedures and where appropriate criminal legislation.

All interviews with staff will be conducted in line with the Council's disciplinary procedures. Should there be a possibility that the investigation could lead to a criminal prosecution then all relevant interviews must be carried out by the Police or by an officer suitably trained in the Police and Criminal Evidence Act 1984 (PACE) to ensure that all evidence gathered remains admissible in a court of law.

Due consideration must also be given the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA), the Human Rights Act 1998 and the Investigatory Powers Act 2016 when undertaking any investigation.

Any conversations you have with, or information that you provide to the Audit Manager or other investigating officers will remain confidential. You should remember, however, that you may be required to provide a signed written statement should the case result in a criminal prosecution.

## **10.0 Preservation of Evidence**

When the initial enquiry has established that further investigation is required, it is essential that all available evidence relating to the fraud be preserved without alerting the alleged perpetrator to your suspicions.

Original documentation is the best form of evidence and original documents should be obtained and retained if possible. They should not be marked in any way and handled as little as possible. Photocopies should be marked, dated and certified as copies. When evidence is held on a computer, the computer should be secured, and the ICT Manager and the Audit Manager consulted about the most appropriate way of retrieving the data in accordance with the rules of court evidence. Under no circumstances should the computer be viewed by anyone who is not appropriately trained. (Note - Even switching it on may corrupt or destroy important evidence.) Other forms of evidence may include cash or stock, which should be counted and agreed, in the presence of the responsible officer. If the person responsible for assets is not available, two people should record the amount held and sign a statement confirming it.

Whenever a person is suspended from work for suspected fraud or corruption, they should be asked to remove all personal belongings from their desk/cupboard and be informed that the desk/cupboard may be examined. Please note also:

- (1) the suspended person must be supervised when removing their personal belongings to prevent the removal of any evidence;
- (2) any door entry card must also be surrendered and/or access revoked;
- (3) access to files and/or computer records should be suspended immediately (and any files or ICT/mobile phone equipment which contain such data recovered); and

- (4) Internet and/or telephone links should be terminated immediately, if not before the suspension is actioned.

## **11.0 Actions Following the Completion of an Investigation**

Once the investigation has been completed, a written report will be issued to senior management stating the facts discovered by the investigation. A recommendation will also be made as to the appropriate course of action to be followed. This can include a disciplinary hearing, criminal proceedings or no further action.

If the fraud was significant (e.g. high value, senior officer, Member, high reputational impact) the findings will also be discussed in detail with the relevant Head of Service/service manager to enable sufficient action to be taken.

The decision whether to take disciplinary action/criminal proceedings rests with the Chief Executive after receiving advice from Human Resources.

## **12.0 Follow Up**

Following all investigations into suspected irregularities, work will be undertaken with the relevant service area(s) in order to address any weaknesses in procedures identified during the investigation. It is the responsibility of management at all levels to ensure that effective systems of internal control are established and operating to minimise the potential for fraud and corruption. Where fraud has been identified, management, in consultation with the Audit Manager, should review the control procedures to ensure that the opportunity to repeat the fraud is minimised.

Where appropriate, the Council will liaise with the Police if sufficient evidence exists for prosecution. This approach may be adopted in conjunction with the Council's own disciplinary procedures.

Whenever fraud has been proved, the Council will make every effort to recover the losses. The method used will vary depending on the type of loss and the regulations and powers available. All means of recovery, including recovery under social security legislation, attachment of earnings, civil court proceedings and criminal court compensation will be used as appropriate to the offence.

## **13.0 Publicity**

The Senior Leadership Team, with the agreement of the Leader of the Council, will deal with the Press and publicity in all matters regarding fraud and corruption. Where appropriate the details of all successful prosecutions for fraud may be released to the media through the Communications Team. Staff and Managers must not directly disclose to the Press the details of any cases suspected or under investigation. Disclosure of details to the media without express authority would be regarded as a disciplinary matter. The aim is to publicise the Council's intolerance of fraud or corruption both within the Council and by users of its services. It also serves to publicise our successes against those who would perpetrate such fraud or corruption against the Council.

### **Version Control**

Version 5.3 – August 2023

# Anti-Bribery Policy



## 1.0 Policy Statement

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence, and detection of bribery. We have zero-tolerance of bribery. We aim to maintain anti-bribery compliance as “business as usual”, rather than a one-off exercise.

## 2.0 Objective of this policy

This policy provides a coherent and consistent framework to enable the Council’s employees and Members to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees and Members to identify and effectively report a potential breach.

We require that all personnel, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the Council’s resources for which they are responsible; and
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates.

## 3.0 Scope of this policy

This policy applies to all Council activities. For partners (including shared service providers), joint ventures, contractors, and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

The responsibility to control the risk of bribery occurring resides at all levels of the Council.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, agents, Members, volunteers and consultants.

## 4.0 This Council’s commitment to action

This Council commits to:

- Setting out a clear anti-bribery policy and keeping it up-to-date.
- Making all employees and Members aware of their responsibilities to adhere strictly to this policy at all times.
- Making training available to permit recognition and avoidance of bribery.
- Encouraging employees, Members and others to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
- Rigorously investigating instances of alleged bribery and assisting Police and other appropriate authorities in any resultant prosecution.
- Taking firm and vigorous action against any individual(s) involved in bribery.
- Include appropriate clauses in contracts to prevent bribery.

## 5.0 The Bribery Act 2010

### 5.1 Definition of Bribery

Broadly, the Act defines bribery as giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.

Bribery does not have to involve cash, or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

### 5.2 Offences

There are four key offences under the Act:

- bribery of another person (section 1)
  - accepting a bribe (section 2)
  - bribing a foreign official (section 6)
  - failure by a commercial organisation to prevent bribery - a corporate offence (section 7)
- Note - It is still an offence for someone to offer a bribe even if it is not accepted.

A *commercial organisation* will have a defence to the corporate offence of failure to prevent bribery if it can show that it had in place *adequate procedures* designed to prevent bribery by or of persons associated with the organisation.

### 5.3 Is the Council a "commercial organisation"?

Yes. The guidance states that a "commercial organisation" is any body formed in the United Kingdom and "...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made."



#### 5.4 What are “adequate procedures”?

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine what procedures to adopt based on the six principles set out below.

#### 5.5 Six principles for bribery prevention

- **Proportionate procedures** – An organisation’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.
- **Top level commitment** – The top-level management is committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.
- **Risk assessment** – The organisation assesses the nature and extent of its exposure to potential external or internal risks of bribery on its behalf by persons associated with it. This includes financial risks but also other risks such as reputational damage.
- **Due diligence** – The organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.
- **Communication (including training)** – The organisation ensures that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.
- **Monitoring and review** - The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

The Council is committed to proportional implementation of these principles.

#### 5.6 Penalties

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- On conviction in a Magistrates’ Court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both
- On conviction in a Crown Court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

Organisations are also liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

## **6.0 Bribery is not tolerated**

It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided in return;
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy; and
- engage in activity in breach of this policy.

## **7.0 Facilitation payments**

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

## **8.0 Gifts and hospitality**

This policy is not meant to change the requirements of our gifts and hospitality guidance, which can be found within the Conditions of Service. In summary, all gifts and hospitality offered to or received by officers should be reported to their line manager and recorded in a Register, regardless of whether they are accepted or not.

## **9.0 Public contracts and bribery offences**

Under the Public Contracts Regulations 2015, a Bribery Act conviction in respect of active bribery (section 1), passive bribery (section 2) or bribery of foreign public officials (section 6) gives rise to a mandatory exclusion from participation in public tenders. The offence of 'failure of commercial organisations to prevent bribery' (section 7) will not trigger mandatory exclusion but may give rise to grounds in support of a discretionary exclusion.

## **10.0. Staff responsibilities**

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy; and
- raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff who breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

## **11.0 Raising a concern**

The Council is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns.

If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

There are multiple channels to help you raise concerns. Please refer to the Council's [Whistleblowing Policy](#) and determine the most appropriate course of action. Preferably the disclosure will be made and resolved internally. However, where internal disclosure proves inappropriate, concerns can be raised via your trade union, professional organisation or regulatory body (e.g. External Auditor). Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).

In the event that an incident of bribery, corruption, or wrongdoing is reported, we will act as soon as possible to evaluate the situation. We have clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.

If you have any questions about these procedures, please contact Gary Angell, Audit Manager either by email ([gary.angell@rother.gov.uk](mailto:gary.angell@rother.gov.uk)) or by telephone (01424 787709).

### **Version Control**

Version 5 – November 2022

# Anti-Money Laundering Policy



## 1.0 Introduction

The Proceeds of Crime Act 2002 and the Terrorism Act 2000 place certain obligations on the Council and its employees regarding suspected money laundering.

Any employee could potentially be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it. Failure to report these suspicions is a criminal offence.

This policy has therefore been adopted in order to provide guidance and introduce safeguards to help staff identify and report instances where money laundering is suspected.

## 2.0 Objectives and Scope

The policy sets out the procedures which must be followed to enable employees to comply with their legal obligations.

The aim of this policy is to prevent criminal activity through money laundering by:

- raising awareness of the legal and regulatory requirements affecting both individuals and the Council as a whole; and
- helping employees to correctly respond to any concerns they may have about money laundering in the course of their dealings for the Council.

This policy applies to all employees, whether permanent or temporary.

## 3.0 What is Money Laundering?

### 3.1 Definition

Money laundering is generally understood to mean the process by which illegally acquired funds (i.e. from crime or terrorism) are moved through financial systems so that they appear to come from a legitimate source. However, the term also covers a range of activities, which do not necessarily need to involve money. *Legislation*

The main requirements of the UK anti-money laundering regime are set out in the:

- Proceeds of Crime Act 2002 (as amended by the Serious Organised Crime and Police Act 2005 and further amended by the Serious Crime Act 2015).

- Terrorism Act 2000 (as amended by the Anti-Terrorism, Crime and Security Act 2001 and the Terrorism Act 2006 and further amended by the Money Laundering Regulations 2007).
- Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (which supersede the Money Laundering Regulations 2007, 2012 and 2015).

Whilst local authorities are not subject to the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, guidance from the Chartered Institute of Public Finance & Accountancy (CIPFA) indicates that they should still comply with the underlying spirit of the legislation and regulations by taking all reasonable steps to minimise the likelihood of money laundering, including putting in place proper policies and procedures.

### 3.3 *Legislative Requirements*

The main requirements of the legislation are:

- To nominate a Money Laundering Reporting Officer (MLRO).
- Maintain client identification procedures in certain circumstances.
- Implement a procedure to enable the reporting of suspicions of money laundering.
- Maintain record keeping procedures.

### 3.4 *Offences*

Money laundering offences under the Proceeds of Crime Act 2002 include:

- concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327);
- entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328); and
- acquiring, using or possessing criminal property (section 329).

There are also two secondary offences:

- failure to disclose any of the three primary offences above; and
- “tipping off” whereby somebody informs a person or persons who are, or who are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation.

The Terrorism Act 2000 includes the money laundering offence of becoming concerned in an arrangement relating to the retention or control of property likely to be used for the purposes of terrorism or resulting from acts of terrorism.

### 3.5 *Penalties*

The consequences for staff committing an offence are potentially very serious. Money laundering offences may be tried at a Magistrates’ Court or in the Crown Court, depending on the severity of the suspected offence. Trials at the former can attract fines of up to £5,000, up to six months in prison or both. In a Crown

Court, fines are unlimited, and sentences from two to fourteen years may be imposed.

#### **4.0 The Money Laundering Reporting Officer (MLRO)**

The officer nominated to receive disclosures about money laundering activity within the Council is Duncan Ellis, the Interim Deputy Chief Executive (Section 151 Officer)

#### **5.0 How do I know when money laundering is taking place?**

It is not possible to give a definitive list of ways in which to identify money laundering or how to decide whether to make a report to the MLRO. The following are types of risk factors which may, either alone or cumulatively, suggest possible money laundering activity:

- Payment of a substantial sum in cash (i.e. over £10,000).
- Payment of lower cash sums where cash is not the normal means of payment.
- A new customer or use of new/shell companies .
- A secretive customer – e.g. refuses to provide requested information without a reasonable explanation.
- Concerns about the honesty, integrity, identity or location of a customer.
- Illogical third party transaction such as unnecessary routing or receipt of funds from third parties or through third party accounts.
- Involvement of an unconnected third party without logical reason or explanation.
- Overpayments by a customer or payments of deposits subsequently requested back.
- Absence of an obvious legitimate source of funds.
- Movement of funds overseas, particularly to a higher risk country or tax haven.
- Unusual transactions or ways of conducting business, without reasonable explanation.
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational.
- The cancellation or reversal of an earlier transaction.
- Requests for release of customer account details other than in the normal course of business.
- Transactions at substantially above or below fair market values.
- Poor business records or internal accounting controls.
- A previous transaction for the same customer which has been, or should have been, reported to the MLRO.
- Lack of 'traceability' of persons involved.
- Individuals and companies that are insolvent yet have funds.

Facts that tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

#### **6.0 What should I do if I suspect a case of money laundering?**

Anyone who knows or suspects money laundering activity is either taking, or has taken, place **must** inform the MLRO immediately, either in person or in

writing by completing Part A of the disclosure form included at the end of the policy.

**If you do not disclose information immediately, then you may be liable to criminal prosecution.**

If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 to 329 of the Proceeds of Crime Act 2002, then your report must include all relevant details, as you will need consent from the National Crime Agency, via the MLRO, to take any further part in the transaction.

You should make it clear in the report if such consent is required and clarify whether there are any deadlines for giving such consent – e.g. a completion date or court deadline.

You must follow any subsequent directions from the MLRO but must not make any further enquiries into the matter or any related transactions.

You must not disclose or indicate your suspicions to the person suspected of the money laundering as this could be regarded as “tipping off” which is itself an offence. Similarly, you must not discuss the matter with others or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.

## **7.0 What will the MLRO do?**

The MLRO will consider the report and any other available internal information he thinks relevant. This may include:

- reviewing other transaction patterns and volumes;
- the length of any business relationship involved;
- the number of any one-off transactions and linked one-off transactions; and
- any identification evidence held.

The MLRO will undertake any other enquiries deemed appropriate and will ensure that all available information is taken into account before deciding whether a report to the National Crime Agency (NCA) is required. When making further enquiries the MLRO must avoid any action which could tip off those involved, or which could give the appearance of tipping them off.

The MLRO may also need to discuss the report with you.

If the MLRO concludes that there is actual money laundering taking place, or that there are reasonable grounds to suspect so, he will record his reasoning in Part B of the disclosure form (included at the end of this policy) and must submit a Suspicious Activity Report (SAR) to the NCA immediately.

If consent is required to proceed with transactions for any prohibited acts under sections 327 to 329 of the Proceeds of Crime Act 2002, this can also be requested when the MLRO submits his report.

The quickest and easiest way to submit a SAR is online via the NCA website [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk) (registration required). This provides instant confirmation and a reference number once the report has been received.

The system does not retain a file copy for your use, so the MLRO should keep a copy of the report.

**The MLRO will commit a criminal offence if he knows or suspects, or has reasonable grounds to do so, that another person is engaged in money laundering, and he does not disclose this to the NCA as soon as practicable.**

Where the MLRO concludes that there are no reasonable grounds to suspect money laundering, or he suspects money laundering but has a good reason for non-disclosure, then this must be noted accordingly on Part B of the disclosure form and consent given in writing for any ongoing or imminent transactions to proceed. The MLRO should consult with the Council's Legal Services before reaching a non-disclosure decision. If in any doubt, the MLRO should always disclose.

## 8.0 Customer Due Diligence

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 require 'relevant persons' (i.e. credit and financial institutions, audit and accountants firms, tax advisers and insolvency practitioners, independent legal professionals, trust or company service providers, estate agents, high value dealers and casinos) to perform additional checks when undertaking certain activities in the course of their business. This process is known as customer due diligence.

Customer due diligence measures consist of identifying and verifying the identity of the customer, and any beneficial owner of the customer, and obtaining information on the purpose and intended nature of the business relationship. Regulated businesses are required to undertake these measures where they establish a business relationship, carry out an occasional transaction over 15,000 euros, suspect money laundering or terrorist financing or doubt the accuracy of customer identification information.

The regulations concerning customer due diligence are detailed and complicated, and there is no legal obligation for local authorities to carry them out. However, Council employees are encouraged to adopt the regulations where practical to minimise the likelihood of money laundering.

The basic identity check for **existing business customers** is to verify that signed, written instructions on the organisation's headed paper were obtained at the outset of the business relationship.

For **new business customers**, the Council can exercise due diligence by conducting some simple enquiries such as:

- checking with the customer's website to confirm their business address;
- conducting an online search via Companies House to confirm the nature and business of the customer and confirm the identities of any directors;



- attending to the client at their business address; and
- seeking evidence of the key contact's personal identity (e.g. passport, photo ID card or driving licence) and position within the organisation.

If satisfactory evidence of identity is not obtained at the outset, then the business relationship (or one-off transaction) should not proceed any further and you should report the matter immediately to the MLRO.

For further information on the customer due diligence requirements visit the money laundering regulations guidance on the GOV.UK website and go to the following location: <https://www.gov.uk/guidance/money-laundering-regulations-your-responsibilities>

## 9.0 Other Customer Checks

Staff dealing with transactions which involve income should be suspicious of any unusual payments received from private individuals – e.g. in respect of council tax, benefit overpayments, sundry debtors, etc. In particular, the following practices may indicate potential money laundering:

- large payments of cash;
- substantial overpayments of debts followed by a request for a refund (especially if this happens more than once); and
- substantial overpayments by credit or debit card where a cheque refund is requested (also a potential indication of credit card fraud).

Suggested checks include:

- Assess whether the size/method of payment seems reasonable given the nature and value of the debt.
- Check whether substantial overpayments are due to a genuine mistake – e.g. the customer used the wrong payee details, accidentally made a duplicate payment or entered too many zeros on an Internet payment. (This excuse becomes less credible if the customer then repeats this behaviour once the matter is corrected).
- Consider whether the customer requesting a refund is attempting to introduce intermediaries to either protect their identity or hide their involvement. (The safest policy is to always refund the originating card/bank account).

Preferably, all of the above checks should be carried out based on information already received rather than through further contact with the customer. Care must be taken to avoid “tipping off” the customer.

**If you are still suspicious about the transaction after carrying out the above checks, you should report the matter immediately to the MLRO.**

## 10.0 Record Keeping

All disclosure reports referred to the MLRO and reports subsequently made to NCA must be retained by the MLRO in a confidential file kept securely for that purpose, for a minimum of five years.

Where operational, evidence of customer due diligence checks and details of all relevant business transactions carried out for those customers must also be kept for at least five years.

## **11.0 Guidance and Training**

In support of this policy, the Council will:

- make all staff aware of the requirements and obligations placed on the Council and on themselves as individuals by the Anti-Money Laundering legislation; and
- provide targeted training to those officers considered most likely to encounter money laundering.

Note - It is the duty of officers to report all suspicious transactions whether they have received their training or not.

## **12.0 Conclusion**

Given the nature of the Council's services and for whom these services are provided, instances of suspected money laundering are unlikely to arise very often, if at all. However, we must be mindful of the legislative requirements, as failure to comply may render individuals liable to prosecution.

The Council believes that this policy represents a proportionate response to the level of risk faced.

### **Version Control**

Version 5.2 – June 2023

**MONEY LAUNDERING ACTIVITY – DISCLOSURE FORM (PART A)**

*To report suspected money laundering, complete this form and pass it to the Money Laundering Reporting Officer (MLRO)*

|              |                    |  |
|--------------|--------------------|--|
| <b>From:</b> | <b>Name:</b>       |  |
|              | <b>Job Title:</b>  |  |
|              | <b>Service:</b>    |  |
|              | <b>Tel/Ext No:</b> |  |

Date by which a response is required: .....

**Details of suspected offence:**

**Name(s) and address(es) of person(s)/company/public body involved and nature of business if a company/public body:**

|  |
|--|
|  |
|--|

**Nature, value and timing of activity involved (e.g. what, when, where, how):**

|  |
|--|
|  |
|--|

*(Continue on a separate sheet if necessary)*

**Nature of suspicions regarding such activity:**

|  |
|--|
|  |
|--|

**Nature, value and timing of activity involved (e.g. what, when, where, how):**

*(Continue on a separate sheet if necessary)*

**Has any investigation been undertaken (as far as you are aware)? (Delete as appropriate)**

Yes/No

**If yes, please include details below:**

**Have you discussed your suspicions with anyone else? (Delete as appropriate)**

Yes/No

**If yes, please specify below, explaining why such discussion was necessary:**

**Please set out below any other information you feel is relevant:**

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

***Please do not discuss the content of this report with anyone you believe may be involved in the suspected money laundering activity described. To do so may constitute a “tipping off” offence under the Proceeds of Crime Act 2002 which carries a maximum penalty of five years imprisonment.***

## MONEY LAUNDERING ACTIVITY – DISCLOSURE FORM (PART B)

*This part of the form must be completed by the MLRO*

### SECTION 1 - ACKNOWLEDGEMENT AND REVIEW

|                                      |  |
|--------------------------------------|--|
| <b>Date report received by MLRO:</b> |  |
| <b>Date receipt acknowledged:</b>    |  |

#### Consideration of disclosure to the National Crime Agency (NCA):

|   |
|---|
| <b>Action taken to review the report:</b> |
|   |

#### Outcome of consideration of disclosure:

|   |
|---|
| <b>Are there reasonable grounds for suspecting money laundering activity?</b> |
|   |

|   |        |
|---|--------|
| <b>If there are reasonable grounds for suspicion, will a Suspicious Activity Report (SAR) be made to the NCA? (Delete as appropriate)</b> | Yes/No |
|---|--------|

*If yes, please complete Section 2. If no, go straight to Section 3.*

### SECTION 2 - DETAILS OF LIAISON WITH THE NCA

|                        |  |                          |  |
|------------------------|--|--------------------------|--|
| <b>Date of Report:</b> |  | <b>Reference number:</b> |  |
|------------------------|--|--------------------------|--|

|                       |       |     |
|-----------------------|-------|-----|
| <b>Notice Period:</b> | From: | To: |
|-----------------------|-------|-----|

Note - The NCA has 7 working days starting the first working day after the consent request is made to refuse continuation of the activity. If no refusal has been received, consent is deemed to have been given and the activity may continue.

|                           |       |     |
|---------------------------|-------|-----|
| <b>Moratorium Period:</b> | From: | To: |
|---------------------------|-------|-----|

Note - If consent is refused during the notice period, a further 31 days starting with the day on which consent is refused must elapse before the activity may continue. In the absence of any action to restrain the activity by law enforcement during the moratorium period the activity may continue.

|   |        |
|---|--------|
| <b>Is consent required from the NCA to any ongoing or imminent transactions which would otherwise be prohibited acts? (Delete as appropriate)</b> | Yes/No |
|---|--------|

**Record of consent given by the NCA**

|              |  |              |  |
|--------------|--|--------------|--|
| <b>Date:</b> |  | <b>Time:</b> |  |
|--------------|--|--------------|--|

**SECTION 3 - NON-DISCLOSURE**

|   |
|---|
| <b>If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the NCA, please set out below the reason(s) for non-disclosure:</b> |
| Note - Include details of any discussions with other Officers (e.g. Legal Services) together with their name(s) and the advice given.   |
|   |

**SECTION 4 - RECORD OF CONSENT GIVEN BY MLRO**

| Consent given by MLRO for the employee:        | Date |
|--|------|
| To proceed with the transaction                |      |
| For any prohibited act transactions to proceed |      |

**SECTION 5 - ANY OTHER RELEVANT INFORMATION**

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

Print Name: .....

**THIS REPORT MUST BE RETAINED FOR AT LEAST FIVE YEARS**

# Whistleblowing Policy



## 1.0 Introduction

Rother District Council is committed to the highest possible standards of corporate governance including openness, probity and accountability in the delivery of its services to the people who live and work within the District. It is also committed to the prevention, deterrence, detection and investigation of all forms of fraud, theft or corruption. The authority has put in place a range of rules, regulations, procedures and codes of practice to deliver this commitment, but unfortunately malpractice and/or wrongdoing may still occur.

The Council is determined that the culture and tone of the organisation shall be one of honesty and strong opposition to fraud, corruption or any form of malpractice. There is an expectation and requirement that all individuals and organisations associated in whatever way with the Council will act with integrity and that employees, at all levels, will lead by example in these matters.

The Council's employees are an important element in detecting and preventing fraud, corruption or any form of malpractice. Employees are often the first to realise that there may be something wrong within the Council. However, they may be reluctant to speak up if their concerns are no more than a suspicion or if they feel that raising the matter would be disloyal to their colleagues or the Council.

The Council is not prepared to tolerate malpractice or fraudulent activity. Employees, and others that we deal with, are therefore positively encouraged to raise any concerns associated with the Council's activity at an early stage. This policy has been introduced to enable you to do this in confidence, without fear of victimisation, subsequent discrimination or disadvantage. The policy also encourages you to raise concerns within the Council (or if you feel that this is not appropriate then externally) rather than overlooking a problem.

## 2.0 Objectives and Scope

The objectives of this policy are to:

- encourage individuals to feel confident in raising serious concerns;
- provide a channel to raise those concerns (on an anonymous basis if necessary) and to have confidence that those concerns will be properly dealt with; and
- reassure staff that they will be protected from possible reprisals or victimisation if they have made the disclosure in good faith.

This policy applies to all employees of the Council (including agency staff, trainees and volunteers) as well as independent consultants, contractors, suppliers, elected Members (Councillors) and members of the public.

### **3.0 Definition of Whistleblowing**

The term 'whistleblowing' in this policy refers to any confidential disclosure of suspected wrongdoing in respect of anyone working for or associated with the Council.

### **4.0 Reportable Behaviour**

Any serious concerns about a Council's activity or the conduct of any of its officers, Members or agents should be reported using this procedure.

Potential areas of concerns may include:

- Any unlawful act, whether criminal (e.g. theft) or a breach of the civil law (e.g. breach of contract).
- Maladministration (e.g. unjustified delay, incompetence, neglectful advice).
- Breach of any statutory Code of Practice.
- Health and safety risks, including risks to the public as well as other employees.
- The unauthorised use of public funds (e.g. expenditure for an improper purpose).
- Fraud and corruption (e.g. to solicit or receive any gift/reward as a bribe).
- Breach of the Conditions of Service or Members' Code of Conduct
- Any unethical conduct.

Note - This list is not exhaustive.

This policy does not cover employees lodging grievances about their employment, or the public complaining about services that they have or have not received. There are separate Council procedures in place detailing the course of action for those circumstances.

### **5.0 Safeguards**

#### **5.1 Prevention of Harassment or Victimisation**

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith. Any member of staff found to be victimising you will be considered to be committing a serious disciplinary offence. If you experience any such pressure after raising a legitimate concern, tell someone in authority.



## 5.2 Confidentiality

Whilst the Council gives an assurance that it will not tolerate the harassment or victimisation of anyone raising a genuine concern, it recognises that nonetheless an individual may want to raise a concern in confidence under this policy. The Council will take steps to maintain your confidentiality throughout the process. However, it is possible that we will be unable to resolve the concern raised without revealing your identity (e.g. because your evidence is needed in court) but if this occurs we will discuss with you in advance how we can proceed.

## 5.3 Anonymous Allegations

This policy encourages you to put your name to any allegation you make. Concerns expressed anonymously are much less powerful, but they will still be considered for investigation at the discretion of the Council.

## 5.4 Untrue Allegations

No action will be taken against staff who make allegations in good faith if they are not confirmed by the investigation. Employees who report legitimate concerns under this policy are merely fulfilling their duty to the Council and will not therefore be at risk of losing their job/position or suffering any form of retribution. However, if an individual is found to make malicious or vexatious allegations it may be considered appropriate to take disciplinary action.

## 6.0 How to Raise a Concern

Any concerns that you have may be raised verbally or in writing. Concerns are better raised in writing giving the background, history and reason for the concern together with names, dates, places and as much information as possible. If you do not feel able to put your concern in writing, then you can telephone or meet the officer you intend reporting to. Where appropriate, arrangements can be made for disclosures outside normal working hours.

**Remember – The earlier you express your concern the easier it will be to take action. If in doubt, raise it!**

The reporting route for concerns will depend on the seriousness and sensitivity of the issues and who is thought to be involved.

**If you are a member of staff**, agency staff, self-employed worker, contractor, or volunteer you can raise your concern or suspicion in the first instance with your line manager or Head of Service. (The officer receiving the allegation is then required to inform the Audit Manager and the Section 151 Officer and/or Monitoring Officer.) If this is not appropriate you can raise the issue directly with **one** of the following Designated Officers.

- Lorna Ford, Chief Executive
- Duncan Ellis, Interim Deputy Chief Executive (Section 151 Officer)
- Ben Hook, Director – Place and Climate Change
- Joe Powell, Head of Housing & Regeneration (Monitoring Officer)
- Aleksandra Janowicz, Interim Chief Finance Officer
- Gary Angell, Audit Manager

**If you are a Councillor** you should approach one of the above Designated Officers directly.

Your choice of Delegated Officer should take into account the nature and seriousness of your concern and whether they might already be involved in the issue.

Note - Regardless of the route you take, the Designated Officer will be required to inform at least one member of the Senior Leadership Team (Chief Executive, Deputy Chief Executive, Director – Place and Climate Change or Chief Finance Officer) if your concern leads to a formal investigation. However, only one of these officers will usually be consulted in relation to the detail of your concern. This is to ensure that any further escalation or complaint about the conduct of an investigation may be dealt with by a different officer.

**If you are a member of the public** then you are encouraged to raise any matters of concern directly with the Council by contacting the Audit Manager. This may be done using one of the following methods:

- **Online:** By completing a [Whistleblowing Form](#)
- **By email:** By sending a message to [audit@rother.gov.uk](mailto:audit@rother.gov.uk)
- **By telephone:** By calling the Fraud Hotline on **01424 787799**
- **By post:** By writing to the Audit Manager at Rother District Council, Town Hall, Bexhill-on-Sea, East Sussex, TN39 3JX.

All Whistleblowing Forms and email messages are delivered direct to the Audit Manager and are only accessible by this officer. Similarly, all calls (and voicemail messages) received on the Fraud Hotline can only be answered (or accessed in the case of a message) by the Audit Manager.

**All information received by the Audit Manager will be handled in the strictest confidence, but you may still raise your concerns anonymously if you prefer.**

In the event that the Audit Manager is absent for any sustained period of time (e.g. annual leave of more than 72 hours) then one of the Designated Officers listed above will be given secure access to any messages received.

Note - The Internal Audit Team are automatically sent an email alert whenever a whistleblowing referral is received meaning that they would know when to arrange for a Designated Officer to be given secure access. However, at no point are they able to view the content of the message themselves.

## **7.0 How the Council Will Respond**

The action taken by the Council will depend on the nature of the concern. The matters raised may:

- Be investigated internally by Management or Internal Audit
- Be referred to the Monitoring Officer
- Be referred to the Police
- Be referred to the External Auditor
- Form the subject of an independent inquiry

You are encouraged to put your name to concerns. All cases reported will be considered, but concerns expressed anonymously are more difficult to action and investigate effectively. The Council will not expect you to prove that your concern is true, but you will need to demonstrate to the person contacted that there are reasonable grounds for you to raise the issue.

The following factors will be taken into account when establishing the scope and depth of any investigation:

- The seriousness of the issues raised.
- The credibility of the concern.
- The likelihood of confirming the allegation from other sources and information.

In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations that fall within the scope of specific procedures, for example, discrimination issues, will normally be referred for consideration under those procedures. Some concerns may be resolved by agreed action without the need for investigation.

All serious concerns will be investigated quickly using the most appropriate procedure. It is essential that your allegation is heard by an officer who is impartial and capable of taking an independent view on the concerns raised.

The amount of contact between you and the Designated Officer considering your concerns will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from you in a discreet manner. You have the right to be accompanied by a friend, colleague (not involved in the area of work to which the concern relates), trade union or professional association representative when attending any meetings.

The Designated Officer will respond to you within 10 working days acknowledging that your concern has been received and where required arrange an initial, confidential meeting to obtain any further information. This is to enable the Designated Officer to decide upon the best course of action but should not be construed as an acceptance or rejection of the concern.

The Designated Officer will then decide whether an investigation is appropriate or not and, if so, what form it should take.

Owing to the variety of factors to take into account it is only possible to offer an estimate of the timescale for investigation, but the Designated Officer will keep you informed of progress – subject to legal constraints and matters of confidentiality.

## **8.0 How the Matter Can Be Taken Further**

This policy is intended to provide a channel for you to raise concerns within the Council. If you are not satisfied with the outcome of an investigation, and you feel it is right to take the matter outside the Council, the following are possible contact points:

- Relevant professional, government or regulatory bodies such as the Health and Safety Executive, Environment Agency, Financial Conduct Authority, HM Revenue and Customs, or HM Treasury
- Local Government Ombudsman
- External Auditor – Contact: Darren J. Wells (Director), Grant Thornton UK LLP, Telephone: 01293 554120, Email: [Darren.J.Wells@uk.gt.com](mailto:Darren.J.Wells@uk.gt.com)
- Police
- Recognised trade unions

In instances where staff decide to take the matter outside the Council, they must always ensure that, in the first instance, the Council has been given an opportunity to fully investigate the issues raised. You will also need to ensure that confidential information is not disclosed unless relevant to your concern.

## **9.0 Independent Advice**

### **9.1 Council Employees**

The Council recognises that employees may wish to seek advice and be represented by their trade union when using the provisions of this policy and acknowledges and endorses the role trade union representatives play in this area.

It is worth remembering that your trade union, professional organisation or regulatory body can play a valuable role in assisting you raise your concerns under this policy.

### **9.2 Members of the Public**

Organisations that may be able to provide specific advice, in addition to those listed in paragraph 8.0, include:

- Citizens Advice
- Protect (formerly Public Concern at Work)

Protect is an independent charity that provides free advice to anyone who wishes to raise concerns about fraud or other serious malpractice. It can be contacted by telephone on 020 3117 2520, by email at [whistle@protect-advice.org.uk](mailto:whistle@protect-advice.org.uk) or by completing an [online form](#)

## **10.0 Relevant Legislation**

The Public Interest Disclosure Act 1998 aims to protect whistleblowers from victimisation and dismissal, where they raise genuine concerns about a range of misconduct and malpractice. It covers virtually all employees in the public, private and voluntary sectors, and certain other workers, including agency staff, homeworkers, trainees, contractors, and all professionals in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply.

A worker will be protected if the disclosure is made in good faith and is about:

- a criminal act;
- a failure to comply with a legal obligation;

- miscarriage of justice;
- danger to health and safety;
- any damage to the environment; and
- an attempt to cover up any of these.

The Act extends protection given to health and safety representatives to individuals who raise genuine concerns about health, safety or environmental risks. (The Employment Rights Act 1996 already gives some legal protection to employees who take action over, or raise concerns about, health and safety at work.)

Where a whistleblower is victimised following a protected disclosure, they can take a claim to an employment tribunal for compensation. If a whistleblower is dismissed, they can apply for an interim order to keep his/her job, pending a full hearing.

### **Version Control**

Version 5.3 – August 2023

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# **PART 5-4**

## **MEMBER / OFFICER PROTOCOL**

### **Working Together for Local People:**

#### **1. Introduction**

- 1.1 The relationship between Members and officers is an essential ingredient that goes to the very heart of the successful working of the Council. This relationship should be characterised by mutual trust, respect and courtesy. These are essential for good local government and serve to enhance local democracy. Members and officers should feel free to speak to one another openly and honestly. Nothing in this protocol is intended to change this relationship. The purpose of this protocol, rather, is to help Members and officers to perform effectively by giving guidance on their respective roles, inform their expectations and act as a guide to dealing with those issues that most commonly arise.
- 1.2 This protocol seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and officers. It should be read and operated in the context of any relevant legislation, national and local Codes of Conduct and guidance on effective corporate governance, the Council's Constitution and any other relevant Council policies.
- 1.3 If a Member is unsure about any matter, they should contact the Monitoring Officer for appropriate advice or guidance.
- 1.4 If any officer is unsure about any matter, they should contact their line manager, Head of Service or Chief Officer (Chief Executive, Deputy Chief Executive or Director - Place and Climate Change).

#### **2. Roles of Members and Officers**

- 2.1 The respective roles of Members and officers are summarised as follows:
- 2.2 Both Members and officers act in the public interest and are indispensable to one another. Their individual responsibilities are, however, distinct. Members are accountable to the electorate and serve only so long as their term of office lasts. Officers are employees of the Council and their job is to give advice to Members and the authority, and to carry out the Council's work under the direction and control of the Council, the Cabinet and relevant committees etc. Officers shall act in the best interests of the Council as a whole at all times and shall not give political advice. Mutual respect between Members and officers is essential to good local government.

#### **Members**

- 2.3 Members collectively or individually have seven main areas of responsibility:
  - 1) determining the policy of the Council;
  - 2) acting as advocates on behalf of their constituents;
  - 3) providing political leadership;

- 4) representing the Authority externally;
- 5) being accountable for the Council's decisions;
- 6) ensuring the Authority is performing to the required standards; and
- 7) monitoring the Authority's performance and addressing areas where it is performing below agreed levels.

2.4 It is not the role of Members to attempt to manage the day-to-day operation of the Council's services. Members should be careful to avoid involvement in internal office management, discipline and other employment related issues, as the actions of a Member may be held to be the actions of the Council as an "employer".

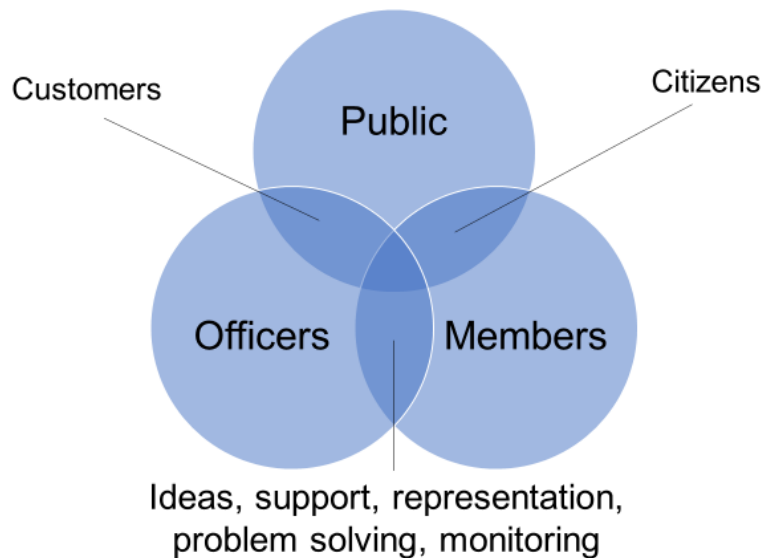
A quick guide and visual diagram to show some of their distinct roles:

**Members:**

- Accountable to the electorate
- Community leader for a ward
- Add a political dimension
- Set high level policy/strategy
- Involved in senior appointments

**Officers:**

- Accountable to the council
- Serve the whole council
- Politically impartial
- Ensure operational delivery
- Day to day employee management



2.5 All individual Members of the Council have the same rights and obligations in their relationship with officers and should be treated equally. This principle is particularly important in the context of overview and scrutiny.

2.6 Where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between officers (particularly those at a senior level in the Council) and the administration will differ from that with opposition groups.

2.7 However, Members in opposition still have the same rights and obligations in their relationships with officers and should be treated equally.



## **Members of the Cabinet, Chairs and Vice-Chairs**

2.8 Members of the Cabinet and chairs and vice-chairs of committees and any steering / working groups have additional responsibilities. Their relationships with officers may be different from, and more complex than, those of Members without those responsibilities.

### **2.9 Formal Committee Meeting Agendas**

Committee and Cabinet meeting agendas are generally proposed to the Chair of a Committee by the appropriate senior officer. It is the Chair's (or leader in the case of the Cabinet) responsibility to decide on the agenda of a meeting (or Cabinet) and the Chair who determines the final agenda. The exceptions to this are where an item is legally required to be decided by a Committee or Council in a specific time period, where one of the three statutory officers have a duty to report or where at least 3 Members of a Committee (or Cabinet) propose a relevant item be added to an agenda at least 5 working days before the publication of the agenda.

## **Officers**

2.10 The role of officers is to give impartial and non-partisan advice and information to Members and to implement the policies determined by the Council.

2.11 The Head of Paid Service, Monitoring Officer, and Section 151 Officer [Chief Finance Officer] have responsibilities in law over and above their obligations to the Council, that they must be allowed to discharge.

## **3. Expectations**

3.1 Members can expect from officers:

- (a) a commitment to the Authority as a whole, and not to any political group;
- (b) respect, dignity and courtesy;
- (c) a positive working partnership;
- (d) an understanding of, and support for, respective roles, workloads and pressures;
- (e) a timely and helpful response to enquiries and complaints (see 6.3 below);
- (f) professional advice, not influenced by political views or preference, and which does not compromise the political neutrality of employees;
- (g) regular up-to-date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold;
- (h) awareness of, and sensitivity to, the political environment;

- (i) training and development in order to carry out their role effectively;
- (j) integrity, support and appropriate confidentiality;
- (k) not to have personal issues raised with them by employees outside the agreed procedures;
- (l) that employees shall not use their relationship with Members to advance their personal interests or to influence decisions improperly;
- (m) that employees shall at all times comply with the Officers' Code of Conduct.

3.2 Officers can expect from Members:

- (a) a positive working partnership;
- (b) respect, dignity and courtesy;
- (c) an understanding of, and support for, respective roles, workloads and pressures;
- (d) political leadership and direction;
- (e) integrity, support and appropriate confidentiality;
- (f) not to be subject to undue pressure;
- (g) regard to the seniority of officers in determining what are reasonable requests, while recognising the potential vulnerability of junior officers;
- (h) that Members shall not use their relationship with officers to advance their personal interests or those of others or to influence decisions improperly;
- (i) that Members shall at all times comply with the local Code of Conduct.

## 4. Potential Issues

### Working Relationships

- 4.1 It is clearly important that there should be close working relationships between all Members and officers. However, such relationships should never be allowed to bring into question the individuals' ability to deal impartially with others. Any dealings between Members and officers should be conducted with mutual trust, respect and courtesy and neither party should seek to take unfair advantage of their position.
- 4.2 An employee who is one of their constituents may ask a Member for advice and support in the same way as any other member of the public. However, Members should be careful not to prejudice the Council's position in relation to disciplinary procedures or employment matters in respect of any employee. A Member approached for help in such circumstances should first seek advice from the Monitoring Officer.

- 4.3 In seeking advice and support, Members should have due regard to the seniority of the officer with whom they are dealing and recognise that officers owe an overriding duty to the Council as a whole. Members should not in any circumstances seek to give direct instructions to officers. If Members are not satisfied with the response given, they may take the matter to the Service Manager, Head of Service or Chief Officer.
- 4.4 Members shall also not pressurise any officer to change their professional opinion on any Council business matter or do anything that compromises, or which is likely to compromise, the impartiality of officers or those who work for, or on behalf of, the Council.

### **Constructive Criticism**

- 4.5 It is an absolute requirement that Members and officers do not criticize each other personally or use inappropriate language or conduct in public about reports or actions taken. It is important that there should be mutual respect and courtesy between Members and officers and that no Member or officer should seek to take unfair advantage of their position.
- 4.6 Members have the right to criticise reports, or the actions taken by officers, but they should always avoid personal attacks on officers and ensure that criticism is constructive, well-founded and likely to lead to improved performance. They should not seek to blame or undermine the officer.

### **Appointments with Officers**

- 4.7 If a Member feels that it is necessary to have a face-to-face meeting with an officer, it is always best to make an appointment, to ensure availability and presence in the office of the officer. This will enable the Member and officer to identify a mutually agreeable day and time; the use of technology for ascertaining availability for such meetings should be used and the use of on-line face-to-face communication platforms for meetings to reduce unnecessary travel is encouraged wherever and whenever possible.
- 4.8 It is expected that there will be frequent contact between Cabinet Portfolio Holders and their respective Chief Officer / Heads of Service / Service Manager.

## **5. Local Members**

- 5.1 Officers and lead Cabinet Members should recognise that the fundamental role of a local Member is representing their Wards and responding to the concerns of their constituents.
- 5.2 Chief Officers and Heads of Service must ensure that all relevant officers are aware of the requirement to keep local Members informed of issues that affect their Wards and that the timing of such information allows Members to contribute meaningfully to any relevant discussions.
- 5.3 Local Members shall be informed about matters that significantly affect their Wards during the formative stages of policy development. Issues may affect a single Ward, but others may have a wider impact in which case numerous Members will need to be consulted and kept informed.

- 5.4 Wherever a public meeting is organised by the Council to consider a local issue, all Members representing the electoral Ward(s) affected shall, as a matter of course, be invited to attend. Similarly, whenever the Council undertakes any form of consultation exercise, the local Member(s) shall be notified before the exercise is begun.

## 6. Members' Enquiries

- 6.1 The relationship between Members and officers should be characterised by partnership, empowerment and trust. In order to ensure delivery of the Council's Corporate Plan priorities and provision of high-quality public services it is essential that Members and officers work in a collaborative and mutually supportive manner. Officers should recognise the need for Members to receive information in a timely manner in order to carry out their constituency roles. Members should likewise be appreciative of the competing demands on officer time.
- 6.2 Heads of Service / Service Managers are responsible for ensuring that Members' enquiries are dealt with promptly and satisfactorily within their service areas.
- 6.3 Officers shall aim to provide a substantive response to Members' enquiries within five working days of receipt. If a substantive response cannot be provided within that timescale, officers shall contact the Member to explain the reason why and shall liaise with them regarding the timescale within which the full response shall be sent. Members are requested not to make repeated contact whilst waiting for the answer to a live enquiry.
- 6.4 An officer shall raise with their line manager / Head of Service any enquiry which would impose a disproportionate burden on their work and, if necessary, further discussion shall then take place with the Member concerned with a view to agreement of the approach to managing the response to the enquiry.
- 6.5 Information requested from a Member that is not related to their own electoral Ward will be shared with the relevant Ward Members when the information is provided.
- 6.6 Members' use of the out of hours service should be limited to extremely urgent events that cannot wait until the next working day and not used to report a service failure, such as a missed bin.
- 6.7 Members' enquiries which fall within the remit of constituents' complaints will be handled under the Council's Corporate Complaints Procedure.
- 6.8 The process outlined in this paragraph supplements Members' statutory and common law rights to information as detailed in paragraph 8.

## 7. Political Groups

- 7.1 Political group meetings, whilst they form an important part in the preliminaries to Council decision-making, are not formal decision-making bodies of the District Council and, as such, are not empowered 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 Members and officers understand and interpret them accordingly.
- 7.2 Officer support to political groups shall not extend beyond providing information and advice in relation to Council business (not party-political business). It may be appropriate for officers to participate in discussions within political group meetings in relation to the professional advice they give. However, it is good practice for party political discussions and debates to take place and conclusions to be reached in the absence of officers, in order to avoid suspicion of impropriety or misunderstanding.
- 7.3 Officers shall respect the confidentiality of any political group discussions. Any breach of this part of the protocol shall be brought to the attention of the Monitoring Officer for consideration. For the avoidance of doubt, it shall be recognised by all that, in discharging their duties, officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Members. Members shall, at all times, respect the political impartiality of officers and shall not expect or encourage officers to give a political view on any matter.
- 7.4 When an officer is requested to attend a political group meeting:
- (a) the request to attend shall be made through, and approved by, the appropriate Chief Officer;
  - (b) such a request shall only be made in relation to Council business; and officers shall:
    - (i) provide relevant factual advice and assistance;
    - (ii) leave during the deliberations of the political group on the issues;
    - (iii) respect the confidentiality of any party group decisions at which they are present;
    - (iv) not champion, defend, action a request or spend any resources of the Council, or be held responsible for actioning in any way whatsoever the decisions of the political group(s), unless and until such decisions have become the formal decisions of the Council; and
    - (v) inform the other political groups, offering them the right of the same information.

## **8. Correspondence**

- 8.1 Emails relating to the Council shall be treated in the same way as formal business correspondence and its distribution considered accordingly. Members should restrict the distribution of email correspondence to the intended recipients and refrain from using multi address distribution lists (for example email replies copied to all Members) unless there is good reason so to do. It should be noted that email can be used for documentary evidence in matters such as disciplinary proceedings and libel cases even after it has been deleted. The Council's policy governing the use and security of ICT facilities should be followed by Councillors and employees at all times.
- 8.2 Official correspondence on behalf of the Council shall normally be sent in the name of the appropriate officer, rather than in the name of a Member. However, there are circumstances in which it is appropriate for correspondence to appear in the name of a Member. For example, a local Member may deal with correspondence with a local constituent in relation to a local matter in their name. Similarly, the Leader of the Council or a Lead Cabinet Member may deal with correspondence concerning their area of responsibility in their name. Any Member who receives correspondence should consider whether it is appropriate in the circumstances for it to be passed to an officer for a reply, or for them to reply in their name. The Chair of Council shall respond to correspondence addressed to them in consultation with the relevant officers. Any such correspondence should always have regard to the Council's policies, practices and procedures and any mechanisms, if appropriate, for changing them.
- 8.3 Members should be aware that correspondence via email and any social media platform relating to official council business is subject to Freedom of Information legislation.
- 8.4 A Member is advised to seek advice, as necessary, from officers before sending any correspondence in their own name. Correspondence which creates legal obligations or gives instructions on behalf of the Council should never be sent out in the name of a Member. Correspondence includes any communication by letter, fax or email, texts, social media posts or other electronic means.

## **9. Support Services to Members and Party Groups**

The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying and transport) to Members is to assist them in discharging their duties as a District Councillor. Such support services shall therefore only be used on Council business. They should never be used in connection with any party-political activity or self-promotion. Members are required to comply with the provisions of the Members' ICT User Agreement when accessing the Council's network and email systems and when using any ICT equipment provided by the Council.

## 10. **Publicity and Media**

### **Publicity**

- 10.1 The Council wishes to encourage regular, open and two-way dialogue with its communities to ensure that the public are aware of the Council's activities, are informed about how to access services and are aware of opportunities for public participation in the democratic process.
- 10.2 The way information is published has changed significantly over time with online and social media being more prominent and instant. The message that is being communicated in publicity should be well considered as it is essential to ensure that local authority decisions on publicity are made in accordance with clear principles of good practice.
- 10.3 Members and officers of the Council shall, therefore, in making decisions on publicity, take account of the provisions of the national Code of Recommended Practice on Local Authority Publicity 2011. The Council's communications team can help to ensure publicity is timely, correct and targeted appropriately.
- 10.4 Particular care should be taken with Council publicity in the run-up to an election (the pre-election period). Additional guidance is issued at these times to help Members and officers.

### **Media**

- 10.5 Members wishing to publicise themselves or their political parties shall do so in an independent capacity without using Council resources.
- 10.6 When using Council email, or writing on behalf of the Authority, correspondence should not include political comments or criticise Council policy adopted by Full Council. If Members wish to make political statements in correspondence, they shall not use Council communications channels or give the impression their views are those of the Council.
- 10.7 The Council's Communications Team provides a press office function on behalf of the Council. Press enquiries requesting information or a response on behalf of the Council should be referred to the Communications Team.

## 11. **When Things Go Wrong**

- 11.1 This protocol is designed to provide the framework within which Members and officers work effectively together. However, the following process should be followed in the event of any difficulties arising.

### **Procedure for officers to follow when experiencing difficulties with Members**

- 11.2 From time to time the relationship between Members and officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior

manager or Member, officers shall have recourse to a procedure whereby the complaint or grievance shall be referred to the Council's Monitoring Officer.

- 11.3 An informal meeting shall then be arranged between the relevant Member and officer, the Member's Group Leader and the Chief Executive. The Chair of the Audit and Standards Committee may also be invited to attend, where appropriate. If an informal resolution cannot be agreed between all parties, the complaint will then proceed to a formal Member complaint and be handled by the Monitoring Officer under the agreed arrangements for dealing with complaints against elected Members.

### **Procedure for Members to follow when experiencing difficulties with officers**

- 11.4 A Member should not raise matters relating to the conduct, behaviour or capability of an officer in a manner that is incompatible with the objectives of this protocol. An officer has no means of responding to such criticism in public. If any Member feels that they have not been treated with the proper mutual trust, respect or courtesy or have any concern about the conduct or capability of an officer, they should raise the matter, in private, with the relevant Head of Service / Service Manager.
- 11.5 Any concerns with regards to a Head of Service / Service Manager or Chief Officer should be discussed in private with the Chief Executive. Where the officer concerned is the Chief Executive, the matter should be raised with the Chair of Council, Leader of the Council or Monitoring Officer, as appropriate to the circumstances. If the matter cannot be resolved informally it may be necessary to invoke the Council's Disciplinary Procedure.

### **Whistleblowing**

- 11.6 Where a Member or officer is concerned about potential unlawful conduct of a Member or officer, the Council's whistle-blowing policy may also be relevant.

## **12. Interpretation**

Questions of interpretation of this protocol shall be determined by the Monitoring Officer.



## **PART 5-5 MEMBER JOB PROFILES AND GENERAL PRINCIPLES**

### **COUNCILLOR**

#### **Purpose of Role**

1. To represent effectively the interests of the Councillor's Ward and deal with constituents' enquiries and representations;
2. to contribute actively to formation, development and scrutiny of the authority's policies, budget, strategies and service delivery;
3. to participate constructively in the good governance of the District and the wider area;
4. to be a people's champion for causes which best relate to the interests and sustainability of the community and campaign for improvement of quality of life in the community in terms of equity, economy and the environment;
5. to represent the Council on any outside bodies to which the Councillor may be appointed; and
6. to engage in continuous member development to enhance corporate and personal skills effectiveness.

#### **Key Tasks**

1. To fulfil statutory and any additional locally determined requirements of an elected member of a local authority and the authority itself, including compliance with all the relevant codes and protocols, and in particular the Code of Conduct and the seven principles of public life, participation in those decisions and activities reserved for the full Council – e.g. setting budgets;
2. to participate effectively as a member of any committee or other body to which the Councillor is appointed;
3. to participate in the activities of any outside body to which the Councillor is appointed, providing two-way communication between the organisations and presenting annually a report on the work of the body and its contribution to the District and the wider area. To develop and maintain a working knowledge of the authority's policies and practices in relation to that body and the community's needs and functions;
4. to participate, as appointed, in the area and service based consultative processes with the community and other organisations;
5. to engage with and represent the community to the authority and vice-versa through all appropriate means;

6. to keep residents and relevant stakeholders informed on key council related issues affecting the Ward including appropriate community meetings;
7. to develop and maintain a working knowledge of the authority's services, management arrangements, powers/duties, and constraints and to develop good working relationships with relevant officers of the authority;
8. to develop and maintain a working knowledge of the organisations, services, activities and other factors that impact upon the community's well-being and identity;
9. to contribute constructively to open government and democratic renewal through active encouragement to the community to participate generally in the government of the area; and
10. to provide information for residents regarding council services and other partner organisations to enhance well-being and social inclusion.

# LEADER

## Purpose of Role

1. To provide visible political leadership in relation to citizens, stakeholders and partners in the overall co-ordination of Council policies, strategies and service delivery;
2. to lead Cabinet in its work to develop policy framework and budget and take overall political control of the authority within the agreed policy framework;
3. to contribute actively to formulation and scrutiny of the authority's policies, budget, strategies and service delivery;
4. to lead the development of local, regional, national and International policy and strategic partnerships;
5. to lead the majority political group; and
6. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

1. To provide leadership to the Council and its political administration;
2. to represent the Council in the community and in discussions with regional, national and international organisations and others to pursue matters of interest to the authority and its communities;
3. to determine the number and make appointments to Cabinet, including the allocation of Cabinet portfolios;
4. to direct, manage and chair meetings of the Cabinet and to take responsibility individually and/or collectively for any specific portfolio, including providing a political lead in proposing new policy, strategy, budget and service standards, as well as acting as spokesperson for the authority;
5. as a Cabinet Member to share in undertaking Executive responsibility for developing and proposing overall strategy, budget, policy arrangements and service reviews;
6. to participate in monitoring or performance reviews of services upon request by an Overview and Scrutiny Committee;
7. to head the political group providing the Council's political administration and to act as spokesperson for that Group;
8. to direct and manage the Chief Executive, and to meet regularly (within or without Cabinet) with the Chief Executive, Deputy Chief Executive, Director – Place and Climate Change, Heads of Service and other relevant senior officers to consider and recommend action within approved policies and strategies;

9. to ensure regular contact with non-executive Councillors, community representatives and other local stakeholders and to take account of their view in shaping recommendations on policies, strategies and budgets; and
10. to maintain professional working relationships and establish mutual respect with all Members and officers.

# DEPUTY LEADER

## Purpose of Role

1. To assist the Leader of the Council; and
2. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

1. To assist the Leader in the formal processes and matters of leadership of the authority. These will include developing overall strategy, budgets, policy arrangements and service reviews, and representing the authority in the community and in discussions with regional, national and international organizations;
2. to participate in monitoring or performance reviews of services;
3. to represent the Council and the political administration in the community and elsewhere as required by the Leader; and
4. to deputise for the Leader in his/her absence.

# **GROUP LEADER**

## **Purpose of Role**

1. To provide leadership to one of the authority's groups;
2. to ensure effective, positive and constructive working relationships with the authority's administration group; and
3. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## **Key Tasks**

1. To lead one of the political groups to include the scrutiny of the political administration of the authority;
2. to provide, as appropriate, alternatives or amendments to the Council's policies, strategies and budgets, and propose amendments thereto;
3. to act as the spokesperson for that group;
4. to direct, manage and chair group meetings;
5. to ensure effective communication between political group members, other political groups, officers, the community, other partners and organisations; and
6. to nominate members of his/her group to serve on overview and scrutiny committees, regulatory committees and if appropriate, local outside bodies.

# CHAIR OF THE COUNCIL

## Purpose of Role

1. To be the Civic Leader of Rother District Council and to represent the Council at various functions of a civic, community and ceremonial nature; and
2. to engage in continuous member development to enhance corporate and personal skills effectiveness.

### Key Tasks

1. To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Full Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. to ensure that the Full Council meeting is the forum for debate of matters of concern to the local community and the place at which Members who are not on the Cabinet are able to hold the Cabinet to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council;
6. to attend such civic and ceremonial functions as the Council and the Chair determines appropriate; and
7. to be an ex-officio Member on all Committees (excluding Cabinet) with no rights to move, second or vote on any Committee.

### Chairing Skills Required:

1. An understanding of the issues and topics being discussed;
2. a knowledge of the Council's Membership and differing viewpoints;
3. ability to effectively manage the meeting and focus on the pertinent issues, limit discussion to relevant points, and allow those all wishing to speak, to do so;
4. ability to summarise the debate and ensure that Members know what they are being asked to vote on; and
5. knowledge of rules of debate / Council Procedure Rules.

# CABINET MEMBER WITH PORTFOLIO

## Purpose of Role

1. To take responsibility within the Cabinet on the basis of individual and/or collective responsibility for a portfolio of services or functions of the authority as directed by the Leader;
2. to contribute actively through the portfolio and membership of the Cabinet to the formulation and scrutiny of the authority's policies, budget, strategies and service delivery; and
3. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

1. To participate in the Cabinet and to implement agreed policies by taking responsibility individually and/or collectively for any portfolio allocated by the Leader of the Council, including providing a lead on and proposing new policy, strategy, programming, budget and service standards, and leading performance review;
2. to have a clear understanding and an in-depth knowledge of the respective portfolio, the scope and range of the relevant services for which they are responsible and an awareness of current agreed policies in respect of those services;
3. to consult and communicate with members of all political groups, council officers and key partners as appropriate to ensure decisions are well informed and that Council policies are widely understood and positively promoted;
4. to ensure that the political group is briefed at the appropriate time on significant issues within the respective portfolio i.e. those which have financial or other major resource implications, will result in a change in established policy, or which are contentious or politically sensitive;
5. to act as spokesperson within and outside the authority for matters within the portfolio;
6. to have responsibility for liaison with the Chief Executive, Deputy Chief Executive, Director – Place and Climate Change, Heads of Service and other senior officers responsible for the services within the portfolio;
7. to answer and account to the Council and the community for matters within the portfolio;
8. to participate in monitoring or performance reviews of services upon request by an Overview and Scrutiny Committee; and
9. to represent the Council and the political administration in the community and elsewhere as required by the Leader.



# **CABINET SPOKESPERSON – ROLE**

## **Description (non-Cabinet appointee)**

1. To be the Member point of contact for matters on your area of responsibility;
2. to maintain an understanding and assist Cabinet with particular insights in relation to your area of responsibility.
3. to collate information and assist with consultations on your area of responsibility;
4. to liaise with the Communications Team on press releases, social media etc., on the specific area of responsibility;
5. to network with partner and other organisations to find out more information on the area of responsibility;
6. to meet regularly with the Lead Officer(s) for your area of responsibility;
7. to communicate with other Members on your area of responsibility as well as attending meetings (e.g. Overview and Scrutiny) where appropriate;
8. to use Cabinet and other meetings to raise the profile of the specific area of responsibility; and
9. to produce an end of year report to Council updating Members on the actions and issues looking back over the past year.

# CHAIR OF AUDIT AND STANDARDS COMMITTEE

## Purpose of Role

1. To lead the Council's activities in relation to those functions covered by the Terms of Reference of the Committee;
2. to ensure that the Committee deals with its functions in a fair and proper manner having regard to the Council's policies, the relevant statutory provisions and the rules of natural justice; and
3. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

1. To chair meetings of the Audit and Standards Committee in accordance with the adopted Council Procedure Rules and develop and maintain a working knowledge of the practices, procedures, services and functions which fall within the Committee's terms of reference;
2. to ensure, in relation to each function of the Committee, that appropriate policies, regulations, protocols and processes are adopted to enable the Committee to undertake its functions in a fair and even-handed manner; and
3. in partnership with the appropriate senior officers, to contribute to the agenda for Committee meetings.

## Audit Tasks

1. To oversee publication of reports, plans and statements in relation to the Council's audit activity, regulatory framework and accounts to Council and elsewhere;
2. to undertake such other meetings as are necessary for the effective and efficient functioning of the Committee within its terms of reference; and
3. in consultation with the Chief Finance Officer and Principal Auditor to consider the training requirements of Members of the Audit and Standards Committee and arrange for suitable briefings or training sessions as appropriate.

## Standards Tasks

1. To ensure, as far as possible, that all Members of the Committee take full and proper account of the relevant legislative and probity framework in setting any policies, regulations, protocols and processes in relation to the functions of the Committee;
2. to ensure that the appropriate mechanisms are put in place to measure the efficiency and quality of the arrangements for dealing with the functions of the Committee and the Council's policies and protocols;

3. to liaise with the Monitoring Officer and maintain an overview regarding current issues related to the Code of Conduct or emerging guidance from the Department for Levelling Up, Housing and Communities;
4. to encourage best practice, so that the Members of the Committee comply with the rules relating to the declaration of interests;
5. to take the lead in promoting and maintaining high standards of conduct by Members and co-opted members; and
6. to ensure that appropriate training programmes and seminars are arranged to enhance Members' knowledge and their ability to carry out the Committee's functions effectively.

### **Chairing Skills Required:**

1. An understanding of the issues and topics being discussed;
2. an in depth understanding of the Code of Conduct and regulations and its application;
3. a knowledge of the Committee's Membership and differing viewpoints;
4. ability to effectively manage the meeting and focus on the pertinent issues, limit discussion to relevant points, and allow those all wishing to speak, to do so;
5. ability to summarise the debate and ensure that Members know what they are being asked to vote on; and
6. knowledge of rules of debate / Council Procedure Rules.

# CHAIR OF HUMAN RESOURCES COMMITTEE

## Purpose of Role

1. To lead the Council's activities in relation to those functions covered by the Terms of Reference of the Committee;
2. to ensure that the Committee deals with its functions in a fair and proper manner having regard to the Council's policies, the relevant statutory provisions and the rules of natural justice; and
3. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

4. To chair meetings of the Committee in accordance with the adopted Council Procedure Rules and develop and maintain a working knowledge of the practices, procedures, services and functions which fall within the Committee's terms of reference;
5. to ensure in relation to each function of the Committee, that appropriate policies, regulations, protocols and processes are adopted to enable the Committee to undertake its functions in a fair and even-handed manner;
6. to ensure, as far as possible, that all Members of the Committee take full and proper account of the relevant legislative and probity framework in setting any policies, regulations, protocols and processes and in relation to the functions of the Committee; and
7. to ensure that appropriate training programmes and seminars are arranged to enhance Members' knowledge and their ability to carry out the Committee's functions effectively.

## Chairing Skills Required:

1. An understanding of the issues and topics being discussed;
2. a knowledge of the Committee's Membership and differing viewpoints;
3. ability to effectively manage the meeting and focus on the pertinent issues, limit discussion to relevant points, and allow those all wishing to speak, to do so;
4. ability to summarise the debate and ensure that Members know what they are being asked to vote on; and
5. knowledge of rules of debate / Council Procedure Rules.

# CHAIR OF THE LICENSING AND GENERAL PURPOSES COMMITTEE

## Purpose of Role

1. To lead the Council's activities in relation to those functions covered by the Terms of Reference of the Committee;
2. to ensure that the Committee deals with its functions in a fair and proper manner having regard to the Council's policies, the relevant statutory provisions and the rules of natural justice; and
3. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

1. To chair meetings of the Committee in accordance with the adopted Council Procedure Rules and develop and maintain a working knowledge of the practices, procedures, services and functions which fall within the Committee's terms of reference;
2. to ensure in relation to each function of the Committee, that appropriate policies, regulations, protocols and processes are adopted to enable the Committee to undertake its functions in a fair and even-handed manner;
3. to ensure, as far as possible, that all Members of the Committee take full and proper account of the relevant legislative and probity framework in setting any policies, regulations, protocols and processes and in relation to the functions of the Committee;
4. in specific cases where delegated authority for suspension of licences exists with the Heads of Service in consultation with the Chair, consideration is given with all available facts and evidence;
5. in consultation with Legal Services and Heads of Service ensure that appropriate training programmes and seminars, including the annual mandatory training, are arranged to enhance Committee Members' knowledge and their ability to carry out the Committee's functions effectively;
6. in consultation with the Democratic Services Manager ensure that all Committee Members have received the annual mandatory and on-going training prior to being selected to act as a Licensing Panel Member; and
7. to ensure that appropriate training programmes and seminars are arranged to enhance Members' knowledge and their ability to carry out the Committee's functions effectively.

## Chairing Skills Required:

1. An understanding of the issues and topics being discussed;

2. a knowledge of the Committee's Membership and differing viewpoints;
3. ability to effectively manage the meeting and focus on the pertinent issues, limit discussion to relevant points, and allow all those wishing to speak, to do so;
4. ability to summarise the debate and ensure that Members know what they are being asked to vote on;
5. knowledge of rules of debate / Council Procedure Rules;
6. ability to understand the legislation related to the Committee and panels and apply it in determining licensing applications;
7. ability to understand the effects of the Committee's decision in relation to the Council's priorities and strategies / plans and the needs of the Community; and
8. a working understanding of the Licensing protocol and the Constitution in relation to licensing issues.

# **CHAIR OF OVERVIEW AND SCRUTINY COMMITTEE** (must be appointed from the Members of the Major Opposition Group serving on the Committee).

## **Purpose of Role**

1. To chair meetings of an Overview and Scrutiny Committee and hold specific responsibility for the programming and direction of reviews, accessing professional advice, where appropriate and the assembly and presentation to Council of reports (including minority reports, where necessary); and
2. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## **Key Tasks**

1. To chair an Overview and Scrutiny Committee and develop and maintain a working knowledge of the practices, procedures, services and functions which fall within the Committee's terms of reference;
2. to propose an Annual Scrutiny Programme for the Committee, drawn up in consultation with Councillors and senior officers, to achieve a balance of service interests and broad coverage of all council services over time;
3. to lead the investigation of policy proposals referred to it by the Cabinet, in particular by leading the Committee in obtaining preliminary background information, selecting witnesses and determining whether evidence is to be given orally or in writing, and in determining a timetable for investigation;
4. to lead the scrutiny or performance reviews of the services of the authority within the remit of that Committee including where the authority so decides, the scrutiny of policies and budget, and their effectiveness in achieving the strategic objectives of the authority;
5. to lead on identifying cross-cutting strategy issues and ensure a corporate approach to appropriate scrutiny in such areas;
6. to take a lead role in scrutinising decisions taken by the Cabinet within the remit of that Committee, in particular by inviting relevant Cabinet members to attend meetings of the Overview and Scrutiny Committee, co-ordinating the questions to be asked, submitting in advance a list of the issues to be discussed or requests for detailed information, and providing a summary of the discussion and progress made;
7. to take a lead role in scrutinising the decisions of officers, following a similar approach to above;
8. in partnership with the appropriate senior officers, to contribute to the agenda for committee meetings;
9. to meet regularly with relevant officers to ensure the receipt of appropriate "independent" advice to inform effective scrutiny;

10. to ensure regular contact with non-executive Councillors, community representatives and local stakeholders to inform effective scrutiny of policies, strategies, budgets and performance;
11. to oversee publication of reports, plans and statements to Council and elsewhere;
12. to ensure the Committee is able to give direction and advice to appropriate senior officers within the framework of policies set by the Council and Cabinet;
13. to undertake such other meetings as are necessary for effective and efficient functioning of the Committee within its terms of reference; and
14. to consider the training requirements of members of the Overview and Scrutiny Committee and arrange for suitable briefings or training sessions as appropriate.

### **Chairing Skills Required:**

1. An understanding of the issues and topics being discussed;
2. a knowledge of the Committee's Membership and differing viewpoints;
3. ability to effectively manage the meeting and focus on the pertinent issues, limit discussion to relevant points, and allow those all wishing to speak, to do so;
4. ability to summarise the debate and ensure that Members know what they are being asked to vote on; and
5. knowledge of rules of debate / Council Procedure Rules.



# CHAIR OF THE PLANNING COMMITTEE

## Purpose of Role

1. To chair meetings of the Planning Committee and hold specific responsibility for the undertaking of the Council's Planning regulatory functions, accessing professional advice, where appropriate;
2. to ensure that the Committee deals with its functions in a fair and proper manner having regard to the Council's policies and the relevant statutory provisions and the rules of natural justice; and
3. to engage in continuous member development to enhance corporate and personal skills effectiveness.

## Key Tasks

1. To chair meetings of the Committee in accordance with the adopted Council Procedure Rules and maintain a working knowledge of the practices procedures, services and functions which fall within the Committee's terms of reference;
2. to ensure, in relation to each function of the Committee, that appropriate processes are adopted to enable the Committee to undertake its functions in a fair and even-handed manner, having regard to the adopted planning policies and the Council's policies and protocols;
3. to liaise with the relevant Portfolio Holder regarding the preparation, alteration and adoption of the Local Development Framework;
4. to ensure, as far as possible, that all Members of the Committee take full and proper account of the relevant legislative and probity framework in setting any policies, regulations, protocols and processes and in the determination of any applications brought before the Committee;
5. to encourage best practice, so that the Members of the Committee comply with the rules relating to the declaration of interests;
6. in consultation with the Director – Place and Climate Change and/or Development Manager ensure that appropriate training programmes and seminars, including the annual mandatory training, are arranged to enhance Members' knowledge and their ability to carry out the Committee's functions effectively;
7. in consultation with the Democratic Services Manager ensure that all Committee Members have received the annual mandatory and on-going training;
8. to ensure that appropriate training programmes and seminars are arranged to enhance Members' knowledge and their ability to carry out the Committee's functions effectively; and

9. to work with the Development Manager to understand the issues related to upcoming planning applications.

### **Chairing Skills Required:**

1. An understanding of the planning issues and topics being discussed;
2. a knowledge of the Committee's Membership;
3. ability to effectively manage the meeting and focus on the pertinent planning issues, limit discussion to relevant points, and allow all those wishing to speak, to do so;
4. ability to effectively manage the meeting when planning applications are subject to petitions and public speaking;
5. ability to summarise the debate and ensure that Members know what they are being asked to vote on;
6. knowledge of rules of debate / Council Procedure Rules;
7. ability to understand the planning legislation and regulations and their application in the determination of planning applications;
8. ability to understand the relationship of the Planning Committee's decisions in regard to the strategies and adopted plans for the District (e.g. the Local Plan); and
9. a working understanding of the Planning Handbook and the Constitution in relation to planning issues.

# PART 5-6

## HYBRID FORMAL MEETING PROTOCOL

### 1. Officers and Members MUST:

- (a) Join remote hybrid meetings from a suitable location and where possible, on a Rother District Council issued device, or an approved alternative arrangement.
- (b) Join the meeting at least 15 minutes before the start time; failure to do so may result in non-attendance / admittance to the meeting due to technical difficulties.
- (c) Apply the corporate backdrop, where technically possible.
- (d) Be aware of the content on their own devices that may be visible on the live broadcast.

### 2. Members

- (a) Leave microphones muted and cameras ON when not speaking and indicate to the Chair by the “hands-up” facility when wanting to speak.
- (b) Attendance at a remote hybrid meeting will constitute attendance at a meeting for the purposes of the 6-month rule, provided that Members are seen and/or heard.
- (c) Members are requested to confirm one day in advance of the meeting of their intention to join remotely, where possible.
- (d) For the purposes of the call-in procedure in relation to Cabinet decisions, at least one of the two Members requesting a call-in must have been physically present at the relevant Cabinet meeting.
- (e) Committee Members present remotely will have speaking rights only – there will be no rights to move or second a Motion or vote on a Motion.
- (f) Committee Members present remotely cannot be substituted by a Member who is present in the room at the same time.
- (g) The Chair and Vice-Chair of any Committee MUST always be physically present at the meeting to Chair the meeting and in the case of the Vice-Chair take over proceedings where necessary. If the Chair is unable to attend the physical meeting and attends remotely, the meeting will be Chaired by the Vice-Chair or another Member elected to Chair the meeting who is physically present.
- (h) Committee Members present remotely will be asked for their contribution before non-committee Members who are in remote attendance.

- (i) Members attending remotely with a declaration of interest of a Personal and Prejudicial or Disclosable Pecuniary Interest nature will have to leave the remote meeting room and re-join following the item.
- (j) Members physically present in the meeting room must NOT also join the meeting via MS Teams.

### **3. Officers**

- (a) Leave microphones muted and cameras off when not speaking and indicate to the Chair by the “hands-up” facility when wanting to speak.
- (b) Officers will be expected to be physically present at meetings for significant or controversial items / major planning applications. The decision whether an officer attends a meeting remotely or in person will be made in conjunction with the relevant Head of Service / Director or Chief Executive / Deputy Chief Executive and in consultation with the relevant Chair.
- (c) If an officer requires support in delivering a presentation, they must source this from within their own department and discuss their arrangements with Democratic Services five working days before the meeting.

### **4. Public and other invited guests / speakers**

- (a) Members of the public will be able to join hybrid meetings remotely using a suitable device for the purposes of participation in any public speaking scheme in operation and in any other circumstances where they have been specifically invited to address a committee. They will be required to leave their cameras and microphones off until they are invited to speak.
- (b) They will be required to leave the remote meeting room once their participation has concluded. Other (non-public) guests and speakers invited to address a Committee will be asked to leave at the discretion of the Chair of the relevant committee.
- (c) For the purposes of speaking to a planning application, members of the public will be let into the remote meeting room at the start of the relevant planning application and will be asked to leave once the application has concluded. Members of the public will not be permitted to share content during a live broadcast. Any material to be shown by the public will have to be provided to Rother District Council in advance of the meeting.

# **PART 6**

## **MEMBERS' ALLOWANCES SCHEME**

Rother District Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, hereby makes the following scheme. This scheme shall apply for the municipal year 2023-2024.

### **1. Basic Allowance**

- a) Subject to the provisions of this scheme, for each year a basic allowance shall be paid to each Councillor as set out in Schedule 1.
- b) Such allowance payable to all 38 Councillors is intended to recognise the time devoted by them to their work, including attendance at meetings of the Council, Cabinet, Committees, Sub-Committees, Steering Groups and Task and Finish Groups, representation of the Council on outside bodies, meetings with constituents and all incidental costs such as the use of their private telephones and internet connection. The Basic Allowance is also set to reflect an element of voluntary public service.
- c) The Basic Allowance may be increased each year at the start of each new civic year in May by agreement of Rother District Council, having regard to the advice of the Independent Remuneration Panel. The Independent Remuneration Panel may make a recommendation for an increase to apply over multiple years. Following each annual increase, the amount will be either rounded up or down to the nearest full pound.

### **2. Dependent/Childcare Allowance**

- a) A Dependent/Childcare Allowance is available to Councillors under which they will be reimbursed up to £14.00 per hour for the care of dependents and up to £10.42 per hour for childcare, based on actual payments made up to these limits.
- b) This allowance is available in respect of costs necessarily incurred in making arrangements for the care, usually other than by members of their own household, of children or other dependents living with them in order to enable them to perform their duties.
- c) A family member may be paid the dependent/childcare allowance in exceptional circumstances with agreement from the Chief Executive or Monitoring Officer.
- d) The qualifying period includes time spent during the hand-over of care and the travel time to and from duties, not just the actual hours spent conducting duties.
- e) The Chief Executive, or in their absence the Monitoring Officer, can agree to pay a higher dependent/childcare allowance rate on a case-by-case basis. A record of the reasons for the higher rate and agreement to pay the higher rate must be set out in writing.

### **3. Special Responsibility Allowances**

- a) Subject to the provisions of this scheme, for each year a Special Responsibility Allowance (SRA) shall be paid to those Councillors who hold the special responsibilities in relation to the Council and in the amounts that are specified in Schedule 1 to this scheme.

- b) Such allowances are intended to recognise the responsibility taken on by those Councillors who have significant extra duties, but are also set to reflect an element of voluntary public service.
- c) No Member shall be in receipt of more than one SRA at any one time. Should a Member be conducting two roles that attract a SRA, the higher of the two SRAs will be payable.
- d) The SRAs will be increased each year in May, by agreement of Rother District Council, having regard to the advice of the Independent Remuneration Panel. Following each annual increase, the amounts will be either rounded up or down to the nearest full pound. The Independent Remuneration Panel may make a recommendation for an increase to apply over multiple years.
- e) The SRA in respect of designated Cabinet Spokespersons / Member Champions is only payable provided that the Member is not in receipt of any other SRA and there being no more than five spokespersons attracting an SRA payment at any one time.

#### **4. Co-optees Allowances**

- a) Subject to the provisions of this scheme, a co-optees' allowance shall be paid to those persons appointed to the Council's Audit and Standards Committee who are not Members of the Council.
- b) Such allowances shall be paid to these persons in the amounts that are specified in Schedule 2 to this scheme.
- c) Such allowances are intended to recognise the time devoted by such persons but are also set to reflect an element of voluntary public service.

#### **5. Renunciation**

A Councillor or other recipient of an allowance may elect to forego any part of their entitlement to an allowance under this scheme by giving notice to the Chief Finance Officer.

#### **6. Allowance Increases**

If an amendment to this scheme is made which affects payment of a basic allowance, an SRA or a co-optees' allowance in the year in which the payment is made, the new value shall apply from the day the amendment takes effect.

#### **7. Part-year Entitlement**

Where the term of office of a Councillor or other Member begins or ends otherwise than at the beginning or end of a year, the entitlement of that Councillor or other Member to a basic and/or SRA or co-optees' allowance shall be reduced to reflect the number of the days in the period that the allowance applies.

#### **8. Travelling and Subsistence Allowances**

- a) Councillors or other Members are entitled to receive travelling and subsistence allowances at the rates specified in Schedule 3 to this scheme where they necessarily incur expenditure for the purpose of enabling them to perform an approved duty.

- b) For paying travelling and subsistence allowances an approved duty comprises attendance at:
- The bodies set out within Schedule 4 to this scheme by the Member or Members specifically appointed thereto as the Council's representative.
  - Formal site inspections by Members of the Planning Committee (and by Members of other Committees in the case of joint inspections) provided these have been resolved by the Planning Committee or any other Committee as a necessary incidence of consideration of a planning application.
- c) For paying travelling allowance only, an approved duty comprises attendance at:
- The Cabinet or any Council Committee, Sub-Committee, Steering Group and Task and Finish Group etc., (whether or not specifically appointed thereto) by any Member.
  - Any other meetings or visits within the Rother District by any Member provided that it is considered by the Member to be necessary in the furtherance of their duties as a Councillor and subject to any claims in connection therewith being countersigned by the appropriate Group Leader before submission to the Council for payment. In the case of claims by Group Leaders, countersignature will be required from the Chief Executive.
  - Any other meetings or visits outside of the Rother District by any Member provided that it is considered by the Member to be necessary in the furtherance of their duties as a Councillor and subject to the prior approval of the Leader of the Council and any claims in connection therewith being countersigned by the Leader of the Council before submission to the Council for payment. In the case of visits by the Leader the prior approval and subsequent countersignature of the Chief Executive will be required.

## **9. Repayment of Allowances Paid**

Where an Allowance has already been made in respect of any period during which the Councillor concerned ceases to be a Councillor or is in any other way not entitled to receive an Allowance in respect of that period, the Councillor shall repay to the Council such part of the Allowance as relates to any such period.

## **10. Claims and Payments**

Payments shall be made in respect of basic, special responsibility and co-optees' allowances monthly on or about the 20<sup>th</sup> day of each month and in respect of other allowances (i.e. travel and subsistence), on or about the 20<sup>th</sup> day of each month in respect of claim forms received by the Payroll Administrator by no later than the fifth day of each month.

## SCHEDULE 1

### Basic Allowance

| YEAR £ (per annum) |         |         |         |
|--------------------|---------|---------|---------|
| 2023-24            | 2024-25 | 2025-26 | 2026-27 |
| 4,938.00           |         |         |         |

### Special Responsibility Allowances

The following are specified as the special responsibilities in respect of which special responsibility allowances are payable, and the amounts of those allowances:

| SRA   | YEAR £ (per annum) |         |         |         |
|---|--------------------|---------|---------|---------|
|   | 2023-24            | 2024-25 | 2025-26 | 2026-27 |
| Leader of the Council (1)<br>(including leadership of majority Political Group and membership of Cabinet) | 14,814.00          |         |         |         |
| Deputy Leader of the Council (1)<br>(including membership of Cabinet)                                     | 4,938.00           |         |         |         |
| Other Cabinet Members (9)   | 3,259.00           |         |         |         |
| Chair of Overview and Scrutiny Committee (1)  | 3,259.00           |         |         |         |
| Vice-Chair of Overview and Scrutiny Committee (1)   | 494.00             |         |         |         |
| Chair of Planning Committee (1)   | 3,259.00           |         |         |         |
| Vice-Chair of Planning Committee (1)  | 494.00             |         |         |         |
| Chair of Audit and Standards Committee (1)  | 1,630.00           |         |         |         |
| Chair of Licensing and General Purposes Committee (1)   | 1,630.00           |         |         |         |
| Opposition Group Leader   | 1,630.00           |         |         |         |
| Designated Cabinet Spokesperson / Member Champions (5 max)  | 564.00             |         |         |         |
| Other Group Leaders   | 494.00             |         |         |         |

## SCHEDULE 2

| CO-OPTEE'S ALLOWANCES<br>(Other non-District Councillor)<br>/ Standards Committee<br>Members | YEAR £ (per annum) |         |         |         |
|--|--------------------|---------|---------|---------|
|  | 2023-24            | 2024-25 | 2025-26 | 2026-27 |
| One Independent Person (Audit)   | 954.00             |         |         |         |
| Two Independent Persons (Standards)  | 379.00             |         |         |         |
| Two Parish and Town Council Representatives  | 214.00             |         |         |         |



## SCHEDULE 3

| TRAVELLING ALLOWANCES   | YEAR £ (rate per mile) |         |         |         |
|---|------------------------|---------|---------|---------|
|   | 2023-24                | 2024-25 | 2025-26 | 2026-27 |
| Cars (plus an additional 5p/per mile per passenger carried)*            | <b>45p</b>             |         |         |         |
| Motorcycles   | <b>24p</b>             |         |         |         |
| Cycles  | <b>20p</b>             |         |         |         |
| Public Transport<br>(paid at the standard class rail and / or bus fare) | <b>Standard Rate</b>   |         |         |         |

Travelling Allowances for both the approved mileage and passenger mileage rates will be fixed in line with HM Revenue & Customs 'Approved Mileage Allowance Payments' from 2023-2027.

\* The additional 5p passenger allowance can only be claimed where other Members are the passenger.

| SUBSISTENCE ALLOWANCES | YEAR £ (rate) |         |         |         |
|------------------------|---------------|---------|---------|---------|
|                        | 2023-24       | 2024-25 | 2025-26 | 2026-27 |
| Breakfast              | <b>6.10</b>   |         |         |         |
| Lunch                  | <b>8.50</b>   |         |         |         |
| Tea                    | <b>3.60</b>   |         |         |         |
| Dinner                 | <b>12.10</b>  |         |         |         |

## SCHEDULE 4

1066 Country Member Liaison Group  
A21 Reference Group  
Action in Rural Sussex  
Battle Abbey Liaison Group  
Battle Area Sports Centre Management Committee  
Bexhill Museum Limited (formerly Society of Bexhill Museums)  
Combe Valley Community Interest Company  
Connecting Hastings and Rother Together, Local Action Group\*  
De La Warr Pavilion Charitable Trust  
District Councils' Network  
Dungeness Power Station Site Stakeholders Group  
East Sussex Energy, Infrastructure & Development Ltd  
East Sussex Health and Wellbeing Board  
East Sussex Health Overview and Scrutiny Committee  
East Sussex Strategic Partnership  
Hastings Advice and Representation Centre  
Harbour of Rye Advisory Committee  
Hastings and Bexhill Renaissance Ltd (SEASPACE)  
Hastings and Rother Mediation Service  
Hastings and Rother Task Force (formerly Hastings and Bexhill Task Force)  
Hastings Furniture Service  
High Weald Area of Outstanding Natural Beauty Forum / Joint Advisory Committee  
Local Government Association  
Local Government Association – Coastal Issues Special Interest Group  
Pevensey and Cuckmere Water Level Management Board  
Police & Crime Commissioner Panel  
Romney Marshes Area Internal Drainage Board  
Romney Marsh Partnership  
Rother District Citizens Advice Bureau  
Rother Local Strategic Partnership  
Rother Voluntary Action  
Rural Rother Trust  
Rye Chamber of Commerce  
Rye Harbour Nature Reserve Management Committee  
Rye Partnership  
Rye Sports Centre Advisory Committee  
Safer Rother Partnership  
South East Employers  
The Sussex Local General Panel  
Team East Sussex (TES)  
Tourism South East

\*remove from list on 1 July 2023

# PART 7

## MANAGEMENT STRUCTURE

### 1. SENIOR LEADERSHIP TEAM

The Council's operations are structured under the Chief Executive and two Chief Officers\*. The main responsibilities of the Chief Executive and each Chief Officers are as follows:

**Chief Executive – Malcolm Johnston**

Financial Services

Human Resources

Democratic Services and Elections

**Deputy Chief Executive and Monitoring Officer – Lorna Ford**

Audit and Risk Management

ICT

Revenues and Benefits

Housing and Customer Services

Environmental Services

**Director of Place and Climate Change – Ben Hook**

Planning Policy and Strategy

Regeneration and Major Projects

Neighbourhood Services

Climate Change

**Chief Finance Officer – Section 151 Officer**

Anthony Baden

### 2. CORPORATE MANAGEMENT TEAM

The Corporate Management Team includes all Heads of Service and other key senior officers.

\*The Council is currently undertaking a re-structure and this page will be updated as soon as possible with further details and a structure chart.

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# Part 8

## Delegations to Officers

### 1. Head of Paid Service Delegations

In the absence of the Head of Paid Service these delegated powers may be exercised by the Executive Director of Resources or Executive Director of Business Operations.

#### Corporate Management Matters

- 1.1 For the purposes of the provisions of the Local Government and Housing Act 1989
  - (a) to act as Proper Officer (Sections 2 and 19);
  - (b) to be designated Head of the Authority's Paid Service (Section 4); and
  - (c) to settle the list of politically restricted posts, to agree any modifications from time to time of the list, whether by the addition to or the exclusion from the list of posts and to give a certificate of opinion in relation to any post.
- 1.2 To submit planning applications and building regulation applications on behalf of the Council. (S26/7/82)
- 1.3 Acting as Returning Officer, to determine election arrangements as circumstances require.
- 1.4 To arrange Councillors' attendance on Emergency Planning training courses.
- 1.5 To authorise payments of up to £1000 in relation to the provisions of Section 92 of the Local Government Act 2000. (A report must be made to the next available Standards Committee following the exercise of this delegation). (D25/12/02).
- 1.6 To act as a Designated Authorising Officer for the purposes of granting and removing authorisations for covert surveillance under the Regulations of Investigatory Powers Act 2000 (RIPA).

#### Staffing Matters

- 1.7 Acting jointly with the Executive Director of Resources and Service Manager - Finance and Welfare:
  - (a) To grant accelerated increments to staff in circumstances provided for in the National and Local Scheme of Conditions of service, within the approved estimates.
  - (b) To approve within the approved estimates the appointment of temporary staff extra to the establishment.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- (c) Provided there are the necessary funds available by way of underspending in salaries, to agree upon and arrange payment of honoraria as provided for in Paragraph 35(a) of the Scheme of Conditions of Service and Paragraph 35(b) where a clearly defined and agreed apportionment of a Paragraph 35(a) definition and calculation can be demonstrated.
  - (d) To approve payments to staff under the Council's employee rewards scheme.
- 1.8 To authorise the filling of all vacancies within the approved establishment below the level of Directors.
  - 1.9 To amend and alter the establishment as may be necessary from time to time by deletion or addition subject to any changes being contained within the overall budgetary provision.
  - 1.10 To authorise overtime payments within the budgeted expenditure. (S98/5/89)
  - 1.11 To determine those posts for which an authorised car user allowance is appropriate.
  - 1.12 To appoint existing staff as inspectors under Section 12 of the Social Security Administration (Fraud) Act 1997.
  - 1.13 To appoint authorised officers under Section 48 to 52 of the Anti-Social Behaviour Act 2003: Graffiti (fly posting) removal notices.

**Officer Appointments and authorisations etc**

- 1.14 To appoint and authorise such officers as he considers appropriate to deal with applications, serve Notices (including fixed penalty notices) and apply for warrants etc on behalf of the Council and to be empowered to enter premises (including land) in the course of their duties under legislation enforced by the District Council.
- 1.15 To appoint such doctors designated by the Health Protection Authority as 'Proper Officers' for the purposes of communicable disease control (E12/6/96).

**Financial Matters**

- 1.16 To act as Proper Officer for the purposes of Section 116 of the Local Government Finance Act 1988.
- 1.17 The Head of Paid Service and the Service Manager - Finance and Welfare (acting severally) to appoint proxies to attend Creditors meetings arising out of the Companies Act 1985 or any amending or supervening legislation.
- 1.18 In consultation with the Service Manager – Finance and Welfare, to serve notices requiring the repayment of any mortgage advance and interests or any other form of loan, subject to a report on action taken being submitted to Cabinet.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 1.19 Acting jointly with the Service Manager - Finance and Welfare to approve the Council acting as a Lead Organisation for Partnership sponsored projects, where it is deemed appropriate.
- 1.20 To authorise entry by the Council into any contract or agreement for the provision of goods or services or for the execution of works, where the cost has been budgeted for; it conforms with the requirements of the Council's Financial Procedure Rules and does not exceed the relevant EU Procurement threshold for the time being.

**Legal Matters**

- 1.21 To defend any appeal or other proceedings against the Council consequent upon any action taken or not taken by the Council, any notice served etc and in the case of claims for compensation in respect of which the Council is insured, to authorise its Insurers to defend such claims on its behalf.
- 1.22 To appoint existing staff to represent the Council before the Magistrates' Court, under Section 233 of the Local Government Act 1972 in relation to applications for Liability Orders in respect of Non payment of Council Tax and National Non-Domestic Rates and matters relating to Committal proceedings.

**Land and Property Matters**

- 1.23 In the case of applications for the purchase of the freehold reversion in properties in Rye held on long leases situate in any street or road where the Council has previously sold such an interest, the Head of Paid Service in consultation with the Service Manager - Finance and Welfare is empowered to act in the name of the Council in determining such applications and the terms upon which such interest shall be sold.

**Injunctions**

- 1.24 To obtain injunctions under the provisions of Section 222 of the Local Government Act 1972, whenever the peace and quiet of residents in the Council's area is under threat.

## **2. Executive Director of Resources Delegations**

In the absence of the Executive Director of Resources these delegated powers may be exercised by the Head of Paid Service or Executive Director of Business Operations.

### **Staffing Matters**

- 2.1 To implement national awards on salaries, wages, allowances and any other revisions in the national conditions of service involving the payment of money, subject to report to the Licensing and General Purposes Committee.
- 2.2 To apply local awards as above to employees who are not paid in accordance with nationally negotiated rates of pay.
- 2.3 To approve loans to authorised car users in accordance with the assisted car purchase scheme in force from time to time.
- 2.4 Acting jointly with the Head of Paid Service and Service Manager - Corporate and Human Resources:
  - (a) To grant accelerated increments to staff in circumstances provided for in the National and Local Scheme of Conditions of service, within the approved estimates.
  - (b) To approve within the approved estimates the appointment of temporary staff extra to the establishment.
  - (c) Provided there are the necessary funds available by way of underspending in salaries, to agree upon and arrange payment of honoraria as provided for in Paragraph 35(a) of the Scheme of Conditions of Service and Paragraph 35(b) where a clearly defined and agreed apportionment of a Paragraph 35(a) definition and calculation can be demonstrated.
  - (d) To approve payments to staff under the Council's employee rewards scheme.
- 2.5 To authorise overtime payments within the budgeted expenditure. (S98/5/89)
- 2.6 To act as a Designated Authorising Officer for the purposes of granting and removing authorisations for covert surveillance under the Regulations of Investigatory Powers Act 2000 (RIPA).

### **Land and Property Matters**

- 2.7 To examine offers of property to the Council and requests to purchase property from the Council and to reject such offers and requests.
- 2.8 To give consent or otherwise to requests for the assignment or sub-letting of leases.



**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 2.9 To deal with requests for the Council's consent required under the terms of leases granted by the Council. (P93/10/91)
- 2.10 To grant wayleaves and easements over Council land.
- 2.11 To grant leases of land to statutory undertakers required for the discharge of their statutory powers, and power to accept surrender of leases so granted.
- 2.12 To renew leases of allotment land to Parish Councils on such terms and conditions as he may determine. (H20/5/94)
- 2.13 To sign, together with the Solicitor to the Council, certificates of title (form RB1 and RB2) pursuant to subsections (2) and (3) of Section 154 of the Housing Act 1985.
- 2.14 To authorise the Council's seal to be affixed to the discharge or variation of any mortgage under the Council's Housing Advances Scheme.
- 2.15 To authorise, following consultation with the Chairman of the Council, the free use of the Council Chamber or Committee Room at the Town Hall, Bexhill for public meetings sponsored by a Member of the Council on matters relating to the responsibility of the District Council and not related to a political party or commercially sponsored issue.
- 2.16 To approve renewals of leases, tenancies, licences to occupy land (including buildings) or any other lettings of the Council's land.
- 2.17 To initiate and approve rent / licence fee reviews and authorise the Solicitor to the Council to prepare all necessary legal documentation and execute it (including affixing the Council's Common Seal).

**Agricultural Tenancies & rent**

- 2.18 To determine the level of rents charged under, and other terms for, agricultural tenancies on Council-owned land.

**Financial Matters**

- 2.19 To set and vary the fees, in consultation with the Service Manager - Finance and Welfare, for answering Official Searches of the Local Land Charges Register and the accompanying enquiries having regard to inflation and the fees of adjacent local authorities.
- 2.20 To authorise entry by the Council into any contract or agreement for the provision of goods or services or for the execution of works, where the cost has been budgeted for; it conforms with the requirements of the Council's Financial Procedure Rules and does not exceed the relevant EU Procurement threshold for the time being.
- 2.21 To authorise new deposit takers or suspend existing deposit takers in agreement with the Council's treasury management advisers.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**  
**Non-Domestic Rate Relief**

2.22 The Executive Director of Resources or Service Manager - Finance and Welfare be authorised to deal with all applications for relief from Non-Domestic Rates in accordance with the criteria as approved (or as may be amended from time to time) by the Licensing and General Purposes Committee, with effect from 1 April 2007.

**Timetable of Formal Council Meetings**

2.23 To approve the annual timetable of formal Council meetings in consultation with officers, the Leader of the Council and the Committee Chairmen.

## **2.1 Service Manager - Finance and Welfare Delegations**

In the absence of the nominated officers delegated power may be exercised by the Executive Director of Resources or such officer as the Head of Paid Service may nominate.

### **Corporate Management Matters**

2.1.1 To be the Officer responsible for the proper administration of the Council's financial affairs in accordance with:

- Section 151 of the Local Government Act 1972
- Section 26 and Section 114 of the Local Government Finance Act 1988
- the Local Government and Housing Act 1989
- the Accounts and Audit Regulations 2003

Delegations to the Executive Director of Resources are included in Financial Regulations and Standing Orders relating to contracts in order to assist him / her to discharge these responsibilities. The Executive Director of Resources has also been appointed by the Council as the Community Charge Registration Officer.

### **Financial Matters**

#### **General**

2.1.2 With the approval of the Head of Paid Service, to roll forward amounts between financial years where the appropriate Portfolio and Council budget is not overspent.

2.1.3 To approve annual contributions to and from scheduled provisions and reserves, including for the replacement of plant and equipment, subject to there being sufficient funds available to meet the expenditure.

2.1.4 To reject applications for community project grants, if they do not comply with the adopted guidelines, subject to the subsequent reporting of all applications rejected to Cabinet.

2.1.5 To arrange as considered by the Executive Director of Resources appropriate, for the renewal of the Council's insurance policies and to enter into the necessary contracts in connection therewith.

2.1.6 To maintain an adequate and effective Internal Audit Service under the Accounts and Audit Regulations 2003.

2.1.7 To adjust the Council's fees and charges when necessary, to take into account any increased costs and taxation.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**  
**Treasury Management, Loans and Investments**

- 2.1.8 To take all necessary action to carry into effect the Council's decisions to borrow money for a purpose for which there is a statutory power to borrow.
- 2.1.9 To lend surplus monies to local authorities and other bodies which he / she considers will secure the best financial advantage for the Council within the list of deposit takers approved by Cabinet.
- 2.1.10 In conjunction with the Head of Paid Service, to deal with the consideration and granting of loans under the Fire Precautions Act 1971 and the Fire Precautions (Loans) Act 1973 and to take all necessary action deriving there from.
- 2.1.11 To employ independent valuers for the purpose of valuing properties and work in connection with housing advances and maturity mortgages.

**Local Taxes, Benefits and Grants**

- 2.1.12 To exercise discretionary powers relating to Council Tax Benefit contained in the Social Security Contributions and Benefits Act 1992.
- 2.1.13 To apply for liability orders and warrants of arrest from the Magistrate's Court where this will protect the Council's position in the event of default of Non-Domestic Ratepayers and Council Tax payers.
- 2.1.14 To pay grants under Sections 521 and 522 of the Housing Act 1985 as amended by the Housing Act 1988 and Local Government & Housing Act 1989 as and when necessary up to the limit of government funds available.
- 2.1.15 To exercise the various discretionary powers relating to Housing Benefits contained within any regulations issued under the Social Security Act 1986, as amended by the Social Security (consequential provisions) Act 1992, any amendments thereto and all subsequent relevant legislation. (F11/12/91).
- 2.1.16 To consider requests from private sector tenants for Discretionary Housing payments.
- 2.1.17 Carry out investigations into suspected fraudulent claims for benefits under the Social Security Administration Act 1992, as amended by the Social Security Administration (Fraud) Act 1997.

## **2.2 Service Manager - Corporate and Human Resources Delegations**

In the absence of the nominated officers delegated power may be exercised by the Executive Director of Resources or such officer as the Head of Paid Service may nominate.

- 2.2.1 To act as a Designated Authorising Officer for the purposes of granting and removing authorisations for covert surveillance under the Regulations of Investigatory Powers Act 2000 (RIPA).
- 2.2.2 To be designated as Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
- 2.2.3 After consultation with the Leaders of the Political Groups to:
  - (a) calculate the total of seats on the Committees of the Council and the proportion that each political group forms of the total membership of the Council;
  - (b) to apply those proportions to the total number of Committee seats to give the aggregate entitlement of each group;
  - (c) apply those proportions to the number of seats on each Committee; and
  - (d) take any such further steps as may be necessary in order to give effect to the political balance requirements of the 1989 Act and the Regulations made thereunder.

### **Member Complaints**

- 2.2.4 In accordance with the approved arrangements for dealing with Member complaints, to make the initial decision on whether complaints should be investigated, consulting one of the Independent Persons as necessary.
- 2.2.5 In respect of District Councillors, to consider and agree, where appropriate, dispensations from the restriction on speaking and/or voting when any matter in which that person has a disclosable pecuniary interest is to be considered at a meeting of the Council or any of its committees, sub-committees, joint committees or joint sub-committees.

### **Licensing Matters**

- 2.2.6 To appoint Members from the Licensing and General Purposes Committee to sit on either Licensing or Taxi Panels as may be required from time to time to ensure that the Panel is quorate.

### **Solicitor to the Council**

#### **Land and Property Matters**

- 2.2.7 To adjust rents for the Wish Street Depot Garages in line with increases in the Retail Prices Index.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 2.2.8 To adjust the rents of residential properties annually in line with increases in the Retail Prices Index.
- 2.2.9 To enter into agreements for the maintenance of Council-owned equipment.
- 2.2.10 To agree tenancies or licences for 364-day periods of land acquired by the Council in advance of requirements not immediately needed for development.
- 2.2.11 To renew on such terms as he shall approve tenancies or licences for 364-day periods of housing land not immediately required for development.
- 2.2.12 To serve and accept service of all notices (including Notices to Quit) under Part II of the Landlord and Tenant Act 1954 (relating to business tenancies) and to institute proceedings under the Law of Property Act 1954 not applying to any particular lease.
- 2.2.13 To select tenants and take all necessary action for the letting of the Light Industrial Units at Beeching Road, Bexhill-on-Sea, on terms and conditions to his / her satisfaction. (P50/10/89).
- 2.2.14 To take all necessary action for the letting at market rents of the Workshop Units at Peasmarsh on such terms and conditions as he / she considers appropriate, in consultation as necessary with English Estates. (P109/4/91).
- 2.2.15 To take all necessary action for the letting of the Udimore School Units on the basis of the terms and conditions approved together with any conditions which he / she deems to be necessary. (P102/3/86).
- 2.2.16 To take steps as necessary, including legal action or proceedings, to secure removal of unauthorised persons and property from the Council's land (or from land which is managed by it or to which it is otherwise entitled to possession) and to take such steps to prevent trespassers or unauthorised persons from entering or re-entering such land.
- 2.2.17 To engage the services of the District Valuer and or a private surveyor/valuer, as required.
- 2.2.18 In consultation with the Executive Director of Business Operations, to deal with requests from frontagers to construct boat ramps onto the sea wall, west of Richmond Road, Bexhill.
- 2.2.19 To review periodically, and determine in consultation with the Service Manager - Finance and Welfare, the licence fee for the use of two hard surfaced tennis courts and changing room at Egerton Park by Bexhill Lawn Tennis Club. (R111/4/88).
- 2.2.20 To serve statutory notices on agricultural tenants under Section 12 of the Agricultural Holdings Act 1986. (R42/7/90).
- 2.2.21 To employ (in consultation with the Head of Paid Service) a private valuer in connection with negotiations where the other party is represented by the District Valuer.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE  
Party Wall Act 1996**

2.2.22 To be designated as the Appointing Officer for the purposes of the Party Wall Act 1996. (E37/9/98).

**Corporate Management Matters**

2.2.23 In the alternative to the Head of Paid Service to exercise all powers delegated to the Head of Paid Service relating to the institution of legal proceedings and, in particular, to sign appropriate documentation to commence any proceedings in the Magistrate's Court which have been authorised by the Council or any of its Committees or by another officer acting under delegated authority.

2.2.24 To institute proceedings in respect of the infringement of Byelaws.

**Housing Matters**

2.2.25 To institute criminal proceedings against persons responsible for offences under the Landlord and Tenant Act, 1985 and the Protection from Eviction Act, 1977.

2.2.26 To comply with any future exercise of the Right to Buy / Acquire a leasehold property vested in a Housing Association or other Registered Social Landlord where the freehold is vested in the Council at a valuation to the satisfaction of the Head of Paid Service and for the Common Seal to be affixed to all necessary documentation.

**Planning Matters**

2.2.27 To withdraw any planning enforcement notice in order to correct any clerical or other defect or informality by re-serving the notice in the correct form or manner in accordance with the authorisation therefore.

**Financial Matters**

2.2.28 To institute proceedings for the recovery of rent arrears incurred by former and existing tenants of the Council upon request to do so by the Executive Director of Resources or the Executive Director of Business Operations respectively.

2.2.29 To institute proceedings in the County Court whenever appropriate, to recover the Council's losses arising from accidental damage to the Council's property.

2.2.30 In consultation with the Executive Director of Resources to institute proceedings for the recovery of outstanding debts, where no other delegated authority exists.

2.2.31 In conjunction with the Executive Director of Resources, to prosecute cases under Section 111A and 112 of the Social Security Administration Act 1992 subject to satisfactory evidence being obtained. (P49/8/93).

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 2.2.32 To institute proceedings for non-compliance with Off-Street Parking Places Orders relating to payment of parking charges.

**Pollution Matters**

- 2.2.33 To take proceedings in the High Court, in consultation with the Executive Director of Business Operations, under the provisions of Section 58(8) of the Control of Pollution Act 1974 (E41/10/89).
- 2.2.34 To obtain injunctions under the provisions of Section 222 of the Local Government Act 1972, whenever the peace and quiet of residents in the Council's area is under threat, in order to prevent events taking place in contravention of the Private Places of Entertainment (Licensing) Act 1967.

**Highway and Transport Matters**

- 2.2.35 To make Public Footpath Diversion Orders under section 257 of the Town and Country Planning Act 1990 in respect of development for which planning permission has been granted by the Council, after consultation with the Chairman of Planning, East Sussex County Council, Statutory Undertakers, the Ward Representative(s), the Parish/Town Council and other representative bodies as appropriate, and to submit the same to the Secretary of State for confirmation or to confirm them on behalf of the Council as unopposed Orders. (P45/8/93).
- 2.2.36 To determine applications for Street Closure Orders under Section 21 of the Town Police Clauses Act 1847 and all other enabling powers subject to consultation with East Sussex County Council, the Police, the Ward Representative(s) and the Parish/Town Council as appropriate.
- 2.2.37 To refuse any applications for the making of a Street Closure Order to facilitate any event where the application is received within 12 weeks of the date of the event.

**Authority to Prosecute**

- 2.2.38 Authority to prosecute for driving with no insurance under the Road Traffic Act 1988, under Section 222 of the Local Government Act 1972.



## **2.3 Service Manager - Finance and Welfare Delegations**

### **Housing Service**

In the absence of the nominated officers delegated power may be exercised by the Executive Director of Resources or in his/her absence such officer as the Head of Paid Service may nominate.

### **Acts, Orders, Strategies & Policies**

2.3.1 The following officers have been given the delegated authority to enact the Housing Service Delegated Powers: Service Manager – Finance and Welfare; Private Sector Housing Manager; Housing Policy and Development Manager; Housing Needs Manager; Senior Environmental Health Officer; Environmental Housing Officer; Housing Aid Co-Ordinator; Housing Surveyor; and Housing Needs Officers.

The above officers have delegated authority to:

- a) prosecute, serve any notices, and to be empowered to enter premises or enter on to land in the course of their duties, undertake all works, closing orders, prohibition orders, demolition orders and execute works in default; under any of the Acts set out in the Schedule hereto.
- b) In consultation with the Service Manager - Finance and Welfare, the above officers have delegated authority to: exercise discretion to increase or reduce the level of charges to be levied, where there is not or where there is a financial hardship based on the circumstances of each individual person on whom any notice, order, prosecution or works resulting from actions under any of the Acts set out in the Schedule hereto.
- c) Deal with all matters under Rother District Councils' adopted Housing Aid Policy and all changes to that Policy adopted or made thereafter and under any of the Acts set out in the Schedule hereto.
- d) to exercise discretion to increase or decrease the maximum or minimum amount of grant aid in respect of grants and charges under Rother District Councils' adopted Housing Strategy, Housing Aid Policy and all changes to that Strategy and Policy adopted or made thereafter and under any of the Acts set out in the Schedule hereto. This discretion to increase the maximum amount of grant aid will be subject to match funding from Adult or Children Services in regard to Disabled Facilities Grants (DFGs).
- e) To exercise all the Council's powers, make decisions and takes actions under the Housing Act 1996 as amended by the Homelessness Act 2002, the Children Act 1989, the Children Act 2004, the Vulnerable Groups Act 2006 and all Regulations and Orders made thereafter.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- f) To take all necessary action to secure the use for temporary housing purposes of any hall, building or suitable structure to accommodate persons rendered homeless in an emergency (fire, flood, etc).
- g) In partnership with Legal Services to institute criminal proceedings against persons responsible for offences under the Landlord and Tenant Act, 1985 and the Protection from Eviction Act, 1977.
- h) In partnership with Legal Services to comply with any future exercise of the Right to Buy / Acquire a leasehold property vested in a Housing Association or other Registered Social Landlord where the freehold or other interest is vested in the Council at a valuation to the satisfaction of the Head of Paid Service and for the Common Seal to be affixed to all necessary documentation.
- i) In partnership with Legal Services to grant a licence for a period of 12 months to the Embassy of The United Arab Emirates upon receipt of its application, permitting a number of persons to sleep in suitable accommodation in excess of the number normally permitted, at the former Prison Site, Northeys, Bexhill-on-Sea, all in accordance with the Housing Act 1985, Section 330.
- j) The above officers have delegated authority in partnership with Legal Services to: renew the licence annually, subject to inspection of the premises and there being no changes to the agreed terms of the licence.

**Miscellaneous**

2.3.2 Safeguarding Children - The Service Manager - Finance and Welfare has the delegated authority and is the named officer for Safeguarding Children for Rother District Council under the Children Act 2004. In the absence of the Service Manager - Finance and Welfare the Housing Policy and Development Manager; Housing Needs Manager and Private Sector Housing Manager are delegated to have this authority.

2.3.3 Supporting People - Following consultation with the Cabinet Portfolio Holder for Housing, the Service Manager - Finance and Welfare, the Private Sector Housing Manager, the Housing Policy and Development Manager are delegated the power to act as spokesperson and decision maker for the commissioning and de-commissioning of housing-related support services across the county on behalf of Rother District Council, as a member of the East Sussex Strategic Forum.

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**SCHEDULE**

The Vulnerable Groups Act 2006  
Housing Act 2004  
The Children Act 2004  
Powers of Entry s.239 Housing Act 2004  
Regulatory Reform (Housing Assistance) (England and Wales) Order 2002  
The Homelessness (Suitability of Accommodation) (England) Order 2003 (Housing Act 1996 as amended by the Homelessness Act 2002

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

Housing Grants, Construction and Regeneration Act 1996

Environmental Protection Act 1990

Local Government & Housing Act 1989

The Children Act 1989`

Housing Act 1985 as amended by the Housing Act 1988

Building Act 1984

Local Government (Miscellaneous Provisions) Act 1982

Local Government (Miscellaneous Provisions) Act 1976

Land Compensation Act 1973

Prevention of Damage by Pests Act 1949

Housing Act 1959

Public Health Acts 1936 to 1961

And all Acts, regulations and orders made thereafter.

## **2.4 Service Manager - Corporate and Human Resources Delegations**

In the absence of the nominated officers delegated power may be exercised by the Executive Director of Resources or such officer as the Head of Paid Service may nominate.

- 2.4.1 To approve, within the approved estimates, all expenditure and absences associated with training and qualifications providing that it does not necessitate the appointment of additional staff.
- 2.4.2 To approve applications for interview and relocation expenses in accordance with the Council's scheme.
- 2.4.3 To serve the statutory period of notice to terminate employment on the grounds of permanent ill-health, when advice to that effect has been received from the Council's Medical Adviser.
- 2.4.4 To update and amend all rates associated with Authorised Car User Scheme.
- 2.4.5 To exercise the Council's functions with regard to street naming under Sections 17-19 of the Public Health Act 1925 and sections 64 and 65 of the Towns Improvement Clauses Act 1847 for the purposes of property numbering.

## **3. Executive Director of Business Operations Delegations**

In the absence of the Executive Director of Business Operations these delegated powers may be exercised by the Head of Paid Service or Executive Director of Resources.

### **Staffing Matters**

- 3.1 Acting jointly with the Head of Paid Service and Service Manager - Corporate and Human Resources:
- (a) To grant accelerated increments to staff in circumstances provided for in the National and Local Scheme of Conditions of service, within the approved estimates.
  - (b) To approve within the approved estimates the appointment of temporary staff extra to the establishment.
  - (c) Provided there are the necessary funds available by way of underspending in salaries, to agree upon and arrange payment of honoraria as provided for in Paragraph 35(a) of the Scheme of Conditions of Service and Paragraph 35(b) where a clearly defined and agreed apportionment of a Paragraph 35(a) definition and calculation can be demonstrated.
  - (d) To approve payments to staff under the Council's employee rewards scheme.
- 3.2 To authorise overtime payments within the budgeted expenditure. (S98/5/89)
- 3.3 To act as a Designated Authorising Officer for the purposes of granting and removing authorisations for covert surveillance under the Regulations of Investigatory Powers Act 2000 (RIPA).

### **Works in Default and Prosecutions**

- 3.4 To carry out works in default (and seek to recover all costs incurred) and / or, through the Solicitor to the Council, to institute legal proceedings, including prosecution of offences against, or applications for Orders under the various Acts, regulations or byelaws made thereunder as set out in these delegations.

### **Miscellaneous Matters**

- 3.5 To grant permission for the landing of helicopters on Council land in an emergency. (P23/7/87)

# 3.1 Director – Place and Climate Change / Development Manager

## Planning Service

The Council's Cabinet and Planning Committee may delegate some of its functions and powers to specific officers of the Council. The following is a list of those delegations

C denotes from Cabinet. P denotes from Planning Committee.

In the absence of the nominated officers delegated power may be exercised by the Chief Executive or such officer as the Chief Executive may nominate.

## DEVELOPMENT MANAGER

All functions exercised by Development Manager and in their absence the Development Management Team Leaders.

### Development Management

- 3.1.1 To deal with applications for Listed Building consent under S10 of the Planning (Listed Buildings and Conservation Areas) Act 1990. (P)
- 3.1.2 To prescribe conditions or reasons for refusal or approval to be applied to any planning application determined by the Council for delegated decisions or resolved to be delegated by the Planning Committee. Decisions taken under this power to be reported to the next available meeting of the Planning Committee. (P)
- 3.1.3 That where decisions of the Planning Committee vary from an officer recommendation the Decision Notice will not be issued until it agrees with the draft minutes approved by the Chair of the Planning Committee. Alignment of the two documents will take place within two clear working days of the receipt of the draft minutes. Should any issue be unresolved at the end of those two days it will be referred to the Chief Executive for final resolution. (C)
- 3.1.4 To approve minor amendments to planning consents and to approve or disapprove any matter submitted as a condition of planning approval. Function also to be exercised by Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4). (P)
- 3.1.5 To deal with applications for Lawful Development Certificates under S191 and S192 of the Town and Country Planning Act 1990. Function also to be exercised by the Development Manager, Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4). (P)
- 3.1.6 To determine applications for planning permission in accordance with the arrangements detailed under Delegated Procedures and to determine individual planning applications specifically delegated by Committee

resolution and to prescribe conditions or reasons for refusal or approval as appropriate. Under the delegated system all applications identified with the (DEL) notification on the weekly list will be dealt with by officers where there are no conflicting views and the matter has not been subject to a 'call-in' by a Member.

- 3.1.7 The weekly list sets out new applications on a ward basis, so that Councillors are fully aware of new submissions in their local area at the outset. They may call applications to Committee (clearly citing planning reasons and whether the call-in is conditional or a recommendation of approval or refusal) up to seven days (no later than 5pm on the last day) after the closure of any weekly list publicity period or expiry of the site notice whichever is the later (P). The officer for a planning application is required to inform the Ward Member or Chair of the Planning Committee of the expected outcome of an application prior to call-in (or any time after) if requested by the Ward Member or Chair of the Planning Committee.
- 3.1.8 Where the time for call-in set out above has expired, a Member may subject to the agreement of the Chair of Planning Committee and in agreement with the Development Manager, call-in a planning application where such an application is considered to be controversial or generate significant local interest. The Chair of the Planning Committee is granted authority to call-in an application, at any time before the Decision Notice is issued after consultation with the local Ward Member(s). Call-ins' may not be made under any other circumstances by officers or Members.
- 3.1.9 Planning applications on the weekly list sets out the applications which are time limited and/or for information only, for example those set against the relevant regulations and those not subject to appraisal against planning policy. Such applications are not subject to any call-in measures.
- 3.1.10 Planning applications which are labelled (COM) automatically go to be determined at Planning Committee where the Applicant is or is related to an elected Member of the Council or member of Council staff, is for Council owned land, or applications submitted by the Council itself.
- 3.1.11 To refuse planning permission for applications in circumstances where no extension of time is agreed, and it is not possible to resolve any outstanding matters. Function also to be exercised by Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4). (P)
- 3.1.12 To rescind or revoke all obsolete, irrelevant or inoperative entries in the registers under his control relating to the Town and Country Planning Act 1990; Article 4 Directions made under the General Permitted Development Orders; the Town and Country Planning (Control of Advertisements) Regulations 1992, and Notices under Section 65 of the Public Health Act 1936. Function also to be exercised by the Team Leaders, Principal Officers (Level 5) and Senior Officers (Level 4). (P) (C)
- 3.1.13 To exercise the Council's functions under Section 224 of the Town and Country Planning Act 1990 – power to remove or obliterate placards and posters. Function also to be exercised by the Development Manager and Development Management Team Leaders. (C)

- 3.1.14 Acting in conjunction with the Solicitor to the Council to authorise Section 106 Planning Obligations or authorise the modification of existing Section 106 Planning Obligations which relate to planning control matters. (Any Obligations that relate to financial matters, including changes to affordable housing provision are to be referred to the Planning Committee for decision). All such Obligations to be concluded within a six-month period of the authorisation unless extended at the discretion of the Development Manager or Solicitor to the Council. Function also to be exercised by the Development Management Team Leaders. (P)
- 3.1.15 To decide not to investigate alleged breaches of planning control where it is considered that the matter is not having a serious impact on amenity or the environment, having regard to the provisions of the development plan and any other material considerations nor in respect of slight variations which would otherwise be permitted by the Town & Country (General Permitted Development) Order 2015 (as amended) or other minor development that amounts only to a technical breach. Function also to be exercised where appropriate by the Development Manager and Development Management Team Leaders. (P)
- 3.1.16 To take enforcement action, having first consulted with the Solicitor to the Council in respect of breaches of planning control, under Part V11 and Part VIII of the Town and Country Planning Act 1990 which are having a serious impact on amenity or the environment, having regard to the provisions of the Council's adopted planning policy and guidance, the current local enforcement plan and any other material considerations. The Solicitor to the Council be authorised to take any other steps necessary to remedy the breach of planning control including legal action under Part VII and Part VIII of the Town and Country Planning Act 1990. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.17 To issue Notices under Powers to require information in relation to the subject land under Section 330 of the Town and Country Planning Act 1990 and to issue Planning Contravention Notices under Section 171C of the Town and Country Planning Act 1990. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.18 Acting through the Solicitor to the Council, to withdraw an enforcement notice which has been complied with, where it is considered that the breach of planning control cannot be repeated or waive or relax any requirements of any notice under Section 173A of the Town and Country Planning Act 1990. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.19 Acting in consultation with the Solicitor to the Council, to extend the period for compliance with any enforcement notice under Section 173A where that would be expedient; such extension not to exceed 12 months. Function also to be exercised where appropriate by the Development Manager and the Development Management Team Leaders. (P)
- 3.1.20 The making of land use planning representations to the Traffic Commissioner on applications for Operators Licences made under the



Goods Vehicles (Licensing of Operators) Act 1995. Function also to be exercised by the Development Manager and Development Management Team Leaders. (P)

3.1.21 The making of directions under Article 4 of the Town and Country (General Permitted Development) Order 1995. Function also to be exercised by the Development Manager and Development Management Team Leaders. (P)

3.1.22 To exercise the Council's functions in respect of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 or any subsequent replacement regulations. Function also to be exercised by Development Manager and Development Management Team Leaders. (P)

### **Rights of Entry**

3.1.23 To authorise at his discretion officers (either generally or specifically) to exercise all or any statutory rights of entry in the Planning Acts and the Regulations made thereunder. (P)

### **Planning Policy**

3.1.24 To make representations on draft planning and related policy statements and documents upon which the Council is consulted in terms of their alignment with Council policies and strategies in consultation with the Chair of Planning Committee. (C)

### **Tree Matters**

3.1.25 That the following actions shall be delegated to the Development Manager and Development Management Team Leaders:

- To determine applications to fell, lop or prune trees the subject of a tree preservation order or in a conservation area. (C)
- To respond to Forestry Commission consultations on the basis of the Council's adopted policy. (C)
- To deal with the hedgerow removal notices under The Hedgerow Regulations 1997 and to issue hedgerow retention notices. (C)

3.1.26 Acting through the Solicitor to the Council, to make such tree preservation orders as considered necessary. This justified through a report to be confirmed by the Development Manager and/or Development Management Team Leaders before the Order is confirmed detailing any objection received. (P)

3.1.27 To exercise the Council's functions in respect of High Hedges under Section 8 of the Anti-Social Behaviour Act 2003. Function to be exercised following consultation with and acting through the Solicitor to the Council. This justified through a report to be confirmed by the Development Manager and Development Management Team. (P)

## Highway Matters

- 3.1.28 To deal with consultations by the East Sussex County Council on highway matters, including the creation, diversion and closure of footpaths and bridleways, and traffic management measures and highway Stopping Up Orders. (C)

## Nature Conservation Matters

- 3.1.29 To determine Appropriate Assessments submitted to the Council under the Conservation (Natural Habitats etc) Regulations 1994.

## **DIRECTOR – PLACE AND CLIMATE CHANGE – STRATEGY AND PLANNING AND BUILDING CONTROL MANAGER (Concurrent Power)**

- 3.1.30 To prepare and implement, after consultation with the Chief Finance Officer, a scheme for the charging of fees in accordance with the Building (Local Authority Charges) Regulations 1998.
- 3.1.31 To approve Site Waste Management Policies for the construction and demolition of sites after consultation with the Director – Place and Climate Change.
- 3.1.32 To issue decisions on all applications under the Building Regulations, and to determine applications for relaxation thereof. (C)
- 3.1.33 To employ qualified consultant structural engineers to check where necessary structural details of applications submitted under the Building Regulations. (C)
- 3.1.34 To exercise the Council's functions under the following Sections of the Building Act 1984. (C)

|      |  |
|------|--|
| S.8  | Relaxation of Building Regulations                 |
| S.16 | Passing and rejection of plans                     |
| S.19 | Use of short-lived materials                       |
| S.20 | Use of materials unsuitable for permanent building |
| S.21 | Provision of drainage                              |
| S.22 | Drainage of buildings in combination               |
| S.24 | Provision of exits etc.                            |
| S.25 | Provision of water supply                          |
| S.31 | Proposed departure from plans                      |
| S.32 | Lapse of deposit of plans                          |
| S.36 | Removal of alteration of offending work            |
| S.59 | Drainage of buildings                              |
| S.72 | Means of escape in case of fire                    |
| S.73 | Raising of chimney                                 |
| S.74 | Cellars and rooms below subsoil water level        |
| S.75 | Consents under Section 74                          |
| S.76 | Defective Premises                                 |
| S.77 | Dangerous Building                                 |

|              |   |
|--------------|---|
| S.78         | Dangerous building - emergency measures               |
| S.79         | Ruinous and dilapidated buildings and neglected sites |
| S.80. 81, 82 | Demolitions   |
| S.84         | Paving and drainage of yards and passages             |
| S.95         | Power to authorise officers to enter premises         |

Revised February 2023

## **3.2 Service Manager - Licensing and Environmental Services Delegations**

### **Environmental Health Service**

The Council's Cabinet and Licensing and General Purposes Committee may delegate some of its functions and powers to specific officers of the Council. The following is a list of those delegations.

In the absence of the nominated officers delegated power may be exercised by the Executive Director of Business Operations or such officer as the Head of Paid Service may nominate.

### **DELEGATIONS TO THE EXECUTIVE DIRECTOR OF BUSINESS OPERATIONS AND HEAD OF ENVIRONMENTAL HEALTH FROM CABINET**

- 3.2.1 To deal with applications, serve Directions, Notices (including fixed penalty notices), apply for warrants and take legal proceedings under the following Acts, regulations and Orders made thereunder as set out below and in Appendix A:

Anti-Social Behaviour Act 2003  
Building Act 1984  
Caravan sites Act 1968  
Clean Air Act 1993  
Clean Neighbourhoods and Environment Act 2005  
Control of Pollution Act 1974  
Control of Pollution (Amendment) Act 1989  
Criminal Justice and Public Order Act 1994  
Dangerous Dogs Act 1991  
Deer Act 1991  
East Sussex Act 1981  
Environment Act 1995  
Environment Protection Act 1990  
European Communities Act 1972 and Regulations Orders made thereunder  
Food and Environmental Protection Act 1985  
Food Safety Act 1990 and regulations made thereunder  
And a). any Order or regulations made thereunder or relating to the foregoing or having effects by virtue of the European Communities Act 1972 and b). any modification ore re-enactment to the foregoing  
Health and Safety at Work etc Act 1974  
Litter Acts 1958 and 1983  
Local Government (Miscellaneous Provisions) Acts 1976 and 1982  
Noise and Statutory Act 1990  
Noise Act 1996  
Prevention of Damage by Pests Act 1949  
Public Health (Control of Diseases) Act 1984  
Public Health Acts 1936 and 1961  
Refuse Disposal (Amenity) Act 1978  
Refuse Disposal Act 1968

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**  
Water Acts 1945 and 1973

Other Acts which amend or replace (in whole or in part) the above Acts.

## **Public Health**

- 3.2.2 To act as a Proper Officer under the Public Health (Control of Diseases) Act 1984 together with Proper Officers appointed by the Health Protection Agency (E120/4/93).
- 3.2.3 To agree local transfers and assignments under Regulations 5 and 6 of the Health and Safety (Enforcing Authority) Regulations 1989 (E93/4/90).
- 3.2.4 To authorise Officers under the Health Act 2006.
- 3.2.5 To carry out functions pursuant to Regulation 8(2) of the Control of Asbestos at Work Regulations 2002.
- 3.2.6 To agree local transfers and assignments under Regulations 5 and 6 of the Health and Safety (Enforcing Authority) Regulations 1989 (E93/4/90).

## **Food Safety**

- 3.2.7 To calculate charges for copies of the Register of Premises required by the Food Premises (Registration) Regulations 1991 (E93/2/92) and the Public Register of Private Water Supplies (E/94/2/92).
- 3.2.8 To authorise suitably qualified officers within the Department to exercise the powers conferred by section 11 of the Deer Act 1991 (E80/11/92).
- 3.2.9 To take any necessary action under both UK and EU Food Safety Legislation and all further statutory provisions, statutory instruments, regulations and directives which may from time to time replace or supplement those specified.
- 3.2.10 To authorise suitably qualified Officers within the Environmental Health Division to act as designated authorised Officers under UK and EU Food Safety legislation as may be required.

## **Dog Matters**

- 3.2.11 To authorise such officers and veterinary surgeons or practitioners as he deems necessary to act on behalf of the Authority under Sections 1 to 3 of the Breeding of Dogs Act 1991 (E35(1)/9/91) and Dangerous Dogs Act 1991.

## **Pest Control**

- 3.2.12 To deal with infestation of rats and mice under Section 6 of the prevention of Damage by Pests Act 1949, and any other pests at the discretion of the Service Manager - Licensing and Environmental Services. To set appropriate charges for dealing with pests.

## **Nuisance and Pollution Matters**

- 3.2.13 To enter into agency agreements with the Department of Transport for the implementation of Noise insulation schemes under the Noise Insulation Regulations 1975.
- 3.2.14 To act, together with the Solicitor to the Council, to obtain injunctions and take proceedings in the High Court against those who intend to hold an event which threatens the peace and quiet of residents, and in contravention of the Local Government (Miscellaneous Provisions) Act 1982.
- 3.2.15 To calculate charges for the release of information required by the Environment Information Regulations 1992 (E118/4/93).
- 3.2.16 To represent the Authority at joint agency meetings to determine applications for Anti-Social Behaviour Orders and to instigate any proceedings, in conjunction with the Solicitor to the Council, for obtaining such an order including the provision of witnesses and the disclosure of relevant information (E7/6/99).

## **Works in Default and Prosecutions**

- 3.2.17 To carry out works in default (and seek to recover all costs incurred) or, through the Solicitor to the Council, to institute legal proceedings, including prosecution of offences against, or applications for Orders under the various Acts, regulations or byelaws made thereunder as set out in Appendix A. In accordance with the Council's current Environmental Health Enforcement Policy (E41/10/01).

## **DELEGATIONS TO THE EXECUTIVE DIRECTOR OF BUSINESS OPERATIONS AND SERVICE MANAGER - LICENSING AND ENVIRONMENTAL SERVICES FROM THE LICENSING AND GENERAL PURPOSES COMMITTEE (REGULATORY COMMITTEE)**

- 3.2.18 To grant, renew, vary, transfer licences, registrations, certificates, permits and issue authorisation and take legal proceedings under Acts listed below and set out within Appendix A :-

Animals Boarding Establishments Act 1963  
Boarding of Dogs Act 1973  
Breeding of Dogs Act 1991  
Caravan Sites and Control of Development Act 1960  
Dangerous Wild Animals Act 1976  
Environmental Protection Act 1990  
European Communities Act 1972 and Regulations Orders made thereunder  
Food Safety Act 1990  
Gambling Act 2005  
House to House Collections Act 1939  
Hypnotism Act 1952  
Licensing Act 2003

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

Local Government (Miscellaneous Provisions) Act 1976 and 1982

Motor Salvage Operators Regulations 2002

Noise Act 1996

Pet Animals Act 1951

Police, Factories, etc (Miscellaneous Provisions) Act 1916 (Street Collections)

Pollution Prevention and Control Act 1999

Public Health Acts Amendment Act 1907 (Pleasure Boats)

Riding Establishments Act 1964 and 1974

Safety of Sports Grounds Act 1975

Scrap Metal Dealers Act 1964

Sunday Trading Act 1994

Town Police Clauses Act 1847

Zoo Licensing Act 1981

Other Acts which amend or replace (in whole or in part) the above Acts.

- 3.2.19 To vary fees and charges in respect of licensing or registration as may from time to time be necessary.
- 3.2.20 Power to register animal trainers and exhibitors. (Section 1 of the Performing Animals (Regulation) Act 1925 (c. 38)).
- 3.2.21 Power to license knackers' yards. (Section 4 of the Slaughterhouses Act 1974. See also the Animal By-Products Order 1999 (S.I. 1999/646)).
- 3.2.22 Power to license persons to collect for charitable and other causes. (Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 (c. 31) and section 2 of the House to House Collections Act 1939 (c. 44)).
- 3.2.23 Power to approve meat product premises. (Regulations 4 and 5 of the Meat Products (Hygiene) Regulations 1994 (S.I. 1994/3082)).
- 3.2.24 Power to approve premises for the production of minced meat or meat preparations. (Regulation 4 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (S.I. 1995/3205)).
- 3.2.25 Power to approve dairy establishments. (Regulations 6 and 7 of the Dairy Products (Hygiene) Regulations 1995 (S.I. 1995/1086)).
- 3.2.26 Power to approve egg product establishments. (Regulation 5 of the Egg Products Regulations 1993 (S.I. 1993/1520)).
- 3.2.27 Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods. (Schedule 1A to the Food Safety (General Food Hygiene) Regulations 1995 (S.I. 1995/1763)).
- 3.2.28 Power to approve fish products premises. (Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (S.I.1998/994)).
- 3.2.29 Power to approve dispatch or purification centres. (Regulation 11 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998).

## **THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 3.2.30 Power to register fishing vessels on board which shrimps or molluscs are cooked. (Regulation 21 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998).
- 3.2.31 Power to approve factory vessels and fishery product establishments. (Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998).
- 3.2.32 Power to register auction and wholesale markets. (Regulation 26 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998).
- 3.2.33 Duty to keep register of food business premises. (Regulation 5 of the Food Premises (Registration) Regulations 1991 (S.I. 1991/2828)).
- 3.2.34 Power to register food business premises. (Regulation 9 of the Food Premises (Registration) Regulations 1991).
- 3.2.35 Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the Authority's capacity as an employer. (Part I of the Health and Safety at Work etc Act 1974 (c. 37)).
- 3.2.36 Power to make closing order with respect to take-away food shops. (Section 4 of the Local Government (Miscellaneous Provisions) Act 1983 (c. 30)).
- 3.2.37 To issue licences for keddle net fishing and set charges.
- 3.2.38 To act as the designated Proper Officer (under the Sunday Trading Act 1994) for the receipt of notices from large shops intending to open on Sundays and to maintain the register thereof (E25/8/94).
- 3.2.39 To take any relevant legal proceedings in conjunction with the Solicitor to the Council under the Acts and Regulations listed in paragraph 3.2.38, including prosecutions for failing to comply with conditions attached to licences etc. In accordance with the current Environmental Health Enforcement Policy (E41/10/01).

## **Hackney Carriage & Private Hire Matters**

- 3.2.40 To appoint such Officers as he deems necessary to act on behalf of the Council for the purposes of Section 68 of the Local Government (Miscellaneous Provisions) Act 1976. (Inspection of Hackney Carriage and Private Hire Vehicles).
- 3.2.41 To increase hackney carriage fares on an annual basis following consultation, if no objections are received.



**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 3.2.42 To appoint private investigators to assist, as may be required from time to time, in the enforcement of hackney carriage and private hire licensing matters, subject to costs being contained within the taxi licensing budget.
- 3.2.43 To suspend or revoke vehicle and driver licences where it is considered necessary for the protection of the public, following consultation with the Chairman or Vice-Chairman of the Licensing and General Purposes Committee.
- 3.2.44 To issue exemption certificates.
- 3.2.45 To approve MOT stations as vehicle compliance testers.

Animal Boarding Establishments Act 1963  
Animal Welfare Act 2006  
Anti-Social Behaviour Act 2003  
Boarding of Dogs Act 1973  
Breeding of Dogs Act 1991  
Building Act 1984  
Caravan Sites and Control of Development Act 1960  
Clean Air Act 1993  
Clean Neighbourhoods and Environment Act 2005  
Control of Pollution Act 1974  
Control of Pollution (Amendment) Act 1989  
Criminal Justice & Public Order Act 1994  
Dangerous Dogs Act 1991  
Dangerous Wild Animals Act 1976  
Deer Act 1991  
Environment Act 1995  
Environmental Protection Act 1990  
Food Safety Act 1990: (as amended) and;  
    a) any order or Regulations made thereunder or relating to the foregoing  
        or having effects by virtue of the European Communities Act 1972 and  
    b) any modification or re-enactment to the foregoing  
Food Hygiene (England) Regulations 2006  
Gambling Act 2005  
General Food Regulations 2004  
Health and Safety at Work etc Act 1974  
Housing Acts 1985, 1996 and 2004  
Housing Grants, Construction and Regeneration Act 1996  
Hypnotism Act 1952  
Licensing Act 2003  
Local Government and Housing Act 1989  
Local Government (Miscellaneous Provisions) Acts 1976 and 1982  
Motor Salvage Operator Regulations 2002  
Noise Act 1996  
Noise and Statutory Nuisance Act 1993  
Official Control of Foods and Foodstuffs Regulations 2006  
Pet Animals Act 1951  
Pollution Prevention and Control Act 1999  
Prevention of Damage by Pests Act 1949  
Public Health Acts 1936 and 1961  
Public Health (Control of Diseases) Act 1984  
Refuse Disposal Amenity Act 1978  
Riding Establishments Act 1964 and 1974  
Slaughter of Poultry Act 1967  
Slaughterhouses Act 1974  
Sunday Trading Act 1994  
Water Industry Act 1991  
Zoo Licensing Act 1981

and amendments made to these Acts.

## **3.3 Service Manager - Community and Economy Delegations**

The Council may delegate some of its functions and powers to specific officers of the Council. The following is a list of those delegations to the Service Manager – Community and Economy. In the absence of the Service Manager - Community and Economy delegated power may be exercised by the Executive Director of Business Operations or such other officer as the Head of Paid Service may nominate.

### **Contract and Financial Management**

Authorities concerning specific Amenities activities that have financial implications are described in the relevant sections that follow.

To approve periodic (monthly) expenditure up to one twelfth of the annual contract sum for service contracts (regardless of value).

- 3.3.1. To approve activities that are of benefit to the community but for which responsibility lies with other public organisations, provided:
- a. sufficient funding exists and
  - b. the total annual revenue cost does not exceed £5,000
  - c. to seek reimbursement for costs incurred when action has been taken

(For example, the removal of visible fly tips not located on Rother District Council land.)

- 3.3.2 To issue proportional refunds for the cost of season tickets and annual licence fees for any services that are the responsibility of the Service Manager - Community and Economy upon surrender thereof in cases where use has not been possible due to illness or weather. (Including car park season tickets, bowls season tickets and sports pitch bookings.)
- 3.3.3 To negotiate lower charges for the hire of open spaces, sports pitch bookings and beach facilities where such action is desirable in order to gain income.

### **Refuse Collection, Recycling and Street Cleansing Services**

- 3.3.4 To arrange the collection of clinical waste from premises as required by the Waste Collection and Disposal Regulations 1988 and as may be requested by industrial or commercial premises for which no duty in respect of collection otherwise exists.
- 3.3.5 To serve Litter Abatement Notices in accordance with Section 92 of the Environmental Protection Act 1990.
- 3.3.6 To receive payment for and arrange the collection of waste and recycling materials for which no duty otherwise exists.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 3.3.7 To carry out the Street Sweeping/Beach Cleansing Service in accordance with Section 89 of the Environmental Protection Act 1990 and the associated Code of Practice to ensure compliance with same.
- 3.3.8 To issue Fixed Penalty Notices as appropriate in accordance with the provisions of the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and other subsequent legislation as advised by the Service Manager - Licensing and Environmental Services.

**Highway and Transport operational matters including car parks**

- 3.3.9 To issue written notices and authorisations as is deemed necessary to ensure the effective management of car parks with regard to the provisions of the Road Traffic Regulation Act 1984 and the Rother Off-Street Parking Order.
- 3.3.10 To enter into a contract for the sale of advertising space on car parking tickets sold by the Council (T8/6/95).
- 3.3.11 To authorise temporary closure(s) and alternate use(s) for car parks up to a total of seven days in any year provided that the total loss of income per annum does not exceed £5,000.
- 3.3.12 To authorise free use of each car park (or designated area within a car park) up to a total of seven days in any year.
- 3.3.13 To deal with the provisions of section 33 of the Road Traffic Regulation Act 1984 including matters concerning temporary car parks.
- 3.3.14 To cancel car parking standard charge notices when there is evidence that extenuating circumstances should be considered.

**Open Spaces, Parks, Sports and Recreational Grounds**

- 3.3.15 To close to the public any park or pleasure ground under section 44 of the Public Health Acts Amendment Act 1890 (as amended by section 8 of the East Sussex Act 1981) and to close up to 100 metres of any esplanade under section 13 of the East Sussex Act 1981.
- 3.3.16 To deal with applications for the hire of sports pitches and other parks and open space facilities including block bookings and to adjust charges for facilities or games etc. if required due to changes in the rate of VAT.
- 3.3.17 To approve temporary access to open spaces, parks, sports and recreational grounds by vehicles on appropriate terms and conditions to be determined by the Council's Estates Officer.
- 3.3.18 To determine charges for and approve the temporary use of open spaces, parks, sports and recreational grounds for entertainment and non-commercial community events provided that general public access to any site is not restricted for more than 20 days in any year. (For example, Carnivals, Circuses, Fairs and fetes.)

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**

- 3.3.19 To grant concessionary use of open spaces, parks, sports and recreational grounds to external organisations and/or individuals to provide or operate non-commercial community services, provided the total annual value of the concessions granted does not exceed £5,000.
- 3.3.20 To issue licences for temporary mobile catering concessions following consultation with the Council's Estates Officer for open spaces, parks, sports and recreational grounds on terms and conditions to the satisfaction of the Head of Paid Service.
- 3.3.21 To display notices, designate and set apart areas in pleasure grounds, public walks and open spaces for the purposes of specified games in accordance with Byelaws.

**Community Facilities Operated by External Organisations**

- 3.3.22 To approve annual contracts and service level agreements with external organisations and/or individuals to provide or operate community services, provided:
- a. sufficient funding exists within existing budgets
  - b. the total annual revenue cost does not exceed £20,000

(For example, for organisations to participate in the annual "In Bloom" competitions; for individuals to operate warning flag systems.)

**Provision of Entertainments and Use of Public Spaces and Buildings**

- 3.3.23 To engage public attractions and entertainments whenever the financial result is considered advantageous to the Council.
- 3.3.24 To grant and apply terms for filming concessions on property owned by the Council.
- 3.3.25 To issue licences for animal grazing on terms and conditions to the satisfaction of the Head of Paid Service.

**Foreshore and Beach Management**

- 3.3.26 To issue and renew licences for beach huts, temporary beach huts, boats and winches.
- 3.3.27 Provided general public access is not restricted for more than 10 days in any year to grant facilities for regattas and other events using beaches or promenades on terms and conditions approved by the Head of Paid Service.
- 3.3.28 In liaison with the Service Manager - Licensing and Environmental Services (who is responsible for permissions for charities to collect on streets) to permit charities to collect money on esplanades on occasions when they are authorised to hold street collections.

**THIS PART IS CURRENTLY OUT OF DATE AND WILL BE AMENDED IN DUE COURSE**  
**Allotments**

3.3.29 To approve applications and issue agreements for the use of allotments and the erection of sheds on allotment sites.

3.3.30 To issue notices to vacate allotments.

**Cemeteries**

3.3.31 To authorise the issue of grants and exclusive right of burial in the Council's cemeteries.

3.3.32 To approve works and the materials used in the construction of monuments.

3.3.33 To approve the erection of cemetery monuments which comply with the regulations governing cemeteries.

3.3.34 To exercise the powers of the Council contained in the regulations relating to the selection or purchase of graves or vaults

3.3.35 To approve the use of music, flags or banners in cemeteries.

3.3.36 To issue notices to owners and authorise works to facilitate maintenance of graves and cemeteries to meet the requirements of the memorial testing regulations in accordance with current Council policy.

3.3.37 To exercise the powers of the Council under Section 46 of the Public Health (Control of Diseases) Act 1984 relating to the burial or cremation of the dead.

**Miscellaneous**

3.3.38 To deal with dangerous trees under sections 23 & 24 of the Local Government (Miscellaneous Provisions) Act 1976.

3.3.39 To apply for premises and Temporary Event Notices on behalf of the Council under the Licensing Act 2003.

3.3.40 To consider applications to hold a public event and give the permission of the Local Authority as the premises licence holder for any regulated entertainment that is proposed.

3.3.41 To secure the removal of any boat which is on any part of the seashore under the control of the Council under section 12 of the East Sussex Act 1981.

3.3.42 To give consent to any person to take off from or land in pleasure grounds, public walks and open spaces in an aircraft, helicopter, hang-glider or hot-air balloon (subject to insurance and safety requirements).

# GLOSSARY OF TERMS

Throughout the Constitution the following words and expressions are used; the definition of each is detailed below:

| TERM                               | DEFINITION  |
|------------------------------------|---|
| <b>Access to Information Rules</b> | Provisions that apply to all principal councils that provide the public and press with access to meetings and connected papers of the Council, its committees and sub committees, unless confidential or exempt information is likely to be disclosed.  |
| <b>Allowances</b>                  | Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.  |
| <b>Articles</b>                    | The basic rules within the Constitution which govern the operation of the Council's business.   |
| <b>Background Papers</b>           | Papers containing facts or matters on which the report author thinks the report or an important part of it is based, or which in their opinion are relied on to a material extent in preparing the report.  |
| <b>Budget</b>                      | The allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and council house rents and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.  |
| <b>Budget and Policy Framework</b> | The plans and strategies and budget which shall be adopted by the full Council and within which Cabinet shall operate.  |
| <b>Cabinet</b>                     | The Leader elected by the Council and up to nine other Councillors chosen by the Leader to form a Cabinet with legal powers and responsibilities for discharging executive functions, including the day-to-day management of the Council's business in line with the policy framework and budget approved by the Council.   |
| <b>Call-in</b>                     | <p>The mechanism by which the Overview and Scrutiny Committee can review or challenge decisions made by the Cabinet, which are not yet implemented.</p> <p>Call-in may be requested by the Chair of the Overview and Scrutiny Committee or any two non-Cabinet Members, one of whom must have been present (in person) at the Cabinet meeting.</p>  |
| <b>Chair</b>                       | <p>The person appointed to preside at meetings of any constituted body.</p> <p>The Constitution refers throughout to "The Chair", whether of the Council or any committee or sub-committee or, by analogy, any Steering or Task &amp; Finish Group. Any Chair may, however, wish to be referred to as "Chairman", "Chairwoman" or "Chairperson" or some other related term, at any meeting at</p> |

| TERM                            | DEFINITION  |
|---------------------------------|---|
|                                 | <p>which they preside and all Members or other persons speaking at the meeting shall respect that wish.</p> <p>Notwithstanding this, unless Council determines otherwise, minutes of all meetings and all references in one meeting to the Chair shall continue to use the word “Chair”.</p> <p>The same principle shall apply to the Vice-Chair.</p> |
| <b>Chair of the Council</b>     | A civic “non-political” role elected by the Council on an annual basis. To run full Council meetings and represent the Council at various functions of a civic, community and ceremonial nature.  |
| <b>Chief Executive</b>          | The officer with overall corporate management and operational responsibility (including overall management responsibility for all officers). This officer is also the Head of Paid Service.   |
| <b>Chief Finance Officer</b>    | The officer appointed by the Council under Section 151 of the Local Government Act 1972, to exercise the proper administration of the Council’s financial affairs, with specific responsibilities under the Local Government Act 1972. Also known as the “Section 151 Officer”. This is a statutory officer role.                                     |
| <b>Chief Officers</b>           | The Chief Executive, Deputy Chief Executive and Monitoring Officer and Director – Place and Climate Change, as defined in Article 12 of the Constitution.   |
| <b>Clear Working Days</b>       | All agendas and papers for decision shall be available five clear working days before the decision is taken (special rules may apply to urgent late items). A clear working day excludes Saturday, Sunday or Bank and Public Holidays and does not include the day the papers are sent out or the date of the meeting.                                |
| <b>Code of Conduct</b>          | All Councillors are required to abide by a Code of Conduct (CoC) adopted by the Council which sets out the standards of conduct expected by them. The CoC applies to all Councillors of the Council. The CoC for Councillors can be found in Part 5 – 1 of the Constitution.  |
| <b>Committee</b>                | Committees are appointed to carry out functions delegated to them by the Council or Cabinet.  |
| <b>Confidential Information</b> | <p>Confidential information means:</p> <ul style="list-style-type: none"> <li>• information provided to the Council by a Government department on terms which forbid the disclosure of the information to the public; and</li> <li>• information which is prohibited from being disclosed by any enactment or by a court order.</li> </ul>            |
| <b>Constitution</b>             | The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose.   |



| TERM                             | DEFINITION  |
|----------------------------------|---|
| <b>Controlling Group</b>         | The political group or groups of the Council whose members have been appointed to the Cabinet by the Leader of the Council shall be identified as the Controlling Group or Groups.  |
| <b>Corporate Management Team</b> | The senior officer team responsible for the operational management of the Authority and comprising the Chief Executive, Deputy Chief Executive and Monitoring Officer, Director – Place and Climate Change, Chief Finance Officer and all Heads of Service.   |
| <b>Councillor</b>                | Person elected on the Council to serve a ward; usually known as a “Member”. Councillors are elected to serve a four year term.  |
| <b>Council</b>                   | Rother District Council comprises of 38 elected Members, elected every four years.  |
| <b>Decision</b>                  | When a matter is ultimately taken by the appropriate decision maker. A recommendation is not a decision.  |
| <b>Delegation</b>                | The Leader of the Council, or the Council, may delegate the exercise of their statutory functions to committees or officers, whilst also retaining the power to carry out the function themselves. Officers who have been given delegated powers may also authorise other officers to carry out all, or part of, their delegated authority on their behalf. |
| <b>Deputy Leader</b>             | Annually appointed by the Leader of the Council to assist the Leader in formal processes and matters of leadership of the authority. To represent the Council and the political administration in the community and elsewhere as required by the Leader and to deputise for the Leader in their absence.  |
| <b>District Council</b>          | Rother District Council, sometimes referred to as “the Authority”.  |
| <b>Employee</b>                  | A collective term for all persons employed by the Council to carry out any function.  |
| <b>Exempt Information</b>        | Information falling into one of seven categories listed in the Access to Information Procedure Rules (Part 4 of Constitution) which usually may not be publicly disclosed.  |
| <b>Executive</b>                 | The Leader and Cabinet; responsible for carrying out most of the Council’s functions. Known as the “Cabinet” in Rother District Council and shall comprise the Leader and up to nine Councillors elected by the Leader.   |
| <b>Executive Functions</b>       | The responsibilities of the Cabinet.  |
| <b>Ex-officio</b>                | The Chair of the Council to be an ex-officio Member on all Committees (excluding Cabinet), but not have any rights to move or second motions or vote.   |
| <b>Forward Plan</b>              | Prepared by the Leader to cover a 4-month period containing all decisions (including key decisions) to be taken by the Cabinet.   |
| <b>Full Council</b>              | Full Council is made up of all 38 Councillors in the Rother District. Meetings of the full Council are held in public and are chaired by the Chair of the Council.  |

| TERM                                   | DEFINITION   |
|--|--|
| <b>Head of Paid Service</b>            | The most senior officer of the Council, with overall responsibility for the management and operation of the Council. The Chief Executive is the “Head of Paid Service” at Rother District Council. This is a statutory officer role.   |
| <b>Head of Service</b>                 | Senior officers who report to the Chief Executive, Deputy Chief Executive, Director – Place and Climate Change and are responsible for the effective management, delivery and performance of the services and functions within their specific corporate areas of responsibility.         |
| <b>Independent Persons (Audit)</b>     | The Council has appointed one Independent Person to assist the Authority in matters of an audit nature, risk management, corporate governance, performance management and financial governance.  |
| <b>Independent Persons (Standards)</b> | The Council is required, under the provisions of the Localism Act 2011, to appoint at least one Independent Person to assist the Authority in promoting and maintaining high standards of conduct amongst its Councillors.   |
| <b>Key Decision</b>                    | A decision by the Cabinet which is likely either to incur significant expenditure or make significant savings (£100,000) or to have a significant impact on those living or working in two or more wards. Decisions must be made in line with the Council’s overall policies and budget. |
| <b>Lead Cabinet Member</b>             | The Cabinet Member appointed by the Leader to have responsibility for ensuring the effective management of a particular area of the Council’s work (sometimes referred to as a “portfolio”).   |
| <b>Leader of the Council</b>           | The person elected by the Council to be its Leader (4-year term) with powers outlined in the Local Government Act 2000 (as amended). Appoints the Deputy Leader and Cabinet and chairs Cabinet meetings.   |
| <b>Major Opposition Group</b>          | The political group with the largest number of seats on the Council and whose members have not been appointed to the Cabinet by the Leader of the Council shall be identified as the Major Opposition Group.   |
| <b>Meeting</b>                         | A meeting of the Council or the Cabinet, a Committee or of a Sub-Committee.  |
| <b>Member</b>                          | See Councillor above.  |
| <b>Minor Opposition Groups</b>         | Other political groups with seats on the Council and whose members have not been appointed to the Cabinet by the Leader of the Council shall be identified as Minor Opposition Groups.   |
| <b>Monitoring Officer</b>              | The officer appointed by the Council in accordance with Section 5 of the Local Government and Housing Act 1989 to promote and maintain high standards of fairness and decision making. The Monitoring Officer is currently the Deputy Chief Executive.                                   |

| TERM                                   | DEFINITION   |
|--|--|
| <b>Motion</b>                          | A motion is a proposal put forward for debate or decision. A motion shall be moved and seconded before it may be debated. It shall be expressed as a motion in positive terms to adopt a certain course of action or to do some act or to declare a particular attitude.   |
| <b>Nem Con Vote</b>                    | No one voting against.   |
| <b>Non-Executive Functions</b>         | Those responsibilities of the Council, Committees and Sub-Committees which cannot be discharged by the Cabinet, along with those local choice functions decided by the Council pursuant to regulations made by the Government under the 2000 Act.  |
| <b>Notice of Key Decisions</b>         | A plan setting out key decisions (as defined in Article 13) which are expected to be taken by the Cabinet over the coming months. The plan is published on the Council's website and is available at least 28 days before a decision is made. Also referred to as the "Forward Plan".  |
| <b>Officers</b>                        | A person employed or appointed as a member of staff and implements policy decisions made by Councillors.   |
| <b>Outside Body</b>                    | Statutory bodies, charities and voluntary organisations, partnership bodies, local government associations, companies and other external organisations to which the Council appoints representatives.  |
| <b>Overview and Scrutiny Committee</b> | Committee established to assist in the development of policy and to hold the Cabinet and other executive decision takers to account by questioning, challenging and monitoring its performance.  |
| <b>Policy Framework</b>                | The plans and strategies set out in Article 4 which shall be adopted by the full Council and within which the Cabinet shall operate.   |
| <b>Political Groups</b>                | Any two or more Councillors notifying the Chief Executive in the appropriate form is considered a political group for the purpose of seat allocation.  |
| <b>Proper Officer</b>                  | The term Proper Officer is peculiar to local government, it is a phrase used to identify a person designated as being responsible for a particular function or range of functions. In a governance / committee context it is the officer who is responsible for issuing the summons to a council meeting – i.e. the Chief Executive. |
| <b>Public</b>                          | Local people i.e. those that have a connection with the District.  |
| <b>Public Speaking Scheme</b>          | The Scheme setting out how members of the public may speak at Planning Committee meetings.   |
| <b>Quorum</b>                          | The minimum number of Councillors who shall be present before a meeting may take place.  |
| <b>Regulatory Committee</b>            | A committee undertaking functions of the Council (such as Licensing or Planning).  |

| TERM                        | DEFINITION   |
|-----------------------------|--|
| <b>Scheme of Delegation</b> | The documents in Part 8 of the Constitution which set out which officers are responsible for particular functions of the Council.  |
| <b>Section 151 Officer</b>  | See Chief Finance Officer above.   |
| <b>Senior Officer</b>       | Officers that report directly to the Chief Executive.  |
| <b>Statutory Officers</b>   | This refers to the three statutory posts of Chief Executive (Head of Paid Service), the Monitoring Officer and the Section 151 (Chief Finance Officer).  |
| <b>Substantive Motion</b>   | The original motion or one that has been amended and is put forward for decision.  |
| <b>Substitute</b>           | A person who is appointed to attend a formal committee or sub-committee meeting in place of a member of their political group where that person is unable to attend themselves. Substitutes are appointed to Licensing and General Purposes, Overview and Scrutiny and Planning Committees only.   |
| <b>Summons</b>              | The term used to describe the agenda for the full Council meeting.   |
| <b>Term of Office</b>       | In the context of the Chair of Council, this is a period of one civic year.  |
| <b>The Authority</b>        | Rother District Council or the District Council.   |
| <b>Vice-Chair</b>           | <p>The person appointed to preside, in the absence of the Chair, at meetings. In the case of the Vice-Chair of Council, the post holder shall also deputise for the Chair of the Council at civic and ceremonial events, from time to time, as required.</p> <p>See definition for “Chair” above as to the right of the individual holding the office to request to be called by some other title.</p> |
| <b>Virement</b>             | Moving budget funds from one area of expenditure to another within a financial year.   |
| <b>Ward</b>                 | An area within the Rother District which has one or more Members elected to represent the area and the electorate.   |